

IRAC: How to Write about Legal Cases

Leonard Tourney, Gina Genova

What differentiates legal writing—good legal writing—from writing on other subjects is not such legalistic phrases as “aforesaid,” “wherein,” “prima facie,” or “cease and desist.” It is, rather, the systematic application of general rules to specific facts for the purpose of arriving at reasonable, persuasive conclusions. An attorney writing a legal memorandum to her colleagues, or a motion to a judge, or presenting a closing argument to a jury is applying the law to the particular set of circumstances constituting the case at hand. She or he may have an opinion as to the guilt or innocence of the defendant (if the case at hand is a criminal one). But these opinions must be subordinate to the logical conclusions that follow from the careful application of rules to facts.

The selections that follow demonstrate this process of application of rule to fact. We present a hypothetical case—a particular set of facts, only some of which are legally relevant. We then offer a systematic analysis, in outline form, of these facts, based on the applicable laws. Next, we present a legal essay on the case based on our analysis. This example should serve as a useful model for much of your own writing in the subsequent cases presented in this chapter.

Before presenting our case, we should introduce IRAC, a method of presenting arguments on legal cases that has been successfully used by generations of law students.

IRAC is an acronym that stands for:

Issue

Rule

Analysis (or Application)

Conclusion

Let’s define each of these terms:

*The **Issue** is the central question around which the case turns. It is generally couched in the following form: “Is a defendant who [indicate specifically what the defendant did] guilty of (in a criminal case) or liable for (in a civil case, or lawsuit) [the specific crime/legal wrongdoing (tort) charged? For example, “Is the defendant, who was recorded by a police officer as traveling 80 mph in a 55 mph zone, guilty of speeding?” This section is generally one sentence long.*

The **Rule** is the primary law (or set of laws) that apply in this case. It is quoted verbatim (and placed within quotation marks) because the letter of the law is crucial. This rule may be a statutory law (such as a section of the criminal code, like arson) or it may be an accepted legal principle based on precedent. This section is frequently one sentence long. Note: secondary rules—those that define or clarify certain elements or terms of the primary rule (such as “privileged” or “intent”)—may also apply to the case. These secondary rules are introduced in the appropriate places in the next section, the Analysis.

The **Analysis**, the longest section of the essay, is a systematic application of components—or elements of the primary and secondary rules—to those facts of the case that are legally relevant. For example, robbery is defined in the California Penal Code (section 211) as “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, and accomplished by means of force or fear.” The separately underlined phrases are individual elements of robbery, and each element must be satisfied for the defendant to be found guilty of robbery. In the case of phrases joined by “or” (as in “force or fear”), only one of the two elements need be satisfied.

In the analysis, it is frequently necessary to bring in additional legal principles that provide definitions or clarifications of key terms in the primary rule. These secondary rules should also be quoted verbatim. For example, the self-defense privilege is a secondary rule that clarifies the conditions under which an attack against another may be legally justified, or “privileged.” By “facts of the case that are legally relevant” (in the paragraph above) we mean those facts that can be associated with one or more elements of the rule. For example, the fact that the defendant used a gun to inspire fear would be legally relevant. The fact that the defendant was in a bad mood because he had just been fired from his job is legally irrelevant. In general, it is a good idea to use climactic order in developing your analysis. That is, first dispose of those elements about which there is likely to be little dispute or about which there is little question as to whether they have been satisfied. Then, move on to the elements that require more extended discussion.

It is a good idea to conclude each section of the analysis by indicating in some manner that a particular element of the rule has or has not been satisfied. However, defer the overall conclusion (the guilt or innocence or liability or non-liability of the defendant) for the

very end of the essay. Do not conclude guilt or liability prematurely, before you have analyzed all the applicable facts!

Also, do not merely summarize facts in this section, as if they speak for themselves. Analyze them by applying rule to fact.

The **Conclusion** is the answer to the question that is posed in the Issue statement. It is generally no more than a few sentences (and sometimes just one sentence) long.

