

THE PARADIGM FOR PREDICTIVE LEGAL WRITING: Using “IRAC”

I. INTRODUCTION

This handout sets out the basic paradigm, or organizational structure, of predictive legal analysis, referred to throughout this course as “IRAC.”¹ IRAC is a general analytical paradigm; as you gain experience in your legal writing, you will be able to modify this paradigm to fit a particular legal issue. Once you understand the IRAC structure and are able to use it fluently, you can decide when it might be appropriate to modify the IRAC paradigm in a particular situation.

Understand that an IRAC is not a stand alone legal document. The IRAC analysis is part of the discussion section of an office memorandum. You will learn how to do a complete office memo later in the semester. In law offices, a memorandum of law is generally written by an associate lawyer for the benefit of a supervising lawyer who, along with the client, will make case management decisions based on the legal conclusions (the predictions) the associate has made in the memorandum of law.

Predictive legal writing uses IRAC structure because it is a logical way to explain and justify prediction. Because of this, lawyers have come to expect that structure when they read an intraoffice memorandum of law. If the document deviates from that structure for no apparent reason, it will confuse the reader and force him or her to work harder to understand what you have written. This means that you may lose your audience and that your reader may not trust the document as much as he or she would have if you had followed the expected structure.

¹For more detailed explanation of the IRAC paradigm, see Linda H. Edwards, Legal Writing: Process, Analysis, and Organization 83-100, 103-17 (4th ed. 2006) (“Edwards”).

II. IRAC ORGANIZATION OF A SINGLE ISSUE

Once a lawyer has identified the issues which must be considered in a legal memo, he or she must begin the careful process of analyzing each issue separately, showing the reader each step in the reasoning process that leads to the prediction or conclusion. The IRAC structure helps the reader to follow the complex reasoning process involved in supporting a legal conclusion:

- I Identification of the issue
- R Rule of law (for that particular issue) with explanation:
 - Rule Statement
 - Rule Explanation
- A Application of the law to new facts (your client's), including counter-analysis
- C Conclusion on that particular issue

Edwards discusses the issue and rule of law together in Chapter 7. She identifies the issue and rule together as **rule explanation**. Edwards discusses the application and conclusion together in Chapter 8. She refers to the application and conclusion together as **rule application**.

III. DRAFTING AN IRAC OF ONE ISSUE

A. ISSUE (identifying the legal problem to be solved)

Identification of the issue

The first sentence in your IRAC introduces the issue you are about to discuss and draws the reader's attention to the legally determinative facts that are relevant to that issue. The legally determinative facts are those that are key and on which you rely in your analysis. Thus, an issue might read as follows:

The next element concerns whether Green had notice of the problem when Brown did not speak with Green but instead left a message on Green's malfunctioning answering machine.

The issue is whether Timberline Stamps constitutes a dwelling, given that the store contained a back room with kitchen, bath, and sleeping facilities, and that the room had been used as a temporary residence previously and was still used sporadically for overnight stays.

The first example above indicates that the sub-issue of "notice" is under scrutiny; the second example indicates that the "dwelling" element of the crime of second-degree burglary is under analysis. Each sentence then continues by setting forth facts that are legally determinative with respect to that particular subpart.

Identification of the issue in the form of a conclusion

Instead of merely identifying the point under discussion, you can instead draft the topic sentence in the form of your conclusion on the issue. This option may, in fact, be more helpful to your reader.

The following are examples of topic sentences identifying the issue under analysis in the form of a conclusion:

Green had neither actual nor constructive notice of Brown's problem because Brown never spoke with Green or an agent of Green but merely left a message on Green's answering machine.

The second factor, which examines family and business ties to a jurisdiction, probably undercuts Doe's claim to being domiciled in Arkansas, because Doe's family, friends, and job prospects remain in Mississippi.

Note that, even in the form of a conclusion, the topic sentence still clearly alerts the reader to the issue under discussion and advances the facts relevant to the determination of that issue.

B. RULE (Rule Statement and Rule Explanation)

Next, you must discuss the law that defines or governs the issue. A complete discussion of the rule requires a statement of the rule of law on the particular issue under discussion and a detailed explanation of the rule from precedent cases.

Statement of the Rule

The statement of the rule governing the issue places the rest of the analysis in context for the reader. You will rely on this statement of the rule to reach your conclusion. In many instances, you will need to synthesize a rule of law from two or more cases. Often rules are not explicitly stated in any one of the relevant cases. The writer must formulate a general principle based on the facts and holdings of the relevant cases. Thus, the statement of the rule is often referred to as the synthesized rule. In the first attached example (pp. 8-10), for instance, the issue under discussion examines the strength and extent of a prisoner's family and business ties to a jurisdiction.

