

# Improving Structure On Exams

## The Halloween Edition

Professor Matt Carluzzo

Your analysis  
horrifies me...



# Knowing the law is only half the battle

Midterm illustrate a key point in law school:

“Knowing” the law does not necessarily  
translate into superior – or even satisfactory –  
essay answers.



Solid structure is *required*

Assuming you know the material, a clear and **well-structured answer** is the only way to get full credit for that knowledge.



# About this session

1. Explain Tips
2. Do Exercise: The exercise is **not** about what you know. It is “canned,” meaning it gives you all the information you need. The **sole point** of the exercise is to try to put each of the tips into practice.

Think **skill** (not knowledge)



# Tip 1: Resist the urge to write.

Plan / Outline / Sketch Answer / Jot

Bottom line: Don't just jump in!

Your professors **expect** you to plan.



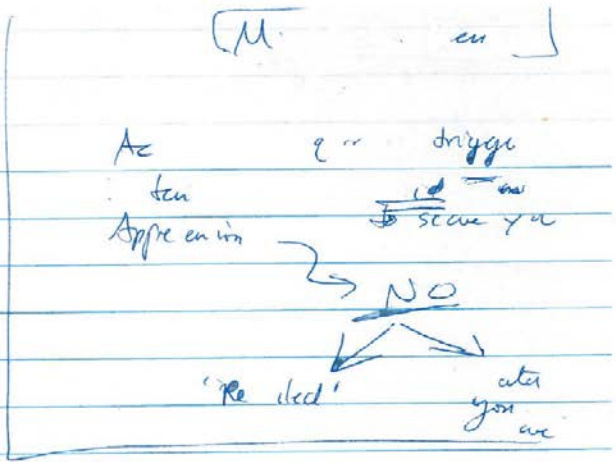
Don't Marginal

# Assault 1

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Defenses?

BATTERY FAILS

# negligence

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## **Tip 2: Use Headings & White Space**

**“Visual organization signposts”**

Don't consider using them – **use them.**

Unsure of whether a section “deserves” a header? Just do it. Too many is better than not enough, and certainly better than (gasp!) none.



The first issue is whether Margaret committed battery when she threw an apple at Dennis but missed. A battery is an affirmative act by the defendant against the plaintiