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Making IRAC Visible

Suzanne Darrow Kleinhaus

Nancy Ellen Chanin



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Making IRAC Visible

By Suzanne Darrow-Kleinhaus and Nancy Ellen Chanin, Esq.

Every year, it is one of our tasks to introduce first-year students to the structure of legal analysis. And, every year, we try to think of a more effective way to do so. It is easy enough to tell students that an effective essay follows some form of the IRAC structure so that, for every issue, the student's analysis is organized around an "issue," a "rule," an "application," and a "conclusion" for every issue. What's not so easy is to give that formula meaning so that students don't end up labeling each paragraph with the words "Issue" and "Rule" or, equally troubling, writing pages of rule statements followed by pages of fact narration. Unfortunately, we have all seen these IRAC abuses:

The difficulty is getting students to fully understand how to use IRAC as an organizing tool. Talking about it doesn't seem to help. Even when we are as explicit as possible and include helping words for framing the issue, writing rule statements, and turning statements into analysis, far too many students don't seem to grasp what we are saying. This deficiency seems especially likely when there are multiple issues and sub-issues. There seems to be a gap between understanding IRAC and implementing it.

Our goal in introducing IRAC this year was to make it visible — to show what it looks like in a written answer, especially how one issue links to another. We hesitated to do this in previous workshops for a couple of reasons. For one thing, it meant that we had to state a rule, a whole rule and not just snippets and buzz words. We have been reluctant to commit to writing a rule because even with a basic problem dealing with assault and battery, rule statements vary by professor. Although we have always been careful to tell students to use the rules that they learn from their professor, not all students do so. They simply copy whatever is given to them. Previously, we allowed this to influence our choice of teaching materials. This time we

decided not to let this concern influence our teaching choices. If we were going to make IRAC "visible," we could not avoid writing the "R" words. Nor could we avoid writing portions of the analysis, knowing that whatever we wrote would be subject to scrutiny.

We tried to resolve the potential problems created by our new approach using the following techniques. First, we made sure to identify where there could be variations in the rule statements by noting differences between the Restatement and judicial opinions. Second, we asked for volunteers to state the rule according to what their professors had said in class. Since there were students from four different Torts sections in the room, it soon became clear that there were slight differences in what they had learned from their individual professors. As we worked our way through crafting rule statements, students began to see how specific and precise their language had to be when writing the rule; they also began to realize how important it was to take good class notes so that they would learn this language. Finally, when we worked on the analysis section, we made it very clear that it is possible to write a solid analysis in so many ways that a single "sample" answer can be misleading. We urged students to consider what we wrote together as only one example and to use what they learned in class from their professor to guide their own analyses.

We had to choose our problem carefully since we would be taking students through the processes of reading, outlining, and writing an IRAC-based analysis in a short period of time. It had to be short, but it had to contain at least two issues to allow us to demonstrate how to use IRAC to transition from one issue to the next. We decided to use a hypothetical that has been circulating for years in law schools in one form or another. After changing it quite a bit, it read as follows:

At 2:00 am one morning, Ben began singing under Jessica's balcony on the 5th floor of the Beverly Hills Hotel. Jessica was not in the mood after a long day on the movie set. She began shouting at Ben to keep quiet, but he refused to stop singing. Jessica then yelled that she would kill Ben if he didn't stop. Ben just continued to serenade her. In an effort to scare Ben away and get some beauty sleep, Jessica began throwing her fuzzy, high-heeled bedroom slippers out the window, first one and then the other. Ben was unafraid. One of the slippers hit Ben on the head. Ben, who had thin skin, died instantly.

What is the result in a suit brought by Ben's estate against Jessica?

As we worked our way through the problem, we wrote out each part of the answer on a whiteboard, careful to label each sentence with its appropriate IRAC identifier. The only place where we had to cut corners was in writing the analysis. There simply wasn't time or room on the board to write everything out. Instead, we identified the relevant facts and verbally articulated the arguments. We were careful to keep students focused on articulating one point of view at a time, first the argument and then the counter-argument.

