

Add an E to Your IRAC

Whether you're answering exam questions or arguing on your client's behalf, explaining rules of law can help get your point across to your professor or the judge

BY MARK E. WOJCIK

Issue, Rule, Application, Conclusion. That's IRAC as it's taught in a large number of legal writing classrooms across the country. Or maybe you learned that the A in IRAC stands for "argument" or "analysis" instead of "application" of the rule of law to the facts of the case.

But many students never learn that you can add an E to IRAC. Call it IREAC (pronounced eye-REE-ack). The E is an "explanation" of the rule of law. Explaining the reason for a rule of law can help you on your essay exams. Tell your professors not only what the rule is, but also the reason for the rule. They will be impressed, and you may get a higher grade.

IREAC enables you not only to state the rule, but also to explain the rule in some way. You might define a word or phrase in the rule. You might explain the reason the rule was enacted. You might explain some other public policy aspect of the rule, such as what the legislature or court hoped to achieve by adopting the rule. Or you might give your readers an example of how the rule works (or should work) in a particular factual set-

ting. There are many ways to explain the rules of law that apply in your case.

Why bother explaining rules? After all, a rule is a rule, and many assume that no explanations are necessary. Oliver Wendell Holmes disagreed. "It is revolting," he wrote in an 1897 *Harvard Law Review* article, "to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." If the reason for the rule has vanished, then it's time for a new rule. But you will only know that it's time for a new rule if you know the original reason for that rule.

Aside from helping you in law school exams, IREAC will also be valuable to you when you practice law. Explaining the reason for a rule of law supports your argument. If you learn not only what the rules are but also why they are rules, you will probably win more often in court. Judges will be more willing to accept your position if the result you are advocating is consistent with the rule's purpose. If you

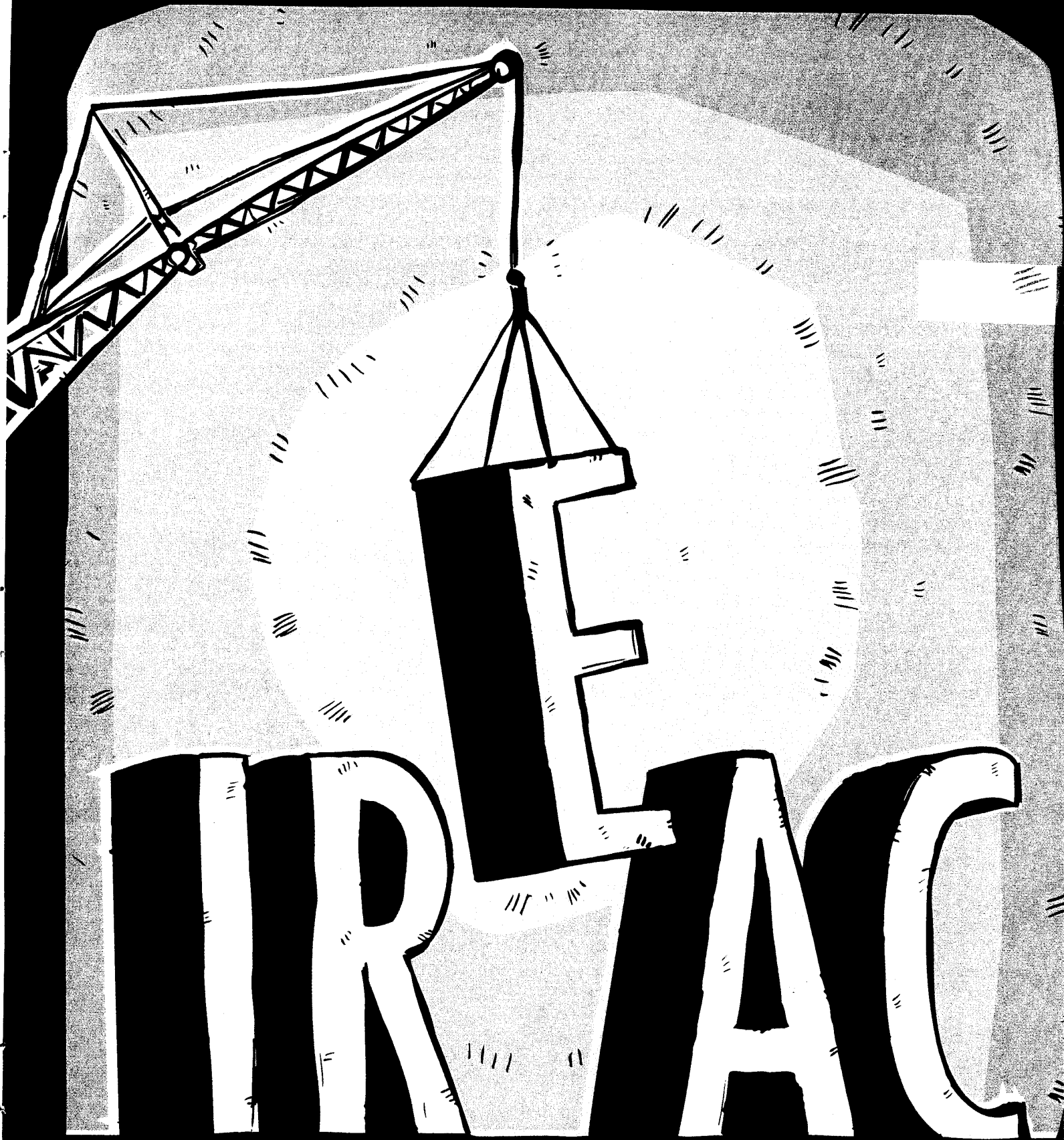
cannot align the reason for a rule with your client's position, then maybe you don't deserve to win the argument.

