

Points Relied On Points and Critique

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These materials are for teaching purposes only. The law is probably incorrect and is solely for demonstrating the substance and technique of Points Relied On.

Use this version if you don't have PowerPoint available. The primary difference is that you scroll down with this version rather than clicking through. The content is the same.

I hope using these slides are helpful.

Instructions

- As you proceed, read each proposed Point carefully. Think seriously about whether it complies, and if not, specifically why not.
- Do not go on until you can articulate whether or not the proposed language meets each part of the Rule.
- Once you are able to do so, scroll down and see how your answer compares to mine.
- Make sure you understand each slide before moving on.
- This is harder than it may appear.

RESTRICTIVE COVENANTS SHOULD ONLY BE ENFORCED WHERE THEY ARE FOR A SHORT DURATION, ARE NOT UNDULY RESTRICTIVE, AND WHERE ENFORCEMENT WOULD BE EQUITABLE WHICH IS NOT THE CASE HERE.

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This Point is missing everything – no “court erred,” no “because” and no “in that”. The court would call this a pure statement of law and nowhere near acceptable.

**THE TRIAL COURT'S RULING WAS CORRECT BECAUSE THE
RESTRICTIVE COVENANT WAS VALID AND THE EVIDENCE
SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.**

THE TRIAL COURT'S RULING WAS CORRECT BECAUSE THE RESTRICTIVE COVENANT WAS VALID AND THE EVIDENCE SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.

- The “court erred” portion is missing what the ruling was.
- The “because” lacks a statement of law explaining why the covenant was valid .
- The “in that” portion begins with “and”, which is not the suggested format, and is totally lacking in facts to support the (nonexistent) rule.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH A COMPETITOR BECAUSE THE RESTRICTIVE COVENANT WAS VALID IN THAT THE EVIDENCE SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH A COMPETITOR BECAUSE THE RESTRICTIVE COVENANT WAS VALID IN THAT THE EVIDENCE SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.

- The “trial court was correct” portion appears to be fine. The “and” in this section is OK as long as these two actions are both being alleged to be correct for the same legal reason found in the “because”.
- The “because” still does not set out any real legal rule.
- The “in that” now uses the suggested language and mentions the evidence but does not provide any facts.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH A COMPETITOR BECAUSE THE RESTRICTIVE COVENANT WAS NOT VOID AS AGAINST PUBLIC POLICY, UNCONSCIONABLE OR UNDULY RESTRICTIVE AND THE EVIDENCE SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH A COMPETITOR BECAUSE THE RESTRICTIVE COVENANT WAS NOT VOID AS AGAINST PUBLIC POLICY, UNCONSCIONABLE OR UNDULY RESTRICTIVE AND THE EVIDENCE SUPPORTED ITS APPLICATION ON THE FACTS OF THIS CASE.

- The “trial court correct” portion again appears OK
- The “because” section appears to contain three legal rules. If these are really three separate legal reasons, you should have three separate Points. If they fall under an umbrella concept, state the concept in the “because” and use subpoints. Always watch for “ands” and “ors” in the “because” – they may suggest more than one legal rule .
- The “in that” uses “and” rather than the suggested language and has just a conclusory statement rather than facts.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE RESTRICTIVE COVENANT WAS NOT VOID OR AGAINST PUBLIC POLICY AS BEING UNDULY RESTRICTIVE IN THAT IT MERELY PREVENTED EMPLOYMENT WITH A COMPETITOR FOR ONE YEAR FOLLOWING DISCHARGE.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE RESTRICTIVE COVENANT WAS NOT VOID OR AGAINST PUBLIC POLICY AS BEING UNDULY RESTRICTIVE IN THAT IT MERELY PREVENTED EMPLOYMENT WITH A COMPETITOR FOR ONE YEAR FOLLOWING DISCHARGE.

- The “trial court was correct” appears OK unless there is a significant difference between “validity” in the first part and “void” in the “because”. It may be that the first part of the “court ... correct” should be eliminated if the legal rule is not directly related to that action of the court.
- The “because” is OK as long as “void” and “against public policy” are both actually parts of the “unduly restrictive” rule (not likely). If not, then this should be reconsidered to determine if there are really two Points or if the law is not being properly stated.
- The “in that” appears OK because it explains why, in this case, the legal rule applies.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE FINDING THAT DEFENDANT'S CURRENT EMPLOYER IS A COMPETITOR IS SUPPORTED BY SUBSTANTIAL EVIDENCE WHERE THE RECORD CONTAINS TESTIMONY OF TWO WITNESSES AND BUSINESS RECORDS THAT DEMONSTRATE THAT THEIR PRODUCTS ARE IN DIRECT COMPETITION.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE FINDING THAT DEFENDANT'S CURRENT EMPLOYER IS A COMPETITOR IS SUPPORTED BY SUBSTANTIAL EVIDENCE WHERE THE RECORD CONTAINS TESTIMONY OF TWO WITNESSES AND BUSINESS RECORDS THAT DEMONSTRATE THAT THEIR PRODUCTS ARE IN DIRECT COMPETITION.

