LLT Lab Annotation Protocol (Public): LegalRuleSentence Type

(Sentences That Primarily State Legal Rules in the Abstract)

The following guidelines and examples govern our annotation of spans of text using the type "LegalRuleSentence".

Part I: Guidelines

This protocol annotates text that has previously been annotated using the annotation protocols for the types "Sentence" and "CitationSentence." Each and every annotation should span one (and only one) entire sentence.

A legal-rule sentence is a sentence that primarily states one or more legal rules in the abstract, without stating whether the conditions of the rule(s) are satisfied in the case being decided. Such sentences can provide important information for constructing a rule tree, and they provide building blocks for arguments about issues of fact. From the perspective of argument mining, we are interested not only in identifying rules that are binding in the jurisdiction, but also rules of other jurisdictions that might still play a persuasive role.

Note that we are interested in sentences that state legal rules in the abstract. That is, we do not annotate as legal-rule sentences the sentences that apply a legal rule to the specifics of the case. (Such sentences are more likely to be finding sentences or ruling/holding sentences.) One reason we do this is because we want to extract general rules from legal-rule sentences for inclusion in rule trees, and we have other purposes for identifying finding sentences or ruling/holding sentences. Note that occasionally a decision writer will express a completely general rule, but do so in terms of what "the veteran" must do. Such sentences may cause us annotation difficulties.

We adopt a fairly standard definition of a "legal rule." Legal rules are general commands that authoritatively prescribe obligations, prohibitions or permissions for particular persons or entities, in particular circumstances. Regardless of how they are expressed in natural language, legal rules are (or can be transformed as) conditional in logical form, "if *p*, then *q*", where *p* and *q* stand for component propositions. For such conditionals to be legal rules, they must have been authoritatively adopted, they must be intended to be universally applicable, and they must have the force of law. See the examples below.

We are annotating at the sentence level, so a sentence that primarily states a legal rule in the abstract, but which also includes within it a citation, should be annotated as a legal-rule sentence. Correspondingly, a sentence that is primarily a citation, but which

incidentally also contains a parenthetical with text that states a legal rule, should be annotated as a citation sentence. (Note that on a second layer of analysis, looking inside the content of a sentence, we can still extract the citation embedded in a legal-rule sentence, or the legal rule embedded in a citation sentence, so no information is lost. It's just that for now we are annotated whole sentences only.)

Characteristics of a "Rule-Making Authority." As you will see below, an important indicator that a sentence is a legal rule is that it is followed immediately by a citation sentence citing to a source issued by a rule-making authority (a legal authority with rule-making powers), or that the sentence contains an embedded citation to a rule-making authority. The normal-form citation to a rule-making authority would cite to one of the institutions that have the power to make rules that are binding on the Board of Veteran Appeals. The primary sources issued by rule-making authorities for the BVA are:

1. Federal statutes ("U.S.C.");
2. VA regulations ("38 C.F.R."; "Fed. Reg.");
3. Decisions of the U.S. Supreme Court ("U.S." or "S.Ct.");
4. Decisions of the U.S. Court of Appeals for the Federal Circuit ("Fed. Cir.");
5. Precedential decisions of the U.S. Court of Appeals for Veterans Claims ("Vet. App.")[1];
6. Instructions of the Secretary of the VA; and
7. Precedential opinions of the VA Office of General Counsel (VAOPGCPREC #-year).

However, we are trying to annotate all statements of legal rules in the abstract, not just those binding on the BVA. For example, the BVA might refer to a Federal Rule of Evidence that is not binding on the BVA. But we want to annotate a statement of such a rule as a legal-rule sentence, because it might play a role in reasoning by analogy, and we might want to use that type of sentence in extracting the legal reasoning. Another example might be a substantive rule of law from another legal domain (e.g., state Tort law), but used in making a policy-based argument for having a similar rule in the law applied by the BVA.

In general, in deciding whether you should annotate a particular sentence as being a legal-rule sentence, you should move through the following steps. These steps do not contain mechanical tests, but rather factors that can "add up" to the sentence's probably being a legal-rule sentence. Think of yourself as computing a "likelihood score" that the sentence is a legal-rule sentence.

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[1] **Note:** whether or not a CAVC decision is precedential or not is a function of complex procedural rules, but in general decisions by single judges and some decisions by panels of three judges are not precedential. For our purposes, however, if the citation is to a decision published in "Vet.App." we will regard it as a citation to a rule-making authority.

