



Chapter 12

Rule Application: Applying the Rule to the Client's Facts

IREAC Map

Issue
Rule
(Rule) Explanation
(Rule) Application
Conclusion

In a legal memorandum, after explaining the rule clearly (the R in IREAC or CREAC) and illustrating it via Rule Explanations (the E or RE), next the legal writer transitions to the Rule Application section (the A or RA). This is the analytical component of the legal memorandum that provides the most insight to the reader (the supervising attorney). This section applies the narrowly focused legal rule to the client's scenario, analyzes the client facts in the

framework of such rule, and predicts as best as possible how a court likely would decide the legal question if presented with the client's particular circumstances.

I. Crafting an Effective Rule Application

The most important qualities of the RA component of a legal memorandum are (1) logic, (2) clarity, and (3) completeness. A good RA contains the following:

- A smooth transition from the RE so the reader knows the writer is shifting from illustrations of the rule through *other* cases (REs) to the actual facts of *the client's* case (RA)
- A strong organizational structure built around the elements or factors of the rule, perhaps allocating one paragraph per rule element or factor

- Clear topic/thesis sentences introducing each paragraph
- Transitions between paragraphs (through mini-conclusions and new topic/thesis sentences)
- Within each paragraph, comparisons and contrasts between the illustrated RE cases and the client facts
- Momentum leading the reader along a path toward the most logical conclusion
- Ultimately, a clear prediction/conclusion (the C in IREAC/CREAC)

If, as a new legal writer, you struggle with creating a logical legal analysis, break the RA-drafting process down into two steps. First, spend some time thinking about the rule itself and consider whether its component parts (elements or factors) can provide a “logic framework” for the RA. This is called rule-based reasoning—a straightforward way to approach a legal analysis. By now, you already recognize that legal rules can be pretty complicated, but legal writers make them less convoluted by identifying elements or factors to create a structural scaffold or checklist. (Chapter 5 explains the difference between elements and factors.)

For example, if your rule has three required elements that must be satisfied, you know you need to apply each individual element to the facts of your client’s case to determine the likely outcome. Regard the rule elements as a mental checklist, and construct your RA in an organized, logical fashion so you are tackling one element at a time.

Alternatively, your rule might involve a set of factors extracted from a statute or synthesized from a collection of cases. If your legal rule is based on factors, you might consider organizing your RA by factor, analyzing one at a time. Allow yourself some space to “work the rule.”

Second, take a step back from the morass of law and ask yourself, “Does my reasoning make sense? Do my analysis and ultimate predicted result reflect good common sense? Does the projected outcome seem fair or practical?” In this process, think about your client as a human being or a real company, even if you are dealing with a law school hypothetical. If this were a real-world scenario, would your analysis seem rational?

II. Remembering the Purpose of the Legal Memorandum

As you write the RA section, remember the underlying purpose of the legal memorandum and your role in its creation. A supervising attorney has asked you to research a client’s legal issue, locate and analyze the governing rule, break it down into workable parts, explain the rule in a clear and understandable fashion, apply the rule to the client’s facts, and predict an outcome. The supervising attorney assigned you this legal issue because she does not know the answer. This is not

a test to see whether you know what she knows. Instead, there is an information gap, and you are the one filling it. The supervising attorney is relying on you to do the best job you can in analyzing the law and facts and forecasting an outcome, so the attorney can advise the client on the most appropriate course of action.

Remember also that this is an internal attorney-client privileged document, so it is appropriate, and encouraged, for you to explore the strengths and weaknesses of your client's case. The opposing party will never see this memorandum. By ruminating over and describing the advantages and disadvantages of your client's position, you are helping the supervising attorney and the client make the best strategic decision possible in circumstances that may involve money, property, freedom, relationships, or other important concerns.

Understandably, you may be a bit nervous in making your first definitive and concrete prediction of a legal outcome. That is why logic is such an important "ally." If you let the rule of law be your guide and use the RA section of the memorandum to "work the rule," the organizational structure will steer you to the most logical conclusion. As long as you process the information in a methodical, systematic way and give the supervising attorney your most well-reasoned prediction, you will have done your job. The answer might not always be the one the supervising attorney or the client wants to hear, and that is okay as long as you have diligently processed the rule.

Be prepared for the possibility that there may be more than one outcome or prediction. Your conclusion might be a close call. You might even have creative ideas for alternate arguments that would change the end result: a way to demonstrate professional creativity. Supervising attorneys will appreciate a junior attorney who conscientiously applies the rule, spends time mindfully thinking about the analysis (lingering in the intellectual moment instead of rushing through the analytical exercise and jumping to the easiest, most obvious resolution), and then predicts a logical outcome. They will also value a junior attorney who takes the analysis a step further and brainstorms other options the client can pursue if the first prediction is unfavorable.

