



Chapter 8

Introduction to the Format of a Single-Issue Legal Office Memorandum

Often, the first assignment legal writing students embark on in law school is a legal research memorandum (also called a law office memorandum) focused on a single legal issue. This type of document is a perfect introduction to the art and science of legal writing because it allows new legal writers to experiment with building a logical legal analysis using a basic foundational structure. The process is simple and yet provides all the fundamental tools you need to start an objective/predictive legal writing project. Through this assignment, you will

- first assess the facts of the hypothetical client's situation and then identify the narrow legal issue affecting the client's rights or interests;
- review statutes, regulations, and/or cases to pinpoint the rule of law governing the issue;
- possibly further narrow the rule of law to a particular element or set of factors to analyze;
- learn how to clearly explain the rule of law to your reader (who might have years of legal experience but still might be unfamiliar with the law you are analyzing);
- apply each part of the rule to the client's facts and perform a legal analysis;
- conclude by predicting how a court would rule on the legal issue.

Real-Life Scenarios of Supervising Attorneys Using Legal Memoranda

- A law firm partner schedules a conference call with in-house counsel to a corporate client and uses the law office memorandum to explain a complex statute to the client.
- A law firm partner boards a flight across the country to attend a settlement meeting with opposing counsel and reads the memorandum on the plane to understand the law and how a court likely will rule on the key legal issue.
- A law firm partner reviews the legal memorandum to evaluate what the client must prove in order to prevail in the case and then makes a list of necessary witnesses to contact and documents to gather.

I. Functional Context: How Do Supervising Attorneys Use Legal Research Memoranda?

Before beginning the task of writing a law office memorandum, it is important to understand how practicing lawyers use these types of documents in real life. As explained in Chapter 1, lawyers write legal research memoranda in many stages of a case. Often, supervising attorneys identify legal issues affecting a client or a case and then assign junior associates to write memoranda on these topics. Junior associates conduct the research and write (hopefully) clear predictive analyses so the supervising attorney can quickly grasp the law on the issue without having to research it independently. The supervising attorney then uses the memo to advise the client on the likely outcomes, empowering the client to make the best possible strategic decision. Legal memoranda are excellent tools to enable supervising attorneys and clients to make wise tactical choices in a case. Lawyers refer to legal research memoranda as “objective” or “predictive” because they are internal documents—not revealed to opposing parties—in which lawyers realistically evaluate both the strengths and weaknesses of the client’s case and impartially apply the law to predict the most likely outcome. This process is different from persuasive legal writing (which you likely will learn about in your second semester of law school, and which is explained in the second half of this book) in which the lawyer takes a stand on the client’s side of the issue and focuses on the strengths of that position.

II. Visual Context: What Does a Legal Research Memorandum Look Like?

Most single-issue legal research memoranda contain the following: (1) a header (To, From, Date, Re:); (2) a Question Presented; (3) a Brief Answer;

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Single-Issue Legal Memorandum Template

MEMORANDUM

TO:
FROM:
DATE:
RE:

Question Presented

Brief Answer

Statement of Facts

Discussion

- (I) ISSUE (Umbrella/Overview/Roadmap Paragraph)
- (R) RULE (Relevant Statute, Regulation, or Common Law Rule)
- (E) Rule Explanation (using case law to explain the Rule)
- (A) Rule Application
- (C) Conclusion

(4) a Statement of Facts; (5) a Discussion section organized around a legal formula called IRAC or IREAC (or alternatively CREAC)¹; and (6) a final Conclusion, summarizing the attorney's prediction of the likely outcome on the legal issue presented.

III. Drafting Context: How the Legal Memo-Writing Process Differs from College-Style Drafting

When writing a term paper in college or graduate school, you may have started the project by drafting the first word of the paper's introduction and continued typing away until you reached the final words of your conclusion. In legal writing, however, lawyers do not necessarily *draft* a legal document in the chronological order that its final component parts appear on the page. For an analytical piece of legal writing to be cogent and well reasoned, a lawyer's drafting process often starts from the "inside out." When first learning how to write a legal

¹ IRAC stands for Issue-Rule-Application/Analysis-Conclusion. IREAC stands for Issue-Rule-Explanation-Application/Analysis-Conclusion. Some law professors use CREAC: Conclusion-Rule-Explanation-Application/Analysis-Conclusion.

research memorandum, law students typically benefit from drafting the discussion section first. Later, once you have pinpointed the precise legal question (which might not be apparent at first glance) and established the correct answer to that question, you can go back and draft the formal question presented and brief answer. You also might write the formal statement of facts after you determine which legally significant facts are essential to the analysis.