For example:

When a prisoner has significant family, business, and social ties in the state of his original domicile and few or no such ties in the state of his incarceration, courts tend to find that the prisoner lacks a bona fide intent to change domicile. [citation]

Significant ties to a jurisdiction include continuation of personal and business interests and affiliations, exercise of the right to vote, and continuing residence of family members there. [citation]

The following is another example of a rule statement, synthesized from a number of cases:

Generally speaking, a geographical restriction in a non-compete agreement that prevents a former employee from working for a competitor in single county or group of counties or the equivalent is deemed reasonable, while those that restrict her from competing anywhere in a multistate or wider area are deemed unreasonable and unenforceable. [citation]

In dealing with a problem governed by a statute, as in the example on pages 11-13, you should begin your rule statement with the statutory language. Continue by stating a rule that explains how the courts have interpreted that statutory term.

Rule Explanation

Rule explanation (also referred to as rule proof) requires using cases to explain or illustrate the rule statement. See Edwards, supra, at 88-89 Discuss a sufficient number of cases to explain the rule under discussion. You must explain the cases accurately and with enough detail so the reader knows why you are using these particular cases and why they are important to your conclusion.

In general, if you have numerous cases that illustrate the same rule, you do not need to explain all of them except in an unusual situation. The determination of the “best” authorities to use depends on various factors. You will learn to rely on your judgment. Prefer precedent from the highest court in your jurisdiction, if you have such precedent; use precedent that later courts seem to think is the most important on that point, i.e., the “leading case” (or cases); use more recent decisions; and choose cases with facts most similar to yours and rationale that is particularly applicable.

Use cases from other jurisdictions only if you cannot find cases directly on point in your jurisdiction. In general, use cases from other jurisdictions only if they have facts that are almost identical to the facts of your case or if the cases are widely cited and there is good reason to believe that a court in your jurisdiction would consider them (i.e., from your reading, they seem like important cases that are well respected around the country).

Do not let this section turn into a parade of “mini case briefs.” You need to draw from each case only that which is necessary to back up your conclusion: facts, holding, and rationale as they relate to the particular issue under discussion. For each case you use, state the facts that are legally relevant to your issue (the determinative facts) and provide sufficient background facts to put the determinative facts in context (the explanatory facts). You also need to indicate the holding or the legal result in the case. Finally, include the court’s rationale for its holding, and

perhaps the policy underlying the rule. The underlying policy, if articulated by the court, may be so important that it should also be discussed in the application section (see below). You may want to show how your conclusion would be consistent with the underlying policy. If so, be sure to describe the policy in the rule explanation. See Edwards, supra, at 6, 94-95

You should be able to do the above using a maximum of about three to six lines for each case used (with, of course, exceptions for certain important cases). You must describe the cases in enough relevant detail so that the reader will be able to see why a court would or would not reach the same result in your case, while avoiding details irrelevant to the issue. If you are researching a procedural issue, for example, sometimes only the procedural facts of cases are relevant.

C. APPLICATION OF RULE TO FACTS OF CASE

By this point in your legal analysis, you should have identified the issue under discussion in your topic sentence, stated the legal rule (perhaps synthesized from more than one case), and explained to the reader in your rule explanation, by reference to case law, how you arrived at your statement of the rule. Now it is time to explain how the legal rule should apply to the facts of your client's case. As you discuss how the rule applies, you will necessarily draw on the facts of certain precedent cases that you discussed in your rule explanation, the courts' reasoning in those cases, and any underlying policy issues that might be relevant.

Analysis: Analogies and Distinctions

In explaining how the legal rule applies to your client's facts, you will find it necessary, as you explain your reasoning, to use analogies and distinctions. See Edwards, supra, 104-10. As you apply the legal rule to your client's key facts, you will compare your client's key facts relevant to the issue to the key facts of the relevant precedent cases. This is the process of analogizing: pointing out important similarities and dissimilarities between your case and the precedent cases contained in the rule explanation. Keep in mind what is not proper or adequate analysis:

- It is not sufficient merely to restate your client's facts.
- It is not sufficient merely to state that your client's facts are like or unlike those of precedent cases, without further explanation. (That would be a conclusory statement, that is, a conclusion offered without foundation or explanation.)
- It is not sufficient merely to compare your client's facts to the facts of each and every case mentioned in your rule explanation, without discussing the significance of the comparisons with respect to the rule statement. (This approach "loses sight of the forest for the trees.")