To see how this process works, read the following selections. First we present a hypothetical case, "Incident at the Airport," written by Leonard Tourney, who teaches legal writing at the University of California at Santa Barbara. Next we present an analysis of this case in outline format, with a systematic application of each element of the rule (in this case, the rule for battery) to the relevant facts of the case. The analysis was written by Gina Genova, who also teaches legal writing at U.C., Santa Barbara, and who practices law in that city. Next, we present a model legal essay based on Genova's analysis, written by Leonard Tourney. Tourney's essay is followed by his "Short Guide to Writing Effective Issue Statements." Finally, we present three problematic model essays (written by Tourney) based on the "Incident at the Airport" scenario. You are invited to discover and discuss the problems.

Incident at the Airport

Leonard Tourney

Lisa St. John arrived at Los Angeles International Airport late in the afternoon after a grueling flight from London via New York and Chicago. She was exhausted and irritable, ready to chuck her job as a computer consultant for international corporations. Her mood did not improve when she found that Frank Mason, her fiancé, was not waiting to pick her up as he had promised. She had long suspected Frank of being a closet flake just waiting to reveal himself to her after he and Lisa were married and only an expensive divorce would undo the damage. The upside of his failure to show was that it gave Lisa cause to break things off. While she waited, she steamed and rehearsed just how she would tell him to marry someone else.

The plane had arrived at 4. Frank didn't appear until nearly 7. Lisa had avoided eating so that her blood sugar level would drop. She wanted to feel awful, look awful. Frank deserved what he got: a whining, inconsolable wreck. Then she saw him, and her cup of wrath overflowed. Frank was smiling, carrying a dozen roses and a box that looked very much like Lisa's favorite chocolates. He threw his arms open wide to greet her and in so doing hit Eben Sommers, a 90 year old man waiting to get a plane to Detroit. The blow broke Mr. Sommers' glasses and his nose.

"You moron, why don't you watch what you're doing?" Lisa cried, as Frank struggled with the roses, candy, and Mr. Sommers, whom he was trying to help up off the floor. The old man had reminded her of her grandfather who had died a month earlier. Enraged, Lisa kicked at Frank but missed, hitting Mr. Sommers in the leg, breaking his tibia. Mr. Sommers cried out in agony. His cries brought Albert Fenstermocker, a German tourist, to his aid. Fenstermocker, thinking Lisa and Frank were assaulting the old man, began to beat Frank over the head with his cane. Seeing her fiancé assaulted by a perfect stranger, Lisa's feelings changed. She threw herself at Fenstermocker, knocking him to the ground.

Write an analysis of the case above, focusing your attention of Lisa St. John's liability for battery to Eben Sommers. Use the following rules:

1. **Battery.** Battery is a harmful or offensive touching of another that is intentional, unconsented, and unprivileged. [primary rule]
2. **Transfer of Intent.** In tort law [the law covering the wrongs committed by individuals against one another], if A, intending to strike B, misses B and hits C instead, the intent to strike B is transferred and supplies the necessary intent for the tort against C. [secondary rule]

3. **Self-Defense Privilege.** The right to protect oneself or another from unlawful attack, the law of self-defense justifies an act done in reasonable belief of immediate danger, with use of reasonable force in the absence of more peaceful alternatives. [secondary rule]

Analysis of “Incident at the Airport”

Gina Genova

Issue: Does defendant who inadvertently kicked plaintiff while intending to kick a third party who had accidentally struck the plaintiff commit a battery?

A. *Did Lisa batter Mr. Sommers?*

1. **Battery** is a harmful OR offensive touching of another that is intentional, unconsented and unprivileged.

a. *Harmful or offensive* - Lisa kicked Mr. Sommers so hard it broke his tibia and caused him to fall to the ground, his cries of pain so loud they brought Albert Fenstermocker to the scene. Thus, the blow was harmful to another, Mr. S.