Similarly, new legal writers benefit from constructing the discussion section from the “inside out,” starting with the “meat” of IREAC—extracting the issue and the rule in conjunction with one another, explaining or illustrating the rule through case examples, applying the rule to the client facts, and then going back and writing the introduction (in an “umbrella,” “overview,” or “roadmap” paragraph) that summarizes what the reader will learn in the discussion section. To teach you how to draft a memorandum like a lawyer, this book follows the progression of steps shown in the following table.²

	Task	Completed?
Step 1	Assessing the Big Picture (Envisioning the Six Major Parts of a Legal Memorandum)	
Step 2	Understanding the Component Parts of IREAC	
Step 3	Gathering the Client Facts	
Step 4	Researching and Extracting the Overall Governing Rule from a Statute/Regulation/Case Law	
Step 5	Clarifying the Precise Issue (or Component of the Rule) the Client Needs Addressed (the I in IREAC)	
Step 6	Synthesizing a More Precise Governing Rule for the Pertinent Legal Issue (the R in IREAC)	
Step 7	Drafting one (or more) Rule Explanation Paragraph(s) (the E in IREAC)	
Step 8	Drafting one (or more) Rule Application Paragraph(s) (the A in IREAC)	
Step 9	Drafting the Umbrella/Overview/Roadmap Paragraph (the I in IREAC)	
Step 10	Drafting the Conclusion (the C in IREAC)	
Step 11	Constructing the Question Presented (QP)	
Step 12	Crafting the Brief Answer (BA)	
Step 13	Writing the Statement of Facts (SOF)	
Step 14	Commencing the (Nonnegotiable) Foolproof, Ten-Step Editing Process (see Chapter 18)	

² Your professor might prefer a different chronological progression. In the end, as long as all the component parts are present, the memorandum should provide your reader with a logical analysis.

IRAC = ISSUE → RULE → APPLICATION → CONCLUSION
IREAC = ISSUE → RULE → EXPLANATION → APPLICATION → CONCLUSION

So, now that you can envision the process, let's talk about IRAC or IREAC.

Why do lawyers use IRAC or IREAC? Well, quite simply, this formula creates a logical flow to any legal analysis that most readers can easily understand. The goal in every piece of legal writing is to simplify complex concepts and guide the audience down the path of understanding, to a particular prediction (in objective legal writing) or a specific favorable result for your client (in persuasive legal writing).

To start, it is essential to clearly identify the legal *issue* for the reader (the I in IRAC or IREAC). When you are just beginning to learn the art and science of legal writing, you likely will be addressing a *single* issue in your first law school writing assignment. The issue part of IREAC will sweep away any distractions in the predicament posed by the client and focus the reader exclusively on the precise legal issue the memorandum will address. Your job in crafting the issue part of IREAC is to pare down the client's question into the exact legal question you will answer through your research and analysis, and steer the reader away from tangential topics that may seem interesting but are not at issue. (Chapter 9 teaches how to describe the issue clearly and concisely.)

In the second component of IREAC, the legal writer explains to the reader—ideally in plain English rather than legalese—the applicable *rule* derived from a statute, regulation, and/or common law. Warning: This next tip may spark flashbacks to grammar school, but lawyers often use sentence diagramming techniques to break down a rule into understandable and workable parts, such as definitions, elements, or factors.

Sample Statute Diagram (see Chapter 5)

Impersonating a Law Enforcement Officer

Any person →

who shall falsely →

assume the functions, powers, duties and privileges of a OR
pretend to be a →

sheriff,

police officer,

marshal, OR

other peace officer →

shall be deemed guilty of a misdemeanor.

Modified from Va. Code Ann. § 18.2-174 (West 2013).

“Elements” and “factors” might sound like interchangeable terms to a layperson, but remember the legal distinction drawn in Chapter 5. Elements are required items that *must* be satisfied for the rule to apply. For example, if you trot out to the driveway to start your car, you must have the keys, gas in the car, a functioning battery, and four inflated tires; otherwise, you will not be able to drive the vehicle to your destination. Any missing items will prevent you from moving forward.