In contrast, proper analysis explains the legal significance of your client's facts in light of the legal rule. Apply the rule statement to your client's facts, and really use the facts: explain how the rule is or is not satisfied in your client's situation by specific reference to the facts of

both your client's case and of particularly relevant precedent cases. Remember, however, that you should draw only those analogies and distinctions that are legally significant. In short, a strong analysis involves applying the governing rule of law to the facts of your client's case and referring, as necessary, to the facts of relevant precedent cases to show how your client's facts are similar to and different from the facts of those cases, thus requiring the same (or a different) legal result.

Analogy of key facts is merely the starting point of the application section in your analysis of an issue. The precedent case law may be further analogized to your client's case by comparing and distinguishing the case law on the basis of the rationale expressly set forth in, or implicitly relied upon by the courts, in the earlier opinions. By examining the logical underpinnings supporting the legal rule and by considering whether those underpinnings would similarly support the applicability of the rule to your client's case, you are able to give greater weight to your ultimate conclusion.

In addition to analogizing case law on the basis of facts and rationale, you should make reference to public policy concerns, if any, expressed by the courts as the basis for the prior decisions. If considerations of public policy guided the courts in deciding the precedent cases, determine whether the same policy issues would be likely to concern a court in your client's case.

Counter-analysis

Facts, rationale, public policy: all these may be used to draw comparisons to the prior case law. You will not have completed your application section, however, until you have addressed any counter-arguments suggested by the law. A counter-argument supports the conclusion contrary to the one you have reached. To address and refute a counter-argument, you must first think about the flip-side of your conclusion on the issue you are addressing. Ask yourself whether it is possible that your conclusion is wrong. Identify and consider the best argument or arguments that might lead to a different conclusion, including any available precedents in support of such different conclusion. Then show why you ultimately have concluded that these alternative arguments are not as strong as the ones leading to your conclusion.

Keep in mind throughout your drafting of the application section that you are preparing a predictive memorandum – one that will be used by your supervising attorney and, ultimately, the client to predict how a court is likely to rule on the client's matter. Do not let the fact that you represent one side of the dispute cloud your reasoned judgment. Be objective. Do not omit cases that are detrimental to your client. You will not help your client by painting an unrealistically rosy picture of the likely outcome.

D. CONCLUSION

After your application, you should state (or restate, if you have already stated it in your topic sentence) your conclusion on the issue. This lets the reader know you have come to the end

of the analysis of an issue and summarizes your prediction.

Be sure to draw a conclusion only as to the issue under discussion, not as to the broader question (of which the issue is only a part).

IV. SOME FINAL POINTS ABOUT IRAC

IRAC structure is the basic building block of legal analysis. Your analysis in the discussion section of an office memorandum will need to employ the IRAC process for each sub-issue of the general test or rule that governs. Thus, you will need to use this basic building block as many times as necessary to treat all the sub-issues. Keep in mind that the length and depth of each IRAC you use will vary, depending on the complexity of a particular issue.

Keep in mind, too, that your reader (generally your supervising attorney) may have a general knowledge of the law on a specific subject, but will not likely be familiar with the specific cases in your rule explanation. Therefore, your explanation of the rule and your application of the rule to the problem at hand must be clear and sufficiently elaborated. Insufficient information about the cases on which you rely and a conclusory application of the rule to your facts will yield an office memorandum that is not helpful to your supervising attorney because it is incomplete. Thus, be sure to include sufficient information to allow the reader to follow (1) the logic of the cases and (2) your application of the legal rule to the facts of your problem.

The litmus test of good legal writing is whether a reader finds the analysis thorough, logically sound, and well organized. You know that you have successfully employed IRAC when what you have written meets this test.

One Example of IRAC Analysis (involving an issue governed solely by case law)²

Consider the following problem:

John Doe, a lifelong resident of Mississippi, is now a prisoner in an Arkansas state prison, serving ten years for armed robbery of an Arkansas store. He wants to file a diversity action in federal court to bring a medical malpractice claim against the psychologist residing in Mississippi who, Doe believes, mistreated his psychological condition.