Because this element can be either harmful OR offensive and we have proven harm, no discussion of offense needs to be made. However, his age makes this act offensive to our cultural sensibilities as well as to Mr. S personally.

b. *Touching* – Lisa’s foot touched Mr. S’ tibia, satisfying this element.

c. *Intentional* – After a grueling flight that left her exhausted and irritable, Lisa intentionally missed a meal and “steamed” herself into an “inconsolable hag” because Frank was late. She let herself get more angered by Frank’s flowers and chocolate, and his mishap with Mr. S who reminded her of her recently deceased

grandfather. Lisa could have stopped her mounting ire at any of these points or even at her verbal abuse but she went further. Showing a clear intent to welcome her aggravated mental state, unwilling or unable to restrain her rage, she used it to aim a kick at the object of her wrath, Frank. Unfortunately for Mr. S' tibia, her aim was off and her foot found it instead. By all factual accounts, Lisa did not intend to hit Mr. S. This element has not been met.

Is there a rule that allows for this element to be circumvented? Yes.

Transfer of Intent. In tort law, if A, intending to strike B, misses B and strikes C instead, the intent to strike B is transferred and supplies the requisite intent for the tort against C.

1. For this rule to apply, we must decide whether Lisa intended to harm another when she inadvertently struck Mr. S.
2. As analyzed above argued in Issue 1, Lisa intended to hit Frank when she missed and struck Mr. S instead. She purposely worked herself into a fit and was so “enraged” by Frank that she aimed to kick him. At any time before the kick she could have stopped herself. Frank did arrive with flowers and candy, and a reasonable person might assume he got the pick up time wrong. He also held his arms out to hug her and accidentally hit Mr. S in the nose. She acknowledges this accident with her statement “You moron, why don’t you watch what you’re doing,” implying clumsiness not malice. Instead, she chose to disregard these facts, manifesting clear intent to harm Frank.
3. Because Lisa intended to harm Frank, that intent is transferred to Mr. S, the actual but unintended victim.

d. Unconsented – There is no evidence that Mr. S, a total stranger to Lisa and only in the airport to board a flight, asked or allowed Lisa to strike him.

e. *Unprivileged* – There is no evidence that a relational privilege exists between the two strangers: Mr. S, an innocent bystander embarking on a plane, and Lisa arriving on one. Mr. S had nothing to do with the argument between Lisa and Frank nor had he any apparent relationship or contact with either of them prior to this incident to create a privilege. There is, however, the possible applicability of the self-defense privilege.

Self-Defense Privilege is the right to protect oneself or another from unlawful attack and justifies an act done in reasonable belief of immediate danger, with the use of reasonable force in the absence of more peaceful alternatives.

1. *Protect oneself or another*- Lisa was not under attack but she could argue she was protecting another, Mr. S, from Frank.
2. *Unlawful attack* – Since battery is a crime, if Frank battered Mr. S, his actions would ~~consitute~~constitute an unlawful attack. Thus, we need to work through a quick battery IRAC: Frank hit Mr. S so hard it broke Mr. S' nose and glasses = offensive and harmful; the two were strangers with no apparent consent and no relationship to form a privilege = unconsented; Frank; however, threw his arms wide open to greet Lisa, not to hit Mr. S. The element of intent is missing and nothing in the facts invokes the transfer of intent rule to create liability for battery. We may argue then that this blow was pure accident and did not rise to the level of “unlawful” or an “attack.”
3. Belief of immediate danger – Lisa's cry “you moron,” etc. indicates that she knew Frank's actions were not intentional and she knew that she was not in any danger. It is also unreasonable for her to fear attack from her fiancé since there is no indication that Frank had been abusive to her in the past. Frank also had flowers and candy in his hands, making it difficult for him to attack anything. Finally, Frank, fully

loaded with his gifts, “struggled” to help Mr. S up – clearly contradictory to the behavior of an aggressor. Based on all the above, Lisa could not have held any reasonable belief of immediate danger from Frank.