After the workshop, we heard from many students that the process of working through the problem, articulating the precise language, and then labeling the pieces as we "built" the answer together was incredibly helpful. We like to think so but only time will tell. For now, we are happy to see the students writing out answers to the problem in their small, teaching-assistant led study groups, using what we discussed in the workshop as their outline.

Except for the additions of bold-face and italicized text used for the purposes of this discussion, what we wrote on the

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whiteboard looked like this when we were done:

Overall Issue

The question is whether Jessica committed a wrongful act(s) when she threw her slippers at Ben and he died. This depends on analysis of the following:

Sub-issue 1:

I The first issue is whether Jessica committed a battery when she threw the slippers out the window and hit Ben.

R A battery occurs when a party intends to inflict a harmful or offensive bodily contact and such contact results.

Sub-elements of rule: intent and act

R Intent:

! D acts with purpose¹ to cause a harmful or offensive bodily contact **or**

! D acts with knowledge to a "substantial certainty" that a harmful or offensive contact will occur.

A Here, the facts indicate that Jessica did not intend harm but only to "scare Ben away and get some beauty sleep."

! Purpose: It is only necessary that Jessica intended to cause either a harmful or offensive contact; it is not necessary that she desire to cause harm. Jessica may have had the requisite intent because:

[Facts: she threw two slippers at him — one at a time shows deliberate act; intent to scare; nothing in facts indicate intent to make contact; bedroom slippers; high heels]

! Knowledge: Alternatively, it is possible that if she knew with

substantial certainty that throwing her slippers out the window would result in hitting Ben, she could be liable. Whether Jessica knew with substantial certainty that her slippers would hit Ben is questionable because:

[Facts: 2 a.m. so may not be able to see; 5th floor is a remote distance; slippers not hard object, no aim for throw indicated]

R Act/conduct:

! Contact may be direct or indirect

! Contact is harmful or offensive

A Here, we have an indirect contact between Jessica and Ben because Jessica threw a slipper out the window which hit Ben. The contact was harmful since Ben is dead.

C It is likely there was no battery because intent was lacking; she did not act with purpose or knowledge that she would hit him with the slipper.

Sub-issue 2:

I The next question is whether Jessica committed an assault when she threw the slippers.

R An assault occurs when a party desires or is substantially certain that her action will cause the victim's apprehension² of imminent harmful or offensive contact.

Sub-elements of rule: intent and act

R Intent: D acts with purpose or is substantially certain that her action will cause apprehension of an imminent harmful or offensive contact.

A Here, Jessica's intent was for Ben to stop singing by scaring him away. She shouted that she was going to kill him and she threw her slippers out the window to scare him away. While words alone would not be sufficient, here they were accompanied by

the physical act of throwing the slippers so the intent required to commit an assault is satisfied.

R Act/conduct: D's act actually causes apprehension of imminent harmful or offensive contact.

A Here, the facts indicate that Ben was "unafraid" which would mean that he saw the slippers coming at him but was not afraid of them. However, one need not feel fear to perceive that a harmful or offensive contact is about to happen. Because Ben was unafraid, it is likely he saw the slippers and therefore would feel apprehension of the contact.

C Therefore, Jessica committed an assault.

Sub-issue 3:

I Can the doctrine of transferred intent be used to establish liability for a battery?

R Under transferred intent,³ if the defendant intends to commit any of the intentional torts but her acts instead or in addition result in any of the other five intentional torts, the defendant is liable even if she did not intend the other tort.

A Since Jessica had the requisite intent to commit an assault, that intent can be transferred to satisfy intent for the battery. Here, Jessica intended an assault and then caused a harmful touching as well.

Overall Conclusion

Therefore, Jessica would be liable for assault and battery.

Suzanne Darrow-Kleinhaus is a professor and director of academic development at Touro Law Center. Contact her at suzanned@tourolaw.edu. Nancy Ellen Chanin is assistant director of academic development at Touro Law Center and can be reached at nchanin@tourolaw.edu.