The issue is whether diversity jurisdiction exists, that is, whether Doe and the psychologist are indeed residents of two different states. (As you will learn in civil procedure, federal courts are courts of limited jurisdiction. One way to invoke federal court jurisdiction is to show that plaintiff and defendant to a lawsuit are citizens of different states.) Suppose that research reveals that, to show acquisition of a new domicile (and a new state of residence), Doe will have to show a bona fide intent to change his domicile from Mississippi to Arkansas. Research also shows that courts examine a variety of factors to determine this intent, including (1) location of the prisoner's property, (2) the prisoner's family and business ties to each of the two possible domiciles, and (3) the length of his incarceration.

A full analysis of the issue would require an IRAC discussion of each of the issues. The following is a complete IRAC for the second issue of the above legal test, which examines the prisoner's family and business ties to each domicile. Please note that the glosses in bold are inserted here to show you each part of the IRAC. Such glosses would not appear in an actual memo.

In the following example, the IRAC structure has made the writer's reasoning process apparent to the reader. For example, by providing a clear topic sentence, the writer has explicitly identified which of the three issues (family and business ties) is under discussion. The writer has then stated the legal rule (here a rule which has been synthesized from several cases) about the requisite ties and then explained that rule by using illustrative examples from precedent cases. Since the reader would now have the proper context for an application of new facts, the writer then applied the law to the new factual situation. It is also clear from the application section that the writer has considered possible counter-arguments to his or her own analysis and reasoned through possible responses to such counter-arguments. In the final sentence, the writer presented his or her conclusion on the issue, predicting how a court will rule on that issue

²Adapted from Helene S. Shapo et al., Writing and Analysis in the Law 367-70 (3d ed. 1995).

[Identification of issue in form of conclusion] The second factor, which examines family and business ties to a jurisdiction, probably undercuts Doe's claim to domicile in Arkansas, because Doe's family, friends, and job prospects remain in Mississippi. **[Rule Statement]** When a prisoner has significant family, business, and social ties in the state of his original domicile and few or no such ties in the state of his incarceration, courts tend to find that the prisoner lacks a bona fide intent to change domicile. Significant ties to a jurisdiction include continuation of personal and business interests and affiliations, exercise of the right to vote, and continuing residence of family members there.

[Rule Explanation] Where a prisoner owned real property in his pre-incarceration domicile, Missouri, and did not dissolve his real estate business there, the court ruled that he remained a Missouri domiciliary, even though he seemed to have no strong family ties there. Jones v. Hadican, 552 F.2d 249, 251 (8th Cir. 1977) Similarly, in a case involving a military transfer, when a doctor living in Pennsylvania was drafted and stationed in South Carolina, he left his family in Pennsylvania and continued his membership in Pennsylvania medical societies. Brown v. Ulster, 945 F. Supp. 200, 202 (D.S.C. 1992). He also continued to vote, maintain bank accounts, and file his taxes in Pennsylvania. Id. at 203. In light of these extensive ties to Pennsylvania, the court ruled that the doctor could not claim South Carolina as his new domicile. Id. In contrast, a prisoner convinced the court that he had changed his domicile to the state of his incarceration, Pennsylvania, because he had cut all ties to his home state, Ohio, where his crime made him a person of ill repute. Smith v. Levander, 939 F. Supp. 100, 103 (W.D. Pa. 1991). The prisoner transacted all his business in Pennsylvania and showed that he had no familial, business, or social reasons to return to his former domicile. Id. at 104.

[Rule Application] The facts of the Doe case illustrate that Doe's ties with his home state are stronger than his ties with his state of incarceration. Just as the doctor's family in Brown stayed in his state of original domicile, Doe's family continues to reside in Mississippi. Doe has no relatives living in Arkansas. Furthermore, Doe testified at his sentencing hearing that he planned to return to Jackson, Mississippi, and accept a job with his former employer as a condition of parole. Thus, Doe has business opportunities in Mississippi, analogous to the medical society memberships in Brown and the real estate business in Jones. Finally, unlike the prisoner in Smith, who had no family or friends in his original domicile where he was, in fact, shunned because of his crime, Doe has a whole social circle in Jackson, to which he plans to return. **[Counter-analysis]** It is true that in the past six months Doe has established friendships in Arkansas with retired individuals visiting him from a local church. However, beyond these recent friendships, Doe has no other friends or acquaintances in Arkansas (other than fellow prisoners and guards). While the prisoner in Smith could convincingly state that he had neither reason nor desire to return to Ohio, Jackson remains the logical place for Doe to move upon his release.

[Conclusion] Because Doe has numerous family, business, and social ties to Mississippi, his original domicile, and only very limited social ties to Arkansas, his state of incarceration, a court will likely find that this factor does not support Doe's claim of a bona fide intent to change domicile. Only if Doe can reasonably show that his post-incarceration plans have changed since he testified at the sentencing hearing might the court might decide this factor in his favor. In the absence of such proof, however, this factor will not support Doe's claim.