Applying Required Elements

Keys?	<input checked="" type="checkbox"/>
Gas?	<input checked="" type="checkbox"/>
Functioning battery?	<input checked="" type="checkbox"/>
Four inflated tires?	<input checked="" type="checkbox"/>

In contrast, factors are options that a decision maker weighs and balances; not all are required. For example, if you are considering a new place to live, you might deliberate over location, price, square footage, and amenities. You will weigh the various characteristics, but in making your final decision you might compromise on one or two of them if the majority of your primary preferences are present.

The same concept applies to legal rules: some rules have a checklist of required elements, while others balance a range of factors. In your legal writing, you will describe the applicable rule to the reader by creating descriptive and organized lists of the elements or factors governing the client’s issue. Readers often can understand and process well-structured lists more readily than a lengthy statutory quote or case excerpt.

Third, after you communicate the rule to the reader (hopefully in a clear definition or a workable list of elements or factors), you employ another formula called a Rule Explanation (abbreviated as RE)¹ to illustrate how prior courts have

Weighing Factors

	Convenience to law school	Price	Square footage	Amenities
High-rise condo near Wall Street	Ten-block walk	\$350/month more than your original budget	Size of a postage stamp	Modern kitchen, walk-in closet, Wi-Fi, elevator
Renovated warehouse loft in Brooklyn	Thirty-minute subway ride	\$100/month less than your original budget	Size of a larger postage stamp	Appliances from the early 1990s; fifth-floor walkup (no elevator)

¹ Professors might use different terminology for this memorandum component as well, such as Case Illustration or Case Explanation.

applied the same rule in either similar or different factual situations. One RE formula that is easy for a reader to understand is the following:

Rule Statement → Case Citation → Facts → Holding → Rationale

In a RE, legal writers introduce the rule (or a subrule) in an introductory sentence and use legal citation rules (explained in detail in Chapter 11) to cite the case that supports the statement of the rule or subrule. Then, to commence the RE, the writer describes the “legally significant facts” of the precedent case applying that rule—in a few sentences. The writer might not include all the case facts; some cases are many pages long and include tomes of background information and interesting but legally irrelevant details. Instead, the legal writer chooses the legally significant facts that tell the story and that also tie directly to the elements or factors of the legal rule.

RE Formula Example

Rule statement	Under Florida law, an “assault” is (1) an intentional, unlawful threat, (2) by word or act to do violence, (3) to the person of another, (4) coupled with an apparent ability to do so, and (5) doing some act that creates a well-founded fear in such other person that violence is imminent. Fla. Stat. Ann. § 784.011 (West 1975). In <i>Rogan v. State</i> , 203 So. 2d 24 (Fla. Dist. Ct. App. 1967), a man standing outside a residence picked up a heavy flower pot full of dirt and threw the pot into a window of the residence. The man could see the victim inside the residence, seated in a chair five feet from the window, and yelled at her. <i>Id.</i> at 25. The flower pot broke the glass but did not penetrate the screen. The screen also held out the broken glass, but dirt from the flower pot spilled through onto the floor of the room. <i>Id.</i>
Citation	
Facts	
Holding	The court held that the perpetrator was guilty of the crime of assault. <i>Id.</i> at 26. The court reasoned that, while the flower pot was not a deadly weapon, the elements of the crime of assault were established: (1) the man intentionally hurled the flower pot in the direction of the victim; (2) at the same time, he yelled a threat of bodily harm to her; (3) he had the ability to harm her; and (4) his proximity prompted her well-founded fear. <i>Id.</i>
Rationale	

Next, the memo drafter states the court's holding (or decision) on the legal issue presented in the precedent case, using the phrase, "The court held . . ." Finally, the writer describes the court's reasoning in several sentences, starting with phrases like these: "The court reasoned . . .," "The court explained . . .," "The court relied on . . .," or "The court emphasized . . ."

Your goal in writing the RE is to paint a vivid picture of how a court applied the legal rule to the facts in the precedent case. If the legal writer follows the "facts, holding, rationale" formula in crafting the RE, the reader should be able to grasp (1) the factual circumstances of the case, to eventually compare and contrast to the client's facts; (2) the court's decision on the precise legal issue—the same issue on which the client seeks an answer; and (3) the reasoning behind the court's decision in the precedent case.

Whether you include a single RE paragraph or multiple RE paragraphs in a legal memorandum depends on factors such as the number of relevant cases bearing on the client's legal issue and the appropriate length of the document.