- We don't really know if the "court ... correct" part is correct because we don't really have a good sense of whether "competitor" is related to validity of the covenant. If not, the first phrase should not be there since it is not related to the rule.
- The "because" is inadequate because, although the fact that the finding is supported by substantial evidence may be part of the way the rule is applied, we really don't know how being a competitor is related to why it was correct to enjoin the defendant.
- The "in that" seems OK, appears to set out the facts to support what we think the rule may be. However, uses "where" instead of "in that," which may be OK but also may be risky because reader may think it is not in compliance.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE FINDING THAT DEFENDANT'S CURRENT EMPLOYER IS A COMPETITOR, WHICH IS NECESSARY TO ENFORCE THE COVENANT, IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THAT THE RECORD CONTAINS TESTIMONY OF TWO WITNESSES AND BUSINESS RECORDS THAT DEMONSTRATE THAT THEIR PRODUCTS ARE IN DIRECT COMPETITION.

THE TRIAL COURT WAS CORRECT IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE FINDING THAT DEFENDANT'S CURRENT EMPLOYER IS A COMPETITOR, WHICH IS NECESSARY TO ENFORCE THE COVENANT, IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THAT THE RECORD CONTAINS TESTIMONY OF TWO WITNESSES AND BUSINESS RECORDS THAT DEMONSTRATE THAT THEIR PRODUCTS ARE IN DIRECT COMPETITION.

Essentially the same as the one before but language to fix the “because,” add a link between “competitor” and enforcing the covenant, and changing “where” to “in that” has been added.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE EXERCISE OF ITS EQUITABLE POWERS BY UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE CONTRACT WAS NOT UNCONSCIONABLE IN THAT ITS ONE YEAR TERM WAS LIMITED IN DURATION AND SCOPE

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE EXERCISE OF ITS EQUITABLE POWERS BY UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT'S EMPLOYMENT WITH XYZ CORPORATION BECAUSE THE CONTRACT WAS NOT UNCONSCIONABLE IN THAT ITS ONE YEAR TERM WAS LIMITED IN DURATION AND SCOPE

- This “court...correct” is not in the usual format but is correct since it has the elements of telling the appellate court what the trial court did right. This is a situation where, strategically, the respondent chose to incorporate the court below’s legal standard for action into the “court...correct” part of the Point.
- Again, the link between unconscionability and upholding the contract is missing in the “because”.
- The “in that” appears generally OK as long as these are the facts that make the rule apply in this case and as long as limitations in duration and scope are both related to unconscionability.

THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, AS A MATTER OF LAW, THE RESTRICTIVE COVENANT, WHICH PREVENTS A PROFESSIONAL FROM WORKING FOR THE ONLY OTHER BUSINESS IN THE STATE WHO COULD USE HIS TALENTS, IS AGAINST PUBLIC POLICY AND THEREFORE UNENFORCEABLE.

THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, AS A MATTER OF LAW, THE RESTRICTIVE COVENANT, WHICH PREVENTS A PROFESSIONAL FROM WORKING FOR THE ONLY OTHER BUSINESS IN THE STATE WHO COULD USE HIS TALENTS, IS AGAINST PUBLIC POLICY AND THEREFORE UNENFORCEABLE.

- The “court...erred” is OK as long as validity is related to being against public policy.
- The “because” contains facts that properly belong in the “in that” and does not contain language (against public policy and unenforceable) that belong in it. Note the inclusion of “as a matter of law” – this is a hint at the standard of review (de novo) in a case where normally there is deferential review (because of the equitable nature). This is a good strategic move and complies since it is part of the legal standard.
- The “in that” is missing in form. The substance is in the “because” instead. This is not in compliance with the Rule.

THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, AS A MATTER OF LAW, THE RESTRICTIVE COVENANT IS AGAINST PUBLIC POLICY AND THEREFORE UNENFORCEABLE IN THAT IT PREVENTS APPELLANT, A PROFESSIONAL, FROM WORKING FOR THE ONLY OTHER BUSINESS IN THE STATE WHO COULD USE HIS TALENTS.

THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF THE RESTRICTIVE COVENANT AND ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, AS A MATTER OF LAW, THE RESTRICTIVE COVENANT IS AGAINST PUBLIC POLICY AND THEREFORE UNENFORCEABLE IN THAT IT PREVENTS APPELLANT, A PROFESSIONAL, FROM WORKING FOR THE ONLY OTHER BUSINESS IN THE STATE WHO COULD USE HIS TALENTS.

- The “court erred” portion seems fine assuming there is a sufficient link between “validity” and “against public policy and therefore unenforceable.”
- This “because” looks OK since it contains the relevant legal rule.
- The “in that” looks fine since it sets out the facts that make the rule apply in this case.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, EVEN IF THE CONTRACT WAS ENFORCEABLE, THE TRIAL JUDGE IMPROPERLY BALANCED THE HARDSHIPS IN THAT IT INAPPROPRIATELY AWARDED EQUITABLE RELIEF.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, EVEN IF THE CONTRACT WAS ENFORCEABLE, THE TRIAL JUDGE IMPROPERLY BALANCED THE HARDSHIPS IN THAT IT INAPPROPRIATELY AWARDED EQUITABLE RELIEF.

- The “court erred” is fine, but note that the phrase you saw in many of the other Points is missing. This is necessary because the substance of this Point has nothing to do with the validity of the covenant.
- The “because” and “in that” are improperly intertwined in this Point. The statement of law likely is that it was inappropriate to award equitable relief when the balance of hardships tipped in favor of the defendant. That is not what the “because” says.
- As a result of this intertwining, there are no facts in the “in that” to show how the hardships were improperly balanced.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, EVEN IF THE CONTRACT IS ENFORCEABLE, THE TRIAL JUDGE IMPROPERLY BALANCED THE HARDSHIPS AND INAPPROPRIATELY AWARDED EQUITABLE RELIEF IN THAT THE EVIDENCE ESTABLISHED THAT WHILE THE DURATION OF THE COVENANT WAS ONLY ONE YEAR, IT PRECLUDED APPELLANT FROM WORKING AT ALL DURING THAT PERIOD, AND A COMPLETE BAN ON EMPLOYMENT IS TO BE AVOIDED WHENEVER POSSIBLE.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE, EVEN IF THE CONTRACT IS ENFORCEABLE, THE TRIAL JUDGE IMPROPERLY BALANCED THE HARDSHIPS AND INAPPROPRIATELY AWARDED EQUITABLE RELIEF IN THAT THE EVIDENCE ESTABLISHED THAT WHILE THE DURATION OF THE COVENANT WAS ONLY ONE YEAR, IT PRECLUDED APPELLANT FROM WORKING AT ALL DURING THAT PERIOD, AND A COMPLETE BAN ON EMPLOYMENT IS TO BE AVOIDED WHENEVER POSSIBLE.

- The “court erred” is fine.
- The “because” appears OK - you could establish a stronger link between the error and the balance of hardships, but I think this complies (although it’s not totally clear).
- The “in that” contains the necessary facts to show the balance of hardship . The “complete ban on employment is to be avoided” seems like law; it probably could go in the “because”, but I think it is OK as a means of closing the Point and tying everything together. Which way I would choose to write it would depend on how it read and what appeared to be better advocacy in light of my argument as a whole.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE JUDGE'S FINDING THAT XYZ WAS A COMPETITOR WHERE NO EVIDENCE WAS INTRODUCED THAT THE PRODUCTS MANUFACTURED BY XYZ COMPETED IN COMMERCE WITH THOSE MANUFACTURED BY THE PLAINTIFF.

THE TRIAL COURT ERRED IN ENJOINING DEFENDANT FROM WORKING FOR XYZ CORPORATION BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE JUDGE'S FINDING THAT XYZ WAS A COMPETITOR WHERE NO EVIDENCE WAS INTRODUCED THAT THE PRODUCTS MANUFACTURED BY XYZ COMPETED IN COMMERCE WITH THOSE MANUFACTURED BY THE PLAINTIFF.

- The “court erred” appears fine.
- The “because” is missing a link between being a competitor and why that leads to the conclusion that enjoining defendant was wrong. The “no substantial evidence” addition is fine since it sets out the standard of review where it may be strategically necessary.
- The “in that” is fine – statement of a negative (no evidence) can suffice for your facts in an appropriate case.