**A Second Example of IRAC Analysis
(involving an issue governed by statute)**

Your problem is the following:

Arthur Constable was arrested for stealing from a stamp and coin store, Timberland Stamps, in New York in June. The state prosecutor must decide whether to prosecute him for burglary in the second or third degree. Under the statutory definition of the two crimes, burglary in the second degree involves theft from a dwelling (and carries a greater penalty), while burglary in the third degree involves theft from a building that is not a dwelling (and carries a lesser penalty). The store contained a back room with a cot, bathroom facilities (sink, shower, toilet), a closet, a hot plate, and a small refrigerator. The store owner's college-age nephew had lived in the back room the previous summer but will not return. Norman Timberline, the store owner, has kept a change of clothes in the closet and sometimes stayed overnight when bad weather made the drive home too difficult (no more than twice per month throughout the year).

The issue then is whether the store constitutes a "dwelling" under New York law, such that the state may prosecute Constable for burglary in the second degree. There is a statutory definition of a dwelling: "'Dwelling' means a building which is usually occupied by a person lodging therein at night." N.Y. Penal Law § 140.00(3) (McKinney 1998).

A complete analysis of whether Constable can be convicted of second-degree burglary would involve an analysis of all the statutory elements of the crime (his state of mind, his actions, his intent, as well as whether the structure involved constitutes a "dwelling.") The following is the IRAC which analyzes the issue of whether the store was a "dwelling" at the time of Constable's actions. As in the previous IRAC example, glosses in bold type and in brackets are inserted to show you where the different parts of the IRAC begin (but would not be inserted in an actual memorandum).

[Identification of issue] The issue is whether Timberline Stamps constitutes a dwelling, given that the store contained a back room with kitchen, bath, and sleeping facilities, and that room had been used as a temporary residence previously and was still used sporadically for overnight stays. **[Rule statement: statutory language followed by synthesized rule of the courts' interpretation of statutory language]** New York statute defines a dwelling as “a building which is usually occupied by a person lodging therein at night.” N.Y. Penal Law § 140.00(3) (McKinney 1998). In general, under case law, this language is deemed to encompass a structure that is adapted for overnight accommodations and usable for such accommodations on the day of the crime. Such a structure will qualify as a dwelling even if the structure was not occupied on the day of the burglary or even in the immediate past, provided that the resident intends to return.

[Rule explanation] Even though homeowners had been absent for a year because of a work-related transfer, a house was deemed a dwelling where the facts showed that the owners were coincidentally planning to return to reside there shortly after the time of the burglary. People v. Sheirod, 510 N.Y.S.2d 945, 948 (App. Div. 1987); see also People v. Ferguson, 727 N.Y.S.2d 790, 794 (App. Div. 2001) (holding that sorority house was dwelling because, even though house was vacant during summer at time of crime, sorority members planned to return and take up residence in fall). In contrast, a seven-story school building did not qualify as a dwelling even though upper-level offices contained two beds that were used for overnight stays some twenty to thirty times per year by different visiting individuals. People v. Quattlebaum, 675 N.Y.S.2d 585, 586 (1998). In reaching that conclusion, the court emphasized that a building is not a dwelling if it is only rarely occupied at night. Id. at 587.

[Rule application] Although the back room of Mr. Timberline’s store was adapted for

occupancy and suitable for such occupancy on the day of Constable's crime, no one intended to return there at any particular time for any particular duration of residency. Mr. Timberline uses the back room only as convenience dictates. Furthermore, he now uses the back room for overnight stays less frequently (perhaps two dozen times per year) than the overnight facilities were used in Quattlebaum. In addition, his back room is part of business premises and is thus unlike the house in Sheirod, which was a permanent personal residence and thus remained a dwelling even when unoccupied. Even though Mr. Timberline's nephew resided in the back room for several months last summer, he does not plan to return there. **[Counter-analysis]** On the other hand, Mr. Timberline now seems to be the one person who stays in the back room, unlike the situation in Quattlebaum where different visitors to the religious school stayed overnight. Yet, while Mr. Timberline maintains a change of clothes there, which was not the case in Quattlebaum, nonetheless the store premises are not "usually" occupied at night, as the statute requires. **[Conclusion]** For these reasons, the court will likely conclude that the store was not a dwelling at the time of Constable's crime.