After the RE, the legal writer moves onward to the Rule Application (abbreviated as RA)—the A in IREAC. In the RA, the memo drafter applies each part of the applicable legal rule to the client's fact pattern, compares or contrasts the client's facts to the precedent cases explained in the RE section, and analyzes the impact. RAs also can follow a formula. First, a strong RA starts off with a transition sentence, foreshadowing the ultimate conclusion on the legal issue. Then the RA addresses each component of the applicable legal rule, element by element or factor by factor. This can be accomplished in one paragraph, if the analysis is not too long, or the analysis can be broken into individual well-structured paragraphs (with a beginning, middle, and end). While applying each part of the rule to the client's facts, a thoughtful memo drafter weaves in the case(s) explained in the RE(s), comparing precedent cases to the client's case or distinguishing them, using comparison phrases such as, "Like the passenger in *Ramos* . . .," "Just as the company in *Dehrianian* . . .," or "Similar to the aggrieved homeowner in *Mandell* . . ." Legal writers also use phrases that connote contrast: "In contrast to the bystander in *Ng* . . ." or "Unlike the perpetrator in *Del Giacco* . . ."

After applying all parts of the rule to the client's circumstances, the memo drafter ends the memorandum by concluding and predicting the ultimate outcome. This is the C in IREAC.

Based on the foregoing case law, our client, Cruz, will likely prevail in its cause of action against Howell for fraud.

Example of IREAC

The following is an annotated example of an IREAC analysis.

Issue Our client, Dylan Fontaine (“Fontaine”), seeks legal advice regarding whether she likely will be found guilty of the crime of felonious assault with a deadly weapon, as defined under Ohio law. Ohio Rev. Code § 2903.11(A) (2011)—the felonious assault statute—states that “[n]o person shall knowingly . . . [c]ause or attempt to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance.” Ohio Rev. Code § 2923.11(A) (2013) defines a “deadly weapon” as “any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.” The parties do not dispute that Fontaine knowingly caused physical harm to Jamie Dunham (“Dunham”) by throwing her Jimmy Choo high-heel stiletto shoe directly at him. Thus, the sole question is whether the shoe qualifies as a “deadly weapon” under Ohio law.

Factors helping to explain the rule When evaluating whether an otherwise innocuous item qualifies as a deadly weapon under the felonious assault statute, Ohio courts consider (1) the size and weight of the item, (2) the shape and design of the item, (3) the ability of the item to be grasped in the hands of the user in such a way that it may be used upon or directed against the body of another, and (4) the ability of the item to be used in a manner and with sufficient force to kill the other person. Applying these factors to Fontaine’s shoe, a court likely will construe the stiletto to be a deadly weapon. Thus, Fontaine likely will be found guilty of the crime of felonious assault with a deadly weapon.

RE Courts have applied the foregoing factors to numerous household items that would not normally be considered a weapon in their everyday use. For example, in *State v. Redmon*, No. CA-7938, 1990 WL 94745 (Ohio Ct. App. June 25, 1990), a home intruder, who had smoked cocaine earlier in the evening, broke into a house, picked up a wicker rocking chair, approached the homeowner who was sitting on her couch, and told her that he was going to kill her. *Id.* at *1. The intruder swung the rocker at the woman’s face. While she was able to duck and run into the kitchen, the intruder continued swinging the chair as he made his way to the kitchen. He swung the rocker at the homeowner again, missed, and finally threw it away. *Id.* After an ongoing struggle and a 911 call, eventually the police arrived and arrested the intruder for the crime of felonious assault. *Id.*

The intruder argued that the wicker rocking chair was not a deadly weapon. *Id.* However, the court held that the chair was indeed a deadly weapon as defined by Ohio law. *Id.* at *2. The court explained, “[a]n instrument, no matter how innocuous when not in use, is a deadly weapon if it is of sufficient size and weight to inflict death upon a person, when the instrument is wielded against the body of the victim or threatened to be so wielded.” *Id.* The court considered the following factors: (1) the size and weight of the chair, (2) the shape and design of the chair, (3) the ability of the chair to be grasped in the hands of the intruder and swung at the victim, (4) the ability of the chair to be used in a manner and with sufficient force to

kill the victim. *Id.* Applying these factors, the court emphasized that the intruder swung the wicker rocking chair at the victim's head, while telling her that he was going to kill her. She ducked and the chair missed her face by one-and-a-half feet. These factors supported the court's finding that the chair constituted a deadly weapon. *Id.*