You can explain a rule of law in several ways. To keep things simple, let's use a rule from tort law that you may already know. Here is a rule for the tort of assault:

A defendant is liable for assault if he or she (1) "acts intending to cause a harmful or offensive contact with the person of another or a third person, or an imminent apprehension of such contact," and (2) "the other person apprehends an imminent harmful or offensive touching."

And now, here are three options you can use to explain that rule. Choose whichever one you prefer for any particular exam answer.

Option 1: Explain the public policy behind the rule. After you state the rule of law, you can explain the policy behind it. How did the rule come about?



What legislative or judicial goal is the rule designed to achieve? One of the reasons to explain a rule of law by explaining the policy behind it is to help ensure that the result is one that meets our standards of justice. If you can explain the reason for the rule, and that the reason is still valid, you can use that explanation to reach a result that is fair and just.

Example: The first issue is whether the defendant is liable for the tort of assault. A defendant is liable for assault if he or she (1) "acts intending to cause a harmful or offensive contact with the person of another or a third person, or an imminent apprehension of such contact," and (2) "the other person apprehends an imminent harmful or offensive touching." [Case citation] The tort of assault protects each individual in being free from being afraid of physical harm. Providing liability for the tort of assault also discourages conduct that might otherwise lead to a battery or an even more severe disturbance of the peace.

Option 2: Give an example. You can provide a case example of how the rule works or doesn't work. You can summarize a case that you read in class, or use an example or illustration from the restatement. Giving an example allows you to demonstrate that you know how the rule should be applied. If your readers go along with you, they will agree that your case should be decided similarly by way of analogy.

Example: For example, throwing a cream pie at someone would be an assault if you (1) intended to hit the person and (2) the person saw the pie coming at him or her. (If your aim was good and you hit the person with the pie, then that would create liability for battery rather than assault.)

Example: If the person does not apprehend the imminent harmful or offensive touching, there is no assault. For example, if a person was asleep while another person tried to scare him, no assault would have

occurred (unless the person woke up and reasonably feared a harmful or offensive touching). Or if a person made a menacing gesture behind another person's back, and the person did not notice the gesture, there is no assault because there is no "apprehension of an imminent harmful or offensive touching."

Example: Words alone are generally insufficient to place another person in imminent apprehension of a harmful or offensive touching. However, words accompanied by a threatening gesture may be enough.

Example: If the threat is conditional, or if it is obvious that it is made in jest, there is no liability for assault. For example, telling someone that "If you were not such an old man, I would punch you" would not be ac-

Beware that many statutory terms have their own definitions. If a term is defined by statute, or by an administrative agency's implementing rule or regulation, you should first provide the rule of law and then provide the definition in the statute, rule, or regulation. You would be surprised how often researchers miss the definitions of terms provided in other statutes and administrative regulations. Because many researchers look up statutes online and not in print sources, they often miss the definition section of a statute that might appear several sections later, or at the beginning or end of the statutory material.

Where else can you find definitions? Dictionaries are often a good place to start. Many law students use only the dictionaries that are on their computers,

Explain the public policy, give an example of how the rule works (or should work), or define one or more terms from the rule of law.

tionable when said to an old man because the words used are conditional and do not suggest an imminent threat of a harmful or offensive touching.

Example: It is not necessary to make direct contact with the other person. For example, it has been held to be a battery to rip a plate from someone's hand while he was standing in a cafeteria line. Similarly, liability for battery could arise for forcefully removing a white cane from a blind person.

Option 3: Define a term. Words or phrases in a rule of law may be potentially ambiguous or unfamiliar in the surrounding context. You can define that term for your readers in a way that supports your argument. When you define a term or phrase in a rule of law, you are setting the rules by which the other parties must play the game.

or maybe online. But judges and professors won't be impressed by a citation to dictionary.com as your source of legal authority. Law dictionaries in print are a good source to use—they are even better when you use a full dictionary rather than just the pocket-size abbreviated version. You should actually start a collection of law dictionaries for yourself—you will find them to be valuable friends when you are in practice.

One of the best sources for case definitions of words and phrases is also the source that is most often overlooked by lawyers and law students—the book series called *Words and Phrases*. If you don't know that series, take a few minutes to find these books in your law library. You'll be glad you did. *Words and Phrases* collects federal and state cases in which the court defined a specific legal word or phrase. This means that those

Mark E. Wojcik (7wojcik@jmls.edu) is a professor and director of global legal studies at The John Marshall Law School in Chicago.

definitions can be binding (if the case is from your jurisdiction) rather than only being persuasive. When you use *Words and Phrases* to find a case definition, you should cite the case rather than *Words and Phrases*. You must read the case, of course, and update it with KeyCite or Shepard's. Some lawyers mistakenly believe that they can cite *Words and Phrases* as a shortcut and avoid having to read the case or to check whether it is still good law.

Other sources for definitions of words and phrases include national and state legal encyclopedias, treatises, law review articles, and bar journal articles. Still other sources might be industry specific. For example, you might consult a special business, scientific, or technical dictionary for a definition of a word or phrase.

The key here is that you have many options to choose from. You should spend some time looking for the definition that will most help your argument.

Here are some examples of ways to define a term. In your writing, you must, of course, include a citation to the source of the definition. The following examples include ways to describe binding cases from your jurisdiction or persuasive cases from other jurisdictions.

Example: A defendant is liable for assault if he or she (1) "acts intending to cause a harmful or offensive contact with the person of another or a third person, or an imminent apprehension of such contact," and (2) "the other person apprehends an imminent harmful or offensive touching." [Case citation] Our state supreme court has defined an "offensive" contact as one that would "offend a reasonable sense of personal dignity." [Case citation to a state supreme court case]

Example: Although the term "offensive" has not yet been defined by any court in our state, other courts have defined an "offensive" contact as one that would "offend a reasonable sense of personal dignity." [Case citation to a case from another jurisdiction]

Example: For the tort of assault, the word "apprehension" has been defined as "a perception, understanding, or belief." [Case citation]

Don't get too hung up on which method you use to explain a rule of law, because one person's definition may be another person's case example or explanation of policy. The important thing is to pick one way of "explaining" the rule of law and use it. Explain the public policy, give an example of how the rule works (or should work), or define one or more terms from the rule of law.

You can use this technique of explaining rules in your legal writing memoranda and appellate briefs. You can use it on exams. You can use it in your law review articles. And when you are a lawyer, you can use this technique when writing court documents, office memoranda, and client letters.

We will all benefit if we know not only the rules of law, but also the reasons why we have those rules. And if you explain the rule in a way that benefits your client, you will have done a great service. ■

Do you know other variations on IRAC?

E-mail your brief comments with your name, school, and contact information to studentlawyer@abanet.org (subject line: Variation on IRAC). Let us know if you're a student or professor. We'll publish the best messages in a future issue or online.

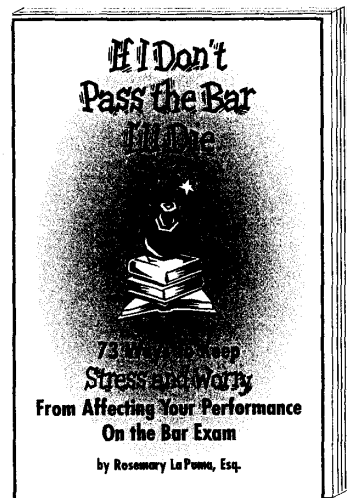
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