4. *Reasonable force* – Even if Lisa argues her belief of immediate danger, was the force she used commensurate with the threat posed? Frank’s blow did break Mr. S’ glasses and his nose. She responded with a kick so forceful that it broke Mr. S’ tibia, a traditionally strong bone. But the elderly are known to break bones more easily than the rest of the population so, perhaps, her kick was less forceful than Frank’s backhand. Also, since she was kicking at Frank and missed, perhaps some of the action’s momentum and force was lost. One more thing – she is a female and although we don’t know her stature, maybe Frank is a much larger person and thus a bigger threat to her & a feeble 90 year old, warranting greater force. However, it is more likely that her force was unreasonable given any slight threat she felt from Frank’s accidental blow to Mr. S.
5. *Absence of alternatives* – Lisa could easily have stopped at her verbal abuse of Frank. Or she could have merely grabbed his arms or pushed him back down. These -alternatives were far more peaceful and readily available to her at the time since Frank was busy picking Mr. S up off the ground with his hands full of gifts for her.
6. Thus, Lisa cannot invoke the privilege of self-defense to avoid liability.

B. *Conclusion:* Lisa committed an unprivileged battery upon Mr. S. Mr. S suffered damages as a result: bodily harm of a broken leg and emotional distress. Mr. S is entitled to compensation for these damages, which are a direct result of the battery. Lisa is therefore civilly liable to Mr. S for the above damages in an amount to be proven at trial.

Model Student Response and Commentary: “Incident at the Airport”

Leonard Tourney

<i>Essay</i>	<i>Discussion of Essay</i>
<p>Does defendant who inadvertently kicked plaintiff while intended to kick a third party who had accidentally struck the plaintiff commit a battery?</p> <p>According to the law, “battery is the harmful or offensive touching of another that is intentional, unconsented, and unprivileged.”</p> <p>At LAX, Lisa St. John, defendant, kicked Eben Sommers, plaintiff, breaking his tibia. This constitutes harmful and, surely, offensive touching to which Sommers, a total stranger, did not consent. Sommers was aiming at a third party, her fiancé, Frank Mason, who had accidentally struck Sommers moments before, breaking his nose and glasses.</p>	<p><i>The issue statement, in one sentence, meets the guidelines in the “Short Guide to Writing Issue Statements” below.</i></p> <p><i>The primary rule is quoted verbatim.</i></p> <p><i>Only the undisputed relevant facts relating to primary rule are summarized at the outset of the analysis: those dealing with “harmful” or “offensive touching” that is “unconsented.”</i></p> <p><i>Having disposed of the “easy calls,” the writer takes up the matter of intent, an element about which there is some</i></p>

<p>Nevertheless, according to the rule of transfer of intent, “in tort law, if A, intending the strike B, misses B and hits C instead, the intent to strike B is transferred and supplies the necessary intent for the tort against C.” Therefore, Ms. St. John’s intent to kick Mason is transferred to the actual victim, Sommers.</p> <p>But can Ms. St. John invoke the self-defense privilege to shield her from liability? “The right to protect oneself from another from unlawful attack, the law of self-defense justifies an act done in reasonable belief of immediate danger, with use of reasonable force in the absence of more peaceful alternatives.”</p> <p>Ms. St. John might argue she kicked Mason to protect Sommers from further harm. But since her statement to Mason asking him to “watch what he was doing” suggests she knew that Mason’s striking of Sommers was accidental and therefore not likely</p>	<p><i>question since Lisa did not intend to hit Mr. S. The secondary rule of transfer of intent is quoted and then applied to the facts</i></p> <p><i>Having applied the secondary rule of transfer of intent, the writer can now conclude that the element of intent in the primary rule has been satisfied.</i></p> <p><i>All that remains to discuss of the primary rule is whether the element of “unprivileged” has been met. To deal with this question, the writer brings in the rule for the only applicable privilege in this case, the self-defense privilege.</i></p> <p><i>The writer begins the discussion of privilege by offering a counter-argument that might be offered by the plaintiff: she did act in self defense to protect plaintiff from harm. The writer then draws upon the facts to rebut</i></p>
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to be repeated since he was immediately aware of what he had done, she cannot be said to have acted to protect Sommers from further immediate danger as the law requires. Nor was the force she exerted reasonable. If she had really believed that Mason intended another blow against Sommers, she could have seized Mason's arms or flung herself at him, as she did later when she threw herself at a German tourist assaulting Mason. The kick was excessive force, reckless, given the proximity of bystanders, and more likely motivated by anger against Mason for his tardiness than a desire to protect Sommers.