Practical Uses of a Legal Memorandum

- Supervising attorney reads the memo and jumps on a conference call with the client to discuss the case.
- Supervising attorney uses your memo to craft an opinion letter to the client.
- Supervising attorney uses your memo to draft a pleading or a motion in a litigation.
- Your memo is retained in the file in the event someone later files a lawsuit against the client.

III. Using Element or Factor Charts to Organize the Rule Application

Writing an RA is not as simple as sitting down at the laptop and picking up from where you left off with your last RE. You first need to organize your thoughts. Some lawyers use charts to integrate three essential sources of information: (1) the parts of the rule, (2) the cases that best illustrate those rule components, and (3) the client facts tied to each part of the rule.

Apply Each Element or Factor of the Rule to the Client's Facts

Element/Factor	Precedent Case that Best Illustrates the Particular Rule Element/Factor	Client Facts

To draw comparisons or contrasts between your client's case and the precedent cases, ask yourself:

Are the facts of my client's case similar or comparable to the facts of a particular precedent case (or cases)? Which one(s)? _____ Why? _____

Are the facts of my client's case distinguishable or different from the facts of a particular precedent case (or cases)? Which one(s)? _____ Why? _____

IV. Transitioning from the Rule Explanation to the Rule Application

One vastly underestimated technique for converting a decent legal memorandum into a great one is the use of smooth transitions between the various memorandum components, gently nudging the reader onward while softening abrupt intellectual lurches. Have you ever ridden in a train, bus, or taxicab in which the conductor or driver clumsily applies pressure to the accelerator and the brakes, causing the vehicle to pitch forward with every jerky stop and start? Reading a legal memorandum without gentle transitions gives the reader the same headache-inducing experience.

Therefore, as you segue from the RE section to the RA segment, start with a transition sentence that summarizes the overall conclusion or prediction.

Example 1: Applying the foregoing elements of California's Vehicle Code Section 10851 to the client's circumstances, a court likely will find that the valet driver did not commit vehicle theft.

Example 2: Applying the foregoing factors to the merchandise our client sold at the street festival without a vendor's license, a court likely will find that the products did not qualify as "art," but rather constituted commercial items requiring a sales license.

V. Applying the Rule to the Client's Circumstances

If you are experiencing difficulty knowing where to begin constructing the RA, start with the ingredients of the rule. Think about all the different components of the rule you need to evaluate and consider dedicating an RA paragraph to each part. You can always edit later and combine short paragraphs if necessary, but for now, tackle each part of the rule one at a time.

Start each paragraph with a clear topic and/or thesis sentence¹. A topic sentence announces to the reader what concept or idea the paragraph discusses, either through key words or phrases. A thesis sentence goes a step further and takes a *position* or declares a *conclusion* on the topic about to be discussed. In legal writing, a topic sentence in an RA paragraph triggers in the reader's mind which part of the rule the writer is poised to apply next. A thesis sentence goes ahead and summarizes the legal writer's conclusion on the particular portion of the rule. Different legal writing professors might have different preferences on whether you use topic sentences or thesis sentences; the important point is that each paragraph needs a "billboard" or a "headline."

Example of a Topic Sentence

The first way a defendant may commit the crime of impersonating a law enforcement officer is by verbally informing another person that he is a duly authorized peace officer.

Example of a Thesis Sentence

Analyzing the first method in which a defendant may commit the crime of impersonating a law enforcement officer, which requires the defendant to verbally inform another person that he is a duly authorized peace officer, our client clearly informed the bartender that he is a member of the NYPD.

In legal writing, thesis sentences can be more helpful to the reader than topic sentences because they state a concrete position. As you begin writing RA paragraphs, however, you may not know yet what your position is on each part of the rule. That is okay. Your thoughtful analysis within each paragraph will help you discover your thesis. For each part of the rule, ponder how the client's facts satisfy, or do not satisfy, that element or factor. Consider all of the client's legally significant facts; do not omit substantive details simply because they are unfavorable. Again, this process is called rule-based reasoning. Then, you can always go back and convert topic sentences to thesis sentences once your position on each rule component is more firm.

¹ In legal writing, a thesis sentence is a "persuasive topic sentence." Kirsten K. Davis, *Persuasion Through Organization*, 42-SEP Ariz. Att'y 50 (2005) ("A thesis sentence not only gives the topic of the paragraph it introduces, it also furthers the writer's argument on a particular point.").

