

## IRAC/CREAC IN LEGAL WRITING - EXAMS AND MEMOS

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### Step One: Issue / Conclusion / Thesis – What is the legal question that I need to analyze?

First, start with a sentence that *identifies the legal issue that you are trying to solve* and predicts the likely outcome of the case. A good issue sentence should incorporate the facts that give rise to the issues you are trying to answer.

#### Examples in an exam:

“The issue is whether opening an unlocked door to a building at twilight to commit a theft is sufficient to constitute a charge of burglary.”

“The issue is whether Defendant, who repeatedly telephoned the victim and left threatening voice messages, engaged in “course of conduct” sufficient to constitute “stalking” under the relevant statute.

#### Examples in a legal memo:

“The Court will likely rule that the Officer used unconstitutionally excessive force under the *Graham* test as applied to the facts of this case.”

“The State will probably fail to prove beyond reasonable doubt that Patrick unlawfully possessed marijuana in violation of the statute because several factors do not affirmatively link Patrick to the drugs found nor support a reasonable inference that he both knew of the drugs’ presence and exercised control over them.”

### Step Two: Rule / Rule Proof / Explanation – What is the governing law for the issue?

Second, state the *rule* or *legal principle* that the court will use to resolve the issue. Briefly state the holdings of cases, and only include relevant facts and conclusions. You may also be expected to *explain* how courts have applied the rule in the past (and also how they have chosen *not* to apply the rule) and explanation of the policy behind the rule.

#### Examples in an exam:

“According to the Georgia statute, a charge of burglary requires that the defendant (i) enter the dwelling of another person, (ii) without authority to enter such dwelling; and (iii) intends to commit a felony or theft within the dwelling

“The Pennsylvania statute requires that a person committing the crime of stalking (x) engages in a course of conduct or repeatedly commits acts towards another person, (y) under circumstances which demonstrate either (i) an intent to place such other person in reasonable fear of bodily injury or (ii) to cause substantial emotional distress to such other person.”

#### Example in a legal memo:

“When applying the balancing test in *Graham*, the court has held that there is little governmental interest in arresting a suspect for a minor offense. See *Jones v. Parmley*, 465 F.3d 46 (2d Cir. 2006) (jury could reasonably find that kicking and punching peaceful protesters in

violation of local ordinance was excessive); *Thomas v. Roach*, 165 F.3d 137 (2d Cir. 1999) (verbal threats are a too minor a crime to create a strong governmental interest in the arrest). Therefore, a suspect's alleged crime must be sufficiently serious to warrant use of painful force, such as a taser, under a *Graham* analysis. *Tennessee v. Garner*, 471 U.S. at 11. Given that the threat posed by the suspect is "the most important single element" of the *Graham* analysis, *Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994), any arrest in which the suspect poses no threat and is only wanted for a minor infraction likely does not give rise to a significant governmental interest."

### **Step Three: Application – How does the rule apply to the facts in my case?**

Third, *apply the rule to your facts*, using the cases you've discussed in the rule / rule explanation section to draw analogies and distinctions and avoiding conclusory statements. Use transition words such as "Here,..." "In this case,..." *Be sure to include any arguments by the counter-parties.* The application section is the most important part of the analysis since this is where your critical thinking skills will be tested.

#### Example in an exam:

"Although the door was ajar and unlocked, Carl's merely opening the door was sufficient minimal force to constitute a breaking since the nearly shut door was meant to deter unwanted entry. No actual breaking of the door or lock is necessary."

#### Example in a legal memo:

"In this case, the officer's use of force against Victim was objectively unreasonable because Victim committed only a minor offense and posed no threat to Officer. Officer arrested Victim for loitering under New York Penal Law § 240.35, which classifies the infraction as a violation – a lower grade than even a misdemeanor. This infraction is even less serious than the one at issue Thomas (verbal threats) and is equivalent to the minor ones in Jones (protest violation). Moreover, Victim posed so little threat to Officer that sanctioning taser use in this situation would run contrary to precedent and notions of justice. Victim did not approach Officer or manifest any intention to harm him. Much like in *Garner*, 471 U.S. at 21, where substantial force was unreasonable because the fleeing suspect posed no threat to the officer, Victim was actually attempting to escape away from Officer."

### **Step Four: Conclusion – What is the outcome of the issue?**

Lastly, state one or two sentences concisely stating (or re-iterating) the likely outcome of your case, based on the application of the rule to the facts of your case.

#### Examples:

"Therefore, because Victim posed no threat to Officer and was only liable for a minor infraction, Officer's use of force was excessive under *Graham*."

"Because Vince entered a house at twilight through a nearly shut door that was meant to deter unwanted entry to steal computer equipment valued at \$5,000, Vince is probably subject to charge of burglary even though it was not technically nighttime, and the door was unlocked."

## Sample Law School Exam Answer Using IRAC

The issue is whether the defendant was negligent. (ISSUE) To establish negligence, the plaintiff must prove a duty existed, a breach of that duty, causation, and damages. (RULE) As a matter of law, we all owe a general duty of care to reasonably foreseeable plaintiffs whenever we act. (RULE explanation specific to DUTY) Here, the facts show that [*discuss facts that show a duty*]. However, the defendant may argue that a duty does not exist because [*discuss facts that show no duty owed*]. Nevertheless [*discuss facts or legal doctrines that break the tie one way or the other*] which strongly suggests that the plaintiff was reasonably foreseeable to the defendant. (APPLICATION) Therefore, a court will likely find that the defendant owed a duty to the plaintiff. (CONCLUSION)

The next issue is whether the defendant breached his duty to the plaintiff. (ISSUE) A duty is breached when an actor fails to meet the standard of care under the circumstances. (RULE explanation specific to BREACH) Here, the fact that the defendant used an ABC tool instead of the customary XYZ tool suggests that the defendant may have breached his duty..." [*repeat IRAC steps*]

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