1. If the sentence immediately precedes a citation sentence citing a rule-making authority, then it is much more likely to be a legal-rule sentence. For decisions issued by the BVA, the citation is to a rule-making authority if it cites one of the following:
    - U.S.C.
    - C.F.R.
    - Fed. Reg.
    - S.Ct. (U.S.)
    - Fed. Cir.
    - Vet.App. (CAVC)
    - VAOPGCPREC #-year.
2. If the sentence contains an embedded citation of the kind described in step #1, then the clause preceding the citation is more likely to state a legal rule. If the legal-rule clause is predominant in the sentence, then we should label the sentence as a legal-rule sentence.
3. If the sentence in #1 or #2 is a quotation, or has a quotation as the attribution object, then the sentence is more likely to be a legal-rule sentence.
4. If the sentence contains an appropriate attribution cue that typically indicates the adoption of a legal rule (e.g., *held that*, *stated that*, *ruled that*), and the attribution subject of the sentence is a rule-making authority, then the sentence containing the attribution is more likely to be a legal-rule sentence.
5. If the sentence contains deontic words expressing obligation, permission or prohibition (e.g., *must*, *may*, *requires, …*), then the sentence containing these words is more likely to be a legal-rule sentence. Phrases may also play a deontic role -- e.g., *is permitted to*, or *has the burden of proving*.
6. If the sentence contains deontic words followed by a numbered list whose list items are separated by commas or semicolons, then the sentence is more likely to be a legal-rule sentence.
7. If the sentence contains legal terminology or concepts from other legal rules, especially those in the rule tree for the legal area, then the sentence containing these words is more likely to be a legal-rule sentence (legal rules often explain, define, or provide exceptions to other legal rules). We should also label as a legal-rule sentence any sentence that interprets a rule from a statute, regulation or precedential judicial decision. For our purposes, a sentence providing an interpretation of the meaning of a rule is almost always itself a statement of a legal rule.
8. If the sentence contains words or phrasing, especially quantifiers or adverbs, that indicate a general or universal proposition applying to all members of a reference

class (e.g., *all veterans*, *any veteran*, *always*, …), then the sentence containing these words is more likely to be a legal-rule sentence.

9. If the sentence contains references only to indefinite subjects (objects or events identified only by their general characteristics as members of a class, often by common nouns, indefinite descriptions employing the indefinite articles *a* or *an*, or other phrases that name groups or classes of individuals -- e.g., reference only to "veterans," not to a specific veteran), then the sentence containing these words is more likely to be a legal-rule sentence. For example, if the sentence refers to the specific veteran filing the claim, then it is less likely to be a legal-rule sentence (but there are lots of exceptions).

10. If the sentence contains or expresses a conditional proposition, employing such words as: *if … then*, *whenever …* , *only if*, then the sentence containing these words is more likely to be a legal-rule sentence.

11. If the sentence assigns a burden of production to a type of party, or a burden of persuasion, or a burden of proof, then it is more likely to be a legal-rule sentence.

Part II: Lists of Examples (Organized into 3 lists)

List A: Normal Form -- A sentence in "normal form" is one for which we are highly confident that it states a legal rule in the abstract, and this confidence is based on some evidence from the text (the "linguistic cue"). Also, a sentence in "normal form" has a certain fixed format or pattern, which we find recurring numerous times. These should be the easiest types of sentences for computer software to identify.

There are two kinds of normal form for sentences that primarily state legal rules in the abstract: (1) general or abstract sentences that are followed immediately by a citation to the rule-making authority; (2) sentences that contain an attribution to the rule-making authority.

1. Sentences Followed Immediately by a Citation to a Rule-Making Authority. Typical format: {General or Abstract Sentence Stating Rule} {Citation to Rule-Making Authority}.

EXAMPLES:

Establishing service connection requires (1) evidence of a current disability; (2) evidence of in-service incurrence or aggravation of a disease or injury; and (3) evidence of a nexus between the claimed in-service disease or injury and the present disability.

[Note: a linguistic cue is that this sentence was followed immediately by a citation sentence: "Shedden v.Principi, 381 F.3d 1163 (Fed. Cir. 2004)."]

These four factors are: (1) whether there is competent evidence of a current disability or persistent or recurrent symptoms of a disability; (2) whether there is evidence establishing that an event, injury, or disease occurred in service, or evidence establishing certain diseases manifesting during an applicable presumption period; (3) whether there is an indication that the disability or symptoms may be associated

with service or with another service-connected disability; and (4) whether there otherwise is sufficient competent medical evidence of record to make a decision on the claim.

[Note: a linguistic cue is that this sentence was followed immediately by this sentence: "38 U.S.C. § 5103A(d); 38 C.F.R. § 3.159(c)(4); McLendon v. Nicholson, 20 Vet. App. 79 (2006)." Also, this sentence was preceded immediately by the sentence: "In determining whether the duty to assist requires that a VA medical examination be provided or medical opinion obtained with respect to a veteran's claim for benefits, there are four factors for consideration."]