VI. Comparing and Contrasting Case Law to the Client's Facts

Another type of legal analysis is “analogical reasoning.” The word “analogy” comes from the Greek word “analogia,” and is a form of reasoning in which speakers or writers educate an audience by comparing or linking less familiar items or ideas to well-known objects or concepts. You already use analogies in everyday conversation all the time, comparing and contrasting things or experiences to illustrate a point.

Examples of Nonlegal Analogies

- “This political race is like the story of David and Goliath.”
- “Getting my legal memorandum submitted on time feels like an uphill battle.”
- “The study of law sometimes feels like learning a foreign language.”
- “My teacher’s comments on my paper resemble a Jackson Pollock painting.”

In analogies, authors or orators use descriptions of events, things, or experiences that already resonate with the audience to help better explain and give context to unexplored concepts or ideas. In legal writing, you can accomplish the same goal by analogizing a precedent case (a past event/experience with a concrete result) to the client’s facts (a new uncharted event/experience with, as yet, an uncertain outcome). In the RA, legal writers often compare and contrast the cases presented in REs to the client’s facts.

Example 1: Like the street artists in *Mastrovincenzo*, who sold clothing they had hand-painted with hip-hop-style “expressive” graffiti, which was priced according to each piece’s design complexity, our client hand-painted roller-derby skates to communicate artistic ideas about female athleticism and priced each pair according to color pattern.

Example 2: Unlike the assailants in *Redmon, Ware, and Deboe*, who swung their respective weapons—a rocking chair, an iron, and a sponge-covered bat—numerous times against the bodies of their victims, Fontaine heaved her Jimmy Choo stiletto shoe only one time at Dunham.

When comparing and contrasting precedent cases with the client’s case, you can use terms such as

- “similar to . . .” or “similarly, in _____”
- “as . . .” or “like . . .”
- “exactly like . . .”
- “identical to . . .”

“comparable to . . .”

“just as in _____, . . .”

“in contrast to the _____ in _____, . . .”

“unlike . . .”

“distinguishable from . . .”

“far from . . .”

“distinct from . . .”

Avoid simply “ping-ponging” back and forth between precedent cases and your client’s case; instead, make these factual links, comparisons, and contrasts, but take your writing a step further. Explain the consequence of each nexus or divergence: i.e., because the court ruled a certain way in the precedent case, which reflected similar facts, the court likely will rule the same way in the client’s case. Or, in contrast, because the court ruled a certain way in the precedent case, which reflected facts *different* from the client’s case, the court likely will rule an alternate way in the client’s case because the factual distinctions are legally significant.

VII. Adding Mini-Conclusions to Each Section of the Rule Application

Just as topic/thesis sentences are important to give the reader signposts or headlines for what topics will be discussed in each paragraph of an RA, a good RA paragraph gives the reader closure at the end of each rule component. Consider ending each part of the RA analysis with a mini-conclusion on that particular part of the rule. If you are addressing an element, you can state whether that element likely is satisfied. If you are addressing a factor, you can assess whether that factor weighs in favor of or against a particular result.

When you are ready to move on to the next part of the rule, simply insert a paragraph break and craft your next topic/thesis sentence. By the end of the RA, you can consider whether all the elements of the rule are satisfied (or whether a majority of the factors of the rule are present), and then predict how a court likely would decide the legal issue affecting the client. This prediction will become your overall conclusion—the C in your IREAC or CREAC analysis.

VIII. Stepping Back and Reviewing the Rule Application for Logic

The first draft of an RA is complete when you have exhausted all the pertinent parts of the rule and have led the reader along a path toward a logical

conclusion. Once you have a first draft finished, take a break from the analysis and return to it later with fresh eyes. At your next review, step back and read the RA to make sure it makes logical sense. Ask yourself: Have I applied all the legally significant facts of my client's case? Does the result seem fair under the circumstances? Have I skipped any critical steps? Can an unfamiliar reader understand how I arrived at the ultimate prediction?

IX. Adding Policy-Based Reasoning to a Rule Application

Throughout law school, you will hear professors and students using the term "public policy," but unless you have studied political science or a similar field in college, you may not be 100 percent familiar with that phrase. Public policy refers to "principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society."² In other words, in law, courts and lawmakers often make decisions based on the "good of society," considering such issues as equality, economy, freedom, safety, health, and order.

