
§ 3.5**Introduction to Legal Analysis***IRAC*

A legal memorandum, or brief, is a tool paralegals and lawyers use to relate the applicability of specific authorities to a client's facts. The heart of any memorandum or brief is the analysis, the application of *law to fact*. The Analysis is only one element of a legal memorandum or brief, but it is the most important element.

There is a specific structure to legal analysis, often referred to as the IRAC method. The method presented here is a modification of the IRAC method.

Issue introduction
Rule
Application
Conclusion

Every analysis is based on an issue. An issue is a question that the court must answer. The issue should usually be provided by the attorney. An issue may be analyzed by one authority or many authorities.

If multiple authorities are analyzed within an issue, the writer should follow the IRAC method for each, analyzing and applying each law separately, not collectively. You do not need to tie every case and statute together. Simply go through the IRAC method for each authority.

The most common methods of analyzing authorities involve comparing cases (your client's case and the case being cited), and distinguishing cases (explaining why the case being cited does *not* apply).

Comparing Cases

Comparing a case you have found to a client's facts is the most common form of legal analysis. Assume you are working on a case involving assault with a deadly weapon and that the client is charged with hitting a man with a baseball bat. You find a case in the law library in which a man attacked his brother-in-law with a walking cane. You want to compare those facts with your client's.

Comparing a case in which the deadly weapon was a shotgun (instead of some sort of stick) would not be nearly as relevant. The fact that in the case of the walking cane, the defendant was also charged with theft would also be irrelevant. Discuss only the relevant

facts. After addressing the similarities and differences, you must discuss how the court held and how that decision might influence the court in your client's case.

It is tempting to start the analysis by citing the case being relied upon, saying something like "In *Smith v. Jones*, the court held...."

However, the case being cited needs to be put into context so the reader will understand not just the reasoning of the court (the part that is being cited) but also the facts that led to that reasoning. Using the IRAC method will allow the analysis to flow and to be consistent.

When comparing cases, the IRAC method would be used as follows:

Issue Introduction

Provide a statement introducing the issue, or how courts have generally dealt with the issue.

Rule

The rule is the law or authority being cited. If the authority is a case, the writer must inform the reader of the *facts* of the case, then *quote* the case. If the authority is a statute or regulation, the relevant portion of the rule should be quoted. The quotation should provide some insight into the legal logic of the court, often called the court's reasoning.

Application

The most important part of the analysis. Apply the law to your client's facts, comparing the two.

Conclusion

Determine the answer to the issue being analyzed.

Be disciplined. Use each of these steps for each authority analyzed. This not only makes the process easier; the result is a final product that is more powerful. The result is a product that an attorney will respect.

Structural Considerations in Legal Documents

"Quotations"

Quotes of 50 words or more should be indented on both sides and single-spaced *without* quotation marks. Quotes of less than 50 words should remain in the paragraph *with* quotation marks.

*When Adding **Emphasis***

When the author adds emphasis to part of a quote by use of italics, underlining, or bold-face font, he or she must place *Emphasis Added* or *Emphasis Supplied* in parenthesis at the end of the paragraph.

Ellipsis...

If you start in the middle of a sentence (or statute), begin with an ellipsis:

. . . only the defendant can file such a motion at this time.

If you leave something out of the middle of a sentence or paragraph, tell the reader by using the ellipsis in place of the missing material:

The court ruled that the defendant . . . did not act in good faith.

If you leave something out at the end of a quotation, inform the reader by using an ellipsis *and* a period:

The court ruled in favor of the plaintiff . . .

HELPFUL HINTS

In the foldout in the back of the manuals you will find **Helpful Hints in Legal Writing** to help you get started with each stage of the IRAC analytical process.

EXAMPLE OF A LEGAL ANALYSIS – COMPARING CASES

ISSUE 1

Can a baseball bat be considered a deadly weapon?

In cases involving assault with a deadly weapon, courts have held that even objects not designed for assault can be considered deadly weapons. In the case *State v. Hayden*, 134 S.W.2d 442 (Tenn. 1977), the defendant was charged with attacking a waiter with a walking cane after the waiter insulted the defendant's tipping habits. The defendant was convicted and the Supreme Court of Tennessee affirmed the lower court's decision. The Supreme Court held that:

... it is not the intended design of the object that determines liability but the potential the object has to inflict serious bodily harm. By way of example, an assault with an automobile may result in attempted murder charges being filed despite the fact that an automobile is certainly not designed for murderous acts.

In the instant case, the defendant attacked with a baseball bat. Although not designed with that intent, a baseball bat has even more "potential ... to inflict serious bodily harm" than does a walking cane. It would therefore appear that our client committed an assault with a deadly weapon.