Service connection may be granted for a disability resulting from disease or injury incurred coincident with or aggravated by service.

[Note: followed immediately by the citation sentence, "38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303."]

For service connection for PTSD, a diagnosis of PTSD must be established in accordance with 38 C.F.R. § 4.125(a) (2012), which simply mandates that, for VA purposes, all mental disorder diagnoses must conform to the 4th edition of the American Psychiatric Association's Diagnostic and Statistical Manual for Mental Disorders (DSM-IV).

[Note: followed immediately by, "See 38 C.F.R. § 3.304(f) (2012)."]

Lay evidence can be sufficient to prove service connection, but due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence.

[Note: followed immediately by, "38 U.S.C.A. §1154(a) (West 2002)."]

2. Sentences Containing Attribution to the Rule-Making Authority. Typical format: {Authoritative Source of the Rule} {Attribution Cue} {Rule Being Stated}, where the authoritative source of the rule = a noun or noun phrase that refers to a governmental institution that has rule-making power (legislature, administrative agency, court), the attribution cue = verb+*that* (the evidence of active rulemaking, such as "held that"), and the rule being stated = a complete clause]

EXAMPLES:

The Court in Gilbert held that before the presumption of soundness is for application, there must be evidence that a disease or injury - that was not noted upon entrance into service - manifested in service.

However, the Federal Circuit has held that service connection is warranted when drug or alcohol abuse results secondarily from a service-connected disability, but compensation should only result "where there is clear medical evidence establishing that the drug or alcohol abuse disability is indeed caused by the veteran's primary service-connected disability."

Further, the Court specifically stated that entitlement need not be established beyond a reasonable doubt, by clear and convincing evidence, or by a fair preponderance of the evidence.

List B: Linguistic Transforms of Normal Forms -- A sentence that is a "linguistic transform" of a "normal form" is one for which we are also highly confident that it states a legal rule in the abstract, a confidence based on some evidence from the text (the "linguistic cue"). However, while a sentence in "normal form" has a certain recurring format or pattern, a "linguistic transform" has a more unusual linguistic pattern. Yet there might be some linguistic rules that would make it easier for computer software to

identify them. So here we are looking for merely grammatical variants of the normal form legal-rule sentences.

EXAMPLES:

Transforms of Normal Form #2 (Explicit Attribution):

In cases that do not involve personal assault claims, the Court has held that credible supporting evidence of the actual occurrence of an in-service stressor cannot consist solely of after-the-fact medical nexus evidence.

As provided by the Veterans Claims Assistance Act of 2000 (VCAA), VA has duties to notify and assist a claimant in substantiating a claim for VA Benefits.

The Federal Circuit has held that 38 U.S.C.A. § 105 and § 1110 preclude compensation for primary alcohol abuse disabilities and secondary disabilities that result from primary alcohol abuse.

Indeed, the Veterans Court has held in similar circumstances that where a condition would not normally have been recorded, "the Board may not consider the absence of [administrative record] evidence as substantive negative evidence" of that condition.

[Note: this sentence was followed by, “See Buczynski v. Shinseki, 24 Vet. App. 221, 224 (2011).”]

In Dingess/Hartman v. Nicholson, 19 Vet. App. 473 (2006), the United States Court of Appeals for Veterans Claims (Court) held that the VCAA notice requirements of 38 U.S.C.A. § 5103(a) and 38 C.F.R. § 3.159(b) apply to all five elements of a service connection claim. Those five elements include: 1) Veteran status; 2) existence of a disability; 3) a connection between the Veteran's service and the disability; 4) degree of disability; and 5) effective date of the disability.

[Note: in the above example, both sentences should be annotated as legal-rule sentences.]

In Fenderson, the Court also discussed the concept of the "staging" of ratings, finding that in cases where an initially assigned disability evaluation has been disagreed with, it is possible for a Veteran to be awarded separate percentage evaluations for separate periods based on the facts found during the appeal period.

In Gilbert v. Derwinski, 1 Vet. App. 49 (1990), the United States Court of Appeals for Veterans Claims (Court) found that "a Veteran need only demonstrate that there is an 'approximate balance of positive and negative evidence' in order to prevail."

In Pelegrini v. Principi, 18 Vet. App. 112 (2004), the Court held that a VCAA notice, as required by 38 U.S.C.A. § 5103(a), must be provided to a claimant before the initial unfavorable agency of original jurisdiction (AOJ) decision on the claim for VA benefits.

In Smith v. Shinseki, 24 Vet. App. 40, 45 (2010), it was clarified that the presumption applies when a Veteran has been "examined, accepted, and enrolled for service," and where that examination revealed no "defects, infirmities, or disorders."

However, both 38 C.F.R. §§ 3.301(a) and 3.301(d) prohibit service connection for diseases incurred during active military service resulting from the abuse of drugs.