Second RE Similarly, in *State v. Ware*, No. 57546, 1990 WL 151499 (Ohio Ct. App. Oct. 11, 1990), an ex-boyfriend entered his ex-girlfriend's home and, as she was putting a broom behind a door, struck her on the head with an iron and said, "I am going to kill you." *Id.* at *1. The man continued to strike the woman with the iron while she screamed for help. She struggled toward her bed and grabbed a pillow to protect herself from the blows of the iron. The man continued to swing the iron, hitting her and the wall, until the iron fell apart. Eventually, she got away. *Id.* The ex-boyfriend was charged with felonious assault with a deadly weapon. He argued that the iron did not qualify as a "deadly weapon." *Id.*

The court held that the iron was a deadly weapon. *Id.* at *6. Applying the above-mentioned factors to determine whether the iron was capable of inflicting death, the court emphasized that the ex-boyfriend used the iron in such a manner by striking the victim several times, and caused her to sustain multiple abrasions and lacerations, requiring several stitches. The court found this sufficient to qualify the iron as capable of inflicting death. *Id.*

Third RE Further, in *State v. Maydillard*, No. CA99-06-060, 1999 WL 988822 (Ohio Ct. App. Nov. 1, 1999), an inmate at a correctional institution in Ohio entered the cell of another inmate, carrying a plastic shaving razor from which he had removed the plastic guards to expose the blades. The first inmate brandished the razor at the second inmate in an attempt to collect a debt owed. *Id.* at *1. A struggle ensued. Guards arrived at the cell, pulled the inmates apart, and handcuffed them. During a pat-down search, a guard found the razor. The inmate was charged with possession of a deadly weapon while under detention. *Id.*

In applying the statutory definition of a "deadly weapon" to the razor, the *Maydillard* court held that the razor possessed by the inmate was a "deadly weapon" by the manner of its use or adaptation. *Id.* at *4. The court explained that cases which have found a razor not to be a deadly weapon involve circumstances where the razor was used or possessed consistent with its legitimate purpose, such as a barber's razor or a pocket knife used for cutting packing tape and rope. *Id.* at *3. However, this inmate had adapted the razor, by removing the plastic guards, to function as a deadly weapon. *Id.* at *4. Further, he brandished it as a weapon. Finally, the court emphasized that the inmate presented no testimony that he was using the razor in a manner consistent with its legitimate purpose. *Id.*; see also *State v. Salinas*, No. F-84-8, 1985 WL 7568 (Ohio Ct. App. July 26, 1985) (holding that a jury reasonably could find that a baseball bat constituted a deadly weapon when the perpetrator swung the bat at a victim, causing injury to his jaw, ribs and arms); *State v. Deboe*, 406 N.E.2d 536 (Ohio Ct. App. 1977) (holding that a club-like instrument three inches in

Signal cites
adding
additional
case law

diameter wrapped in spongy material, which the perpetrator swung rapidly at the victim, hitting him 15 or 20 times on the head, arms, back, shoulders, and kidneys, causing black and blue welts and bruises, constituted a deadly weapon).

Fourth RE In contrast, in *State v. Kaeff*, No. 20519, 2004 WL 2245095 (Ohio Ct. App. Sept. 24, 2004), a husband was indicted for one count of domestic violence and one count of felonious assault with a deadly weapon, after using only his hands to attempt to strangle the victim, his wife. *Id.* at *1. The husband filed a motion to dismiss the count of felonious assault on the ground that a person's hands cannot, as a matter of law, be considered a deadly weapon. The trial court granted the motion and dismissed the count. The prosecution appealed the court's ruling. *Id.*

The prosecution argued that hands (1) fit within the definition of an "instrument," (2) are capable of inflicting death, and (3) can be used as a weapon. However, the court held that hands do not meet the definition of a deadly weapon. *Id.* at *4. The *Kaeff* court reasoned that the factors defining a deadly weapon suggest the use of an object apart from one's own body. Thus, one's hands are not within the scope of the statutory definition. *Id.*

RA 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 upon 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. 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.

Conclusion 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 body of their victims, Fontaine only heaved the shoe 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 will likely find that the shoe meets the definition of a "deadly weapon."