In the RA, after you have performed rule-based reasoning, and perhaps some analogical reasoning drawing similarities or distinctions between the precedent cases and the client facts, you also might consider whether there are any public policy reasons supporting your predicted outcome. Does the forecasted result foster equality among citizens? Is it the best economical consequence? Will it preserve the health and safety of citizens? Will it promote order in society? Sometimes public policy reasoning can be communicated concisely in two or three sentences and yet really add a deeper dimension to a legal analysis.



RULE APPLICATION CHECKLIST

- Craft a transition sentence between the RE and RA sections of the memorandum, foreshadowing the overall prediction of the client's legal outcome.
- Organize the RA around the components of the rule. (Elements? Factors? One element or factor per paragraph?) This is rule-based reasoning.
- Start each paragraph with a topic/thesis sentence.
- Apply one part of the rule at a time to the client's facts.

² *Black's Law Dictionary* (9th ed. 2009).

- ☑ Consider all the client's legally significant facts—do not omit unfavorable facts.
- ☑ Within a paragraph applying a particular part of the rule, consider comparing the client's facts to a precedent case or contrasting the client's facts with a precedent case (analogical reasoning).
- ☑ At the end of the analysis of each part of the rule, give the reader closure with a mini-conclusion solely on that aspect of the rule.
- ☑ Once you have applied each component of the rule, check to see whether the analysis of each component leads to a clear probable outcome. This will become the conclusion (final C of the IREAC/CREAC).
- ☑ Once you have completed a first draft of the RA, review it for logic. Does it make logical sense? Does the result seem fair? Will it make sense to an unfamiliar reader?
- ☑ Are there any public policy reasons that support the predicted outcome?

Also Remember

- ☑ Avoid using "I/my/we/our/us" or "you." Instead, state "the client."
- ☑ Avoid contractions ("can't," "didn't") in legal writing.
- ☑ Use active voice instead of passive voice whenever you can.
- ☑ Avoid the temptation to speak in "legalese." Your normal "voice" is better, though your writing should sound a bit more formal than regular conversation.
- ☑ Use pronouns correctly. The pronouns "they" and "their" are plural and therefore cannot refer to singular nouns or indefinite pronouns such as "everyone," or "no one." So, for example, refer to the court as "it" and to "everyone" as "he," "she," or "he or she."
- ☑ Use concrete, affirmative language whenever you can. Avoid the temptation to soften your analysis through statements like "it seems that," or "it might be the case that." It's okay to practice taking a stand or a position.



SAMPLE RULE APPLICATION

In evaluating whether Fontaine's Jimmy Choo stiletto qualifies as a deadly weapon, a court will consider (1) the size and weight of the shoe, (2) the shape and design of the shoe, (3) the ability of the shoe to be grasped in the hands of the user in such a way that it may be used on or directed against the body of another, and (4) the ability of the shoe to be used in a manner and with sufficient force to kill the other person.³ Applying the foregoing factors, the court likely will find the stiletto constitutes a deadly weapon. Regarding the size and weight of the shoe, the facts indicate that Fontaine's "instrument" was a size 7 champagne-colored Jimmy Choo high-heel stiletto shoe. The shoe was constructed of suede and leather, and was a platform peep-toe stiletto. The heel height measured 3.9 inches and was constructed of steel with a gold-colored point attached to a small rubber sole. The platform part of the shoe was less than half an inch. The shoe was neither lightweight nor small. Further, the pointy shape of the nearly four-inch metal heel, and the weight of the platform peep toe structure, rendered the shoe capable of causing harm when thrown with force. Fontaine was able to grasp the heavy unwieldy shoe in her hand and hurl it toward the body of Dunham, specifically his head. The weight and shape of the shoe, when thrown in the manner Fontaine propelled it, likely had sufficient force to kill another person.

Unlike the perpetrator in *Maydillard*, who modified an everyday razor by removing plastic safety guards, Fontaine did not modify or adapt the shoe from its original purpose. Further, unlike the assailants in *Redmon*, *Ware*, and *Deboe*, who swung their respective weapons—a rocking chair, an iron, and a sponge-covered bat—numerous times against the bodies of their victims, Fontaine heaved the shoe only one time at Dunham.

Nonetheless, given the shoe's size, weight, shape, design, and ability to be grasped by Fontaine in such a way to be hurled at Dunham with sufficient force to gravely injure him and possibly kill him, a court likely will find that the shoe meets the definition of a "deadly weapon."

³ This is an example of a short RA, so the factors are not broken down and analyzed in separate paragraphs. But notice how the legal writer performs rule-based reasoning in the first paragraph (applying each of the four factors from the rule) and then analogical reasoning in the second paragraph (comparing and contrasting the precedent cases and the client facts), before reiterating the ultimate conclusion.