[Note: in the sentence above, “38 C.F.R. §§ 3.301(a)” and “3.301(d)” are not citations. They are rather the names of particular sections of the CFR, and they are the grammatical subjects of this sentence.]

When an issue is raised as to whether the disorder claimed by the Veteran pre-existed service, the governing law provides that every Veteran shall be taken to have been in sound condition when examined, accepted, and enrolled for service, except as to defects, infirmities or disorders noted at the time of examination, acceptance, and enrollment into service, or where clear and unmistakable (obvious or

manifest) evidence demonstrates that (1) an injury or disease existed before acceptance and enrollment into service (2) and was not aggravated by such service.

Other Examples Without Explicit Attribution:

The Board must determine on a case-by-case basis whether a particular condition is the type of condition that is within the competence of a lay person.

In making its ultimate determination, the Board must give a veteran the benefit of the doubt on any issue material to the claim when there is an approximate balance of positive and negative evidence.

In rendering a decision on appeal, the Board must analyze the credibility and probative value of the evidence, account for the evidence it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant.

The Board must determine, as a question of fact, both the weight and credibility of the evidence.

The Board must account for the evidence which it finds to be persuasive or unpersuasive, analyze the credibility and probative value of all material evidence submitted by and on behalf of a claimant, and provide the reasons for its rejection of any such evidence.

Equal weight is not accorded to each piece of evidence contained in a record; every item does not have the same probative value.

In this regard, the diagnosis and etiology of psychiatric disorders are matters not capable of lay observation, and require medical expertise to determine.

As noted above, the first element of service connection requires medical evidence of a present disability.

The credibility of a witness can be impeached by a showing of interest, bias, inconsistent statements, or, to a certain extent, bad character.

Regarding aggravation by service, a preexisting injury or disease will be considered to have been aggravated by service when there is an increase in disability during that service.

Under 38 U.S.C.A. § 7104, Board decisions must be based on the entire record, with consideration of all the evidence.

List C: Aberrant Forms of Normal Forms -- Some sentences have very unusual linguistic structures, but we are still confident that they state legal rules in the abstract. This confidence might be based more on the context than on linguistic cues within the sentence itself (e.g., co-references to words or phrases in other sentences). Moreover, such sentences might or might not be followed immediately by a citation to a rule-making authority. In the case of such sentences, we would have to determine from what evidence we have whether they probably state legal rules.

EXAMPLES:

Specific to claims for PTSD, service connection generally requires medical evidence diagnosing the condition in accordance with the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994) (DSM-IV), a link, established by medical evidence, between the current symptomatology and the claimed in-service stressors, and credible supporting evidence that the claimed in-service stressors actually occurred.

Second, as to verification of an in-service stressor, when the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of

clear and convincing evidence to the contrary, and provided that the stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

That it is valid to determine from the absence in a record of the recording of the event, that the event did not occur, where it is reasonable that the event would have been recorded had it occurred, is supported by a recent case of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit).

If the Veteran wishes help, he cannot passively wait for it in those circumstances where he may or should have information that is essential in obtaining the relevant evidence.

While a layperson can provide evidence as to a nexus between an in-service event and a current condition in some circumstances, not all medical questions lend themselves to lay opinion evidence.

In deciding whether the Veteran has a current diagnosis of PTSD, it is the responsibility of the Board to weigh the evidence and decide where to give credit and where to withhold the same and, in so doing, accept certain medical opinions over others.

Examples of such evidence include, but are not limited to: records from law enforcement authorities; rape crisis centers; mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy.

> [NOTE: The example above occurred in a discussion about whether a veteran’s in-service sexual assault contributed to his PTSD.]

Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources.

Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes.

Further, corroboration of every detail of a claimed stressor, including the veteran's personal participation, is not required; rather, a veteran only needs to offer independent evidence of a stressful event that is sufficient to imply his or her personal exposure.

Next, VA has a duty to assist a claimant in the development of a claim. This duty includes assisting in the procurement of service treatment records and all relevant pre-and post-service treatment records, and by providing an examination, when necessary.

> [Note: in the above example, both sentences probably state legal rules in the abstract.]

That revision provides that, in certain circumstances, a veteran who has been diagnosed with PTSD by a VA or VA-contracted psychiatrist or psychologist based on a claimed stressor that is related to the veteran's fear of hostile military or terrorist activity may establish the occurrence of the claimed in-service stressor with lay testimony alone.

There are particular requirements for establishing PTSD in 38 C.F.R. § 3.304(f), which are separate from the general requirements for establishing service connection in 38 C.F.R. § 3.303.

New evidence means existing evidence not previously submitted to agency decision makers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened and must raise a reasonable possibility of substantiating the claim.