Given the evidence, it seems likely that Lisa St. John will be liable to Sommers for battery.

this defense.

Having disposed of the question of whether Lisa acted to prevent Mr. Sommers from harm (and thus acted to "protect another"), the writer next turns to another element of the self-defense privilege: whether the force Lisa used was "reasonable." Facts are cited to support the argument that the force was not reasonable, but rather excessive.

Having addressed all of the elements of the primary and secondary rules, the writer can now conclude that the defendant will likely be held liable for battery. The conclusion as to Lisa's liability for battery has been delayed until the end, until all analysis has been completed.

A Short Guide to Writing Effective Issue Statements

Leonard Tourney

An issue statement is a single sentence defining exactly and correctly the legal question to be addressed. It must define the point on which the case turns. Here are some basic rules for formulating such a sentence:

1. Do *not* use personal names in issue statements; instead, refer to parties in the case by legal (defendant, plaintiff) or by relevant occupational categories (employer, employee, contractor, minor, etc.). An issue statement, while originating in a specific factual situation, is a hypothetical extrapolation. The names of the individuals involved are immaterial.
2. The issue statement, *must* name the specific cause of legal action (i.e., the grounds of the suit or prosecution). *Vague* references to defendant's wrongdoing, liability, or criminal conduct aren't enough.
3. The issue statement *should* provide specific details of the case, especially those relevant to the key elements of the rule. ("Did the defendant commit robbery" is insufficient.)
4. The issue statement *should* be grammatically correct. This means that the sentence must be grammatically complete, verbs should agree with their subjects, and relative clauses must be correctly linked to the words they modify. An issue statement can be couched as a question (e.g., one beginning with "Is . . ." or "Does") or it may be couched as a "Whether" statement ("Whether defendant, who [specific actions] commits (or is guilty of/liable for) [specific offense charged].
5. An effective issue statement is concise: it doesn't use unnecessary words to achieve maximum communication. Good sentences are fat free.
6. Spell and punctuate your issue statement correctly. Avoid unnecessary commas.
7. Use legal terminology correctly. (See legal glossary at end of chapter.)
8. Revise your issue statement carefully. A good issue statement reflects the quality of your thinking about the case and increases the likelihood that the discussion that follows will have the same qualities.

Problematic Student Responses: “Incident at the Airport”

Here are three additional student responses to the “Incident at the Airport” case. All are problematic. Explain why.

Response B

Here the issue in this case is whether Lisa St. John is liable for battery against Eben Sommers, a 90 year old man, injured at LAX when Lisa returned from a business trip. Battery is the harmful or offensive touching of another than is intentional, unconsented, and unprivileged. Lisa St. John is definitely liable for battery. While she meant to kick her fiancé, she kicked Mr. Sommers instead, causing him harm and offense. Furthermore, he didn't consent to being kicked. The big problem here is transfer of intent. According to that rule, if A, intending the strike B, misses B and hits C instead, the intent to strike B is transferred and supplies the necessary intent for the tort against C. This means that her intent to strike Frank is transferred to Mr. Sommers. Thus, she committed a battery against Eben Sommers.

Response C

Lisa St. John arrived at LAX late, in the afternoon. She was mad at her fiancé for being late, so when he greeted her she kicked at him, missing and hitting Eben Sommers, who was this old guy. She broke his tibia in doing so, which was a harmful or offensive touching. It was also unconsented and unprivileged. But was it intended? According to the transfer of intent rule, it was.

The facts speak for themselves. Lisa is guilty of battery.

Response D

Sometimes we aim at one thing and do another, hurting another person in the process. That's basically what happened in this case, the issue of which is if Lisa St. John committed a crime or tort against Eben Sommers.

Lisa St. John committed a battery. She kicked Eben Sommers even though she did not mean to do it, because the transfer of intent rule applies. Thus, she meets all the elements of the following two rules . . .