**Issue
Introduction**

Rule
(Facts of Rule)

Rule
(Quote the Rule)

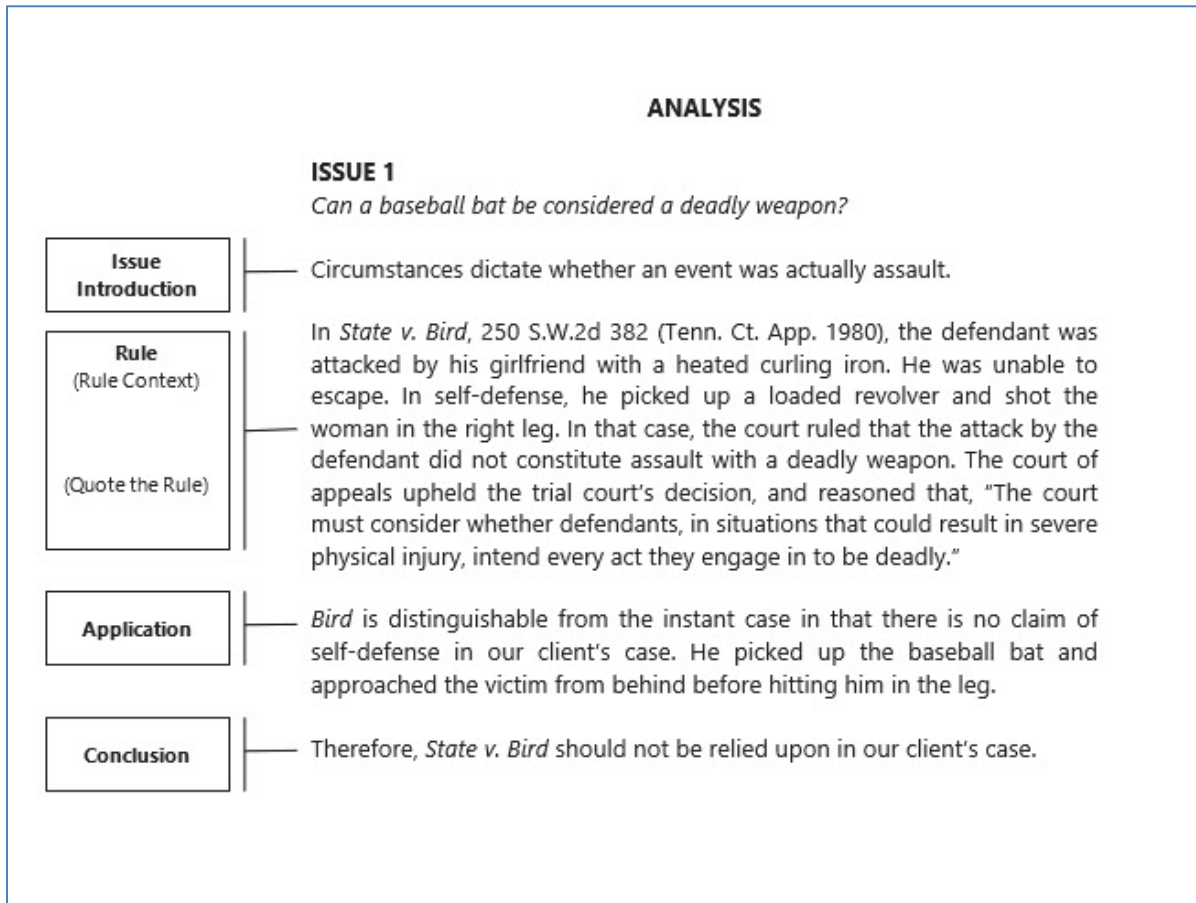
Application

Conclusion

Distinguishing Cases

When comparing a case, one tends to concentrate on the similarities. When distinguishing a case, highlight why the differences in a case (1) may be relevant, or (2) make the case inapplicable. Assume a case is found in which a man was determined not guilty of assault with a deadly weapon after shooting his girlfriend with a pistol. Does this case mean your client will be found not guilty, since his weapon was even less deadly? Not necessarily. You must determine whether there were any distinguishable facts.

EXAMPLE OF A LEGAL ANALYSIS – DISTINGUISHING CASES

**EXERCISE – ANALYZING A CASE**

Your client, Melissa, is suing her doctor, Mel Practice, for negligence. The doctor failed to make sure his nurse had removed a sponge from Melissa's abdomen during surgery. Melissa is claiming that Dr. Practice is responsible for the nurse's error. Dr. Practice is claiming he is not responsible.

Analyzing the case *French v. Fischer* (found in Appendix B), address the following issue:

Is the doctor liable for the negligent acts of the nurse?

Analyzing Statutes and Rules

As previously mentioned, in legal analysis the facts of each case are compared to the issue at hand. Each comparison is followed by the application of the law (case) to the client's facts. When researching a statute or rule in which there are no facts to compare, break the rule or statute into elements and apply each element to your client's facts. If even one of the elements does not apply, the entire statute or rule does not apply.

Your Client's Facts

Bob is married to Keri. In an elevator, Bob told Keri that he had "two joints" in his pocket and asked whether she wanted to smoke one. Unfortunately for Bob, a plainclothes police officer was also in the elevator and overheard the conversation. He arrested Bob for possession of a controlled substance. The D.A. wants Keri to testify. Will she have to?

