



DEVELOPING A THESIS STATEMENT*

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Basics About Thesis Statements

During your law school career, you will almost definitely write a paper that requires a thesis statement. A thesis statement is an original, supportable hypothesis or assertion about a topic. The thesis targets a specific point or aspect of the law, articulates a problem, and ideally attempts to resolve it. In short, your thesis statement embodies your argument.

Your thesis statement develops from the topic you select. To jump-start this process and create a working thesis statement, try a device such as the “should ... because ...” thesis formulation; argue that a certain result *should* happen *because* of particular reasons.

You may want to develop your thesis statement early in your writing process to guide your research. You then can adjust your research or your thesis statement as necessary. To initially develop your thesis statement, read critically. Question what you read, and look for contradictions, oversights, and mistakes in texts. As you develop your argument and construct your paper, test your thesis against known and hypothetical situations, and modify the thesis to further refine or strengthen your proposition.

This paper is divided into three sections. The first section provides some possible approaches to try when developing your thesis statement. The second section provides an example of the thesis development process. The third section provides examples of thesis statements selected from a variety of scholarly papers. If, after reading this guide, you are looking for further information about developing a thesis statement, consider reading *Scholarly Writing: Ideas, Examples, and Execution* by Jessica L. Clark and Kristen E. Murray (2d edition 2012).

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Possible Approaches for Thesis Statements¹

You can develop your thesis statement from a variety of approaches and angles. The following ideas may help you get started:

- Make an argument from a particular perspective or identify and question another writer's argument type.
 - *Arguments from precedent* assert that precedent is binding or should be extended, adopted, or overruled.
 - *Interpretive arguments* examine the language of constitutions, statutes, and regulations.
 - *Normative arguments* assert that a certain rule or result is good, justified by morality, social policy, economics, or justice between the parties.
 - *Institutional arguments* examine the appropriateness of the roles of the judiciary, legislature, or executive or address the administrative impact of a certain result.
- Identify and resolve inconsistencies, logical errors, and omissions.
 - Examine issues the writer omits, logical fallacies, false dichotomies, unsupported empirical claims, claims not supported by cited authorities, or a court's unstated reasons for a decision.
- Identify and question jurisprudential approaches.
 - Examine the approach a judge takes in a decision and imagine the outcome from another perspective. Common American jurisprudential approaches include Formalism, Legal Realism, Legal Process, Fundamental Rights, Law and Economics, Critical Legal Studies, and Feminism.
- Probe the context of a decision, law, or issue.
 - Examine the relation of a statutory provision to the larger document.
 - Consider predecessor statutes or legislative history.
 - Look at lower court decisions that reveal material that may have been simplified or omitted.
 - Examine a decision's place in a larger social or historical context.
 - Compare a case to cases in analogous subject areas.
 - Consider the ramifications and consequences of a decision.
 - Consider interdisciplinary comparisons.
- Try problem-solving.
 - Place yourself in the position of the parties and imagine alternative arguments and outcomes.

¹ Based upon Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* 27-50 (2d ed. 2000).

Example of the Thesis Development Process

You are in a course entitled “Congressional Oversight of the Executive Branch” and your paper assignment requires you to develop a thesis statement regarding an aspect of law related to Congress’ oversight of the Executive Branch. Your audience is an adjunct professor who has spent the better part of her career developing expertise on the subject while working on the hill. You’ve only been learning about congressional oversight for two months. Yet, your thesis must be original, advance a cogent argument, and propose a solution. This can seem like a daunting task. Where should you begin?

First, pick a topic that interests you and begin conducting background research on that topic. You are going to be spending many hours researching and writing your seminar paper, and the writing process will be much more enjoyable if you are passionate about your thesis. For example, you are a constitutional law enthusiast and you are intrigued by the topic of a president taking an executive action that conflicts with the rule of law. Therefore, you begin researching the legal history of presidents who have taken an action that conflicts with their constitutional duties.

Your background research will undoubtedly produce a voluminous amount of case law and secondary sources. Thus, your next step is to narrow your topic to a specific case or constitutional duty. For example, you are particularly interested in Justice Jackson’s three categories of presidential power in *Youngstown Sheet & Tube Co. v. Sawyer* (a.k.a. “The Steel Seizure Case”). Therefore, you begin to develop an original thesis statement by considering how you can apply the analysis from *Youngstown*, a topic which has already been repeatedly written about, to the current president’s potentially unconstitutional use of the presidential pardon power. For example, you decide to apply the *Youngstown* analysis to President Trump’s willingness to use his constitutionally prescribed pardon power to pardon his colleagues in the Russia investigation. It is your contention that such a use of the pardon power would result in an unconstitutional collision with Congress’ constitutional oversight powers. You have now narrowed down your thesis to a manageable problem that you find interesting. You are almost ready to finish developing your thesis. The final step is to propose a solution to your problem. Your final thesis may look something like this:

This paper argues that the President’s pardon power may only be exercised for the purpose of serving the public welfare, and therefore, if a President were to exercise the pardon power purely for the self-serving purpose of protecting himself from impeachment, the Supreme Court would be entitled to invalidate the pardon as an unconstitutional infringement on Congress’s investigative and impeachment powers.

Sample Thesis Statements

- This paper argues that the strategy of appraisal arbitrage has become significantly riskier for investors in a post-*Sprint* world. To the extent “risk-free” appraisal opportunities were present under Delaware law, they are no longer available. Thus, hedge funds and other investors seeking to use appraisal arbitrage will need to go to greater pains when selecting transactions as targets for appraisal actions.²
- The use of state executive emergency power during times of crisis, when impinging upon individual constitutional rights, including the Second Amendment, should be subject to a heightened level of judicial review.³
- This Note argues that, based solely on prior case law, particularly *Circuit City*, the *Pyett* court should have held that an arbitration clause is enforceable against an employee regardless of the employee’s union status.⁴
- To rectify this legal wrong, Congress should enact legislation to abolish the widow penalty for all alien widows, regardless of whether the citizen spouse filed a petition prior to death or marriage length.⁵
- This paper undertakes the task of analyzing Justice Gorsuch’s Tenth Circuit Fourth Amendment jurisprudence. Using the Aristotelian perspective on rhetoric, this paper examines three of then-Judge Gorsuch’s Fourth Amendment opinions. . . . In this way, Gorsuch’s Tenth Circuit opinions serve as initial evidence that Gorsuch may be more than just the new Scalia. Indeed, Gorsuch is a justice with the opportunity to expand the influence of originalism throughout American constitutional law.⁶

² Christopher Fitzpatrick Cannataro, *Sprint to the Finish: The End of Appraisal Arbitrage?* 2 (2017).

³ Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples, and Execution* 213 (2d ed. 2012).

⁴ *Id.* at 84.

⁵ *Id.*

⁶ Christopher Fitzpatrick Cannataro, *The New Scalia?: An Aristotelian Analysis of Justice Gorsuch’s Pre-SCOTUS Fourth Amendment Jurisprudence* 2 (2018).