Authority: Haw. Rev. Stat. § 645.120

Any private verbal or written communication between a husband and wife is privileged, and a party possessing the privilege (the accused) may not be required to testify and may prevent the spouse from testifying.

Breaking Statutes and Rules into Elements

An attorney does not speed read when reviewing statutes and cases. Instead, the attorney reads very slowly, breaking the law into elements. Do not underestimate the importance of this technique. It is powerful and will set you apart from other paralegals.

'And & Or' Rule

When the word *and* appears, the paralegal should separate the sections of the rule into different elements. When the word *or* appears, keep those sections together, since the element will apply if either part applies.

We must now break the rule into elements. Do all elements apply?

1. *Any private*
2. *verbal or written communication*
3. *between a husband*
4. *and wife*
5. *is privileged,*
6. *and a party possessing the privilege (the accused) may not be required to testify and may prevent the spouse from testifying.*

Each of the first four elements is a requirement to the applicability of the rule. They are called active elements. The last two elements, however, are more instructional. They inform what will happen if the previous active elements apply. They are called inactive elements, or passive elements. Passive elements automatically apply. Let us see how each element applies:

1. Any private
This element does not apply since the communication was in an elevator with others present.
2. verbal or written communication
This element applies because there was such communication.
3. between a husband
This element applies because the husband was involved.
4. and wife
This element applies since the wife was involved.
5. is privileged,
This applies as a passive element.
6. and a party possessing the privilege (the accused) may not be required to testify and may prevent the spouse from testifying.
This applies as a passive element.

Application

Remember, if any element fails to apply, the entire statute does not apply. Since the first element above does not apply, the statute does not apply. The wife must testify.

We now know that the statute does not apply. To analyze the statute within a memorandum or brief, the author should use the same analytical system as with case law, although there are no “facts” to the statute. In applying the statute, the author should focus on any element that does not apply. If all elements apply, discuss in detail how they apply.

EXAMPLE OF A LEGAL ANALYSIS | ANALYZING STATUTES AND RULES

Issue

Can a wife be forced to testify against her husband?

Statutory authority addresses the issue of spousal communications and subsequent testimony. Haw. Rev. Stat. § 645.120 states:

Any private verbal or written communication between a husband and wife is privileged, and a party possessing the privilege (the accused) may not be required to testify, and may prevent the spouse from testifying.

The authority above does not apply to our client's situation. Although the communication in question was indeed "verbal communication" between a "husband and wife," the statute requires that the communication be "private." In our client's case, the discussion took place in a crowded elevator. It is doubtful that a court would consider private any communication taking place in such a confined place. There can be little expectation of privacy under such conditions. Therefore, the wife in the matter above will most likely have to testify regarding the conversation.



Issue
Introduction

The Rule

Application

Conclusion

EXERCISES | ANALYZING STATUTES

Break the following rules into elements, and then determine how they apply.

Exercise A

Colo. Rev. Stat. § 29-10-220

When presenting evidence to the court, the original document shall be presented, unless the original document is no longer available through no fault of the party moving to have the evidence admitted.

Facts

Your client wants to have a birth certificate admitted into evidence. He was born in Italy. The original birth certificate was destroyed by a flood. Can he introduce a copy into evidence?

Exercise B

O.R.C. § 331.93

If parties are from different states or countries, and if the amount of damages requested exceeds seventy-five thousand dollars, either party may move to have the matter transferred to federal court.

Facts

Your client is from Oregon and got into a car accident in Portland with a man from New Mexico. The plaintiff is suing for \$75,000 and has moved to have the matter heard in federal court. Will his motion be approved?

Exercise C

Statute: Haw. Rev. Stat. § 645.120

Any private verbal or written communication between a husband and wife is privileged, and a party possessing the privilege (the accused) may not be forced to testify and may prevent his or her spouse from testifying.

Facts

Your client has been separated from his wife for more than a year. During the separation, he told his wife that he had robbed a bank. His wife called the police and reported him. The prosecutor wants to call the estranged wife to testify. Will she be allowed to take the witness stand?

THE TEN COMMANDMENTS OF LEGAL WRITING

When preparing documents that interpret or relate legal authority, such as a legal memorandum or trial brief, always adhere to the following rules:

1. Never rely on your own opinion.
2. Always rely on authority, preferably primary.
3. Avoid the words *I* or *my*. Instead, state “We should argue...” or “Our position should be...”
4. Use complete sentences.
5. As a rule, create short, clear sentences.
6. Write in plain English. Do not try to “sound like a lawyer.”
7. Never use an unfamiliar term. Using a term incorrectly looks foolish.
8. Unless you indicate a quote has been altered, quote word-for-word.
9. If you emphasize a quote by bold, italics, or underlining, tell the reader. Place (emphasis added) at the end of the quote.
10. Reread, checking for spelling and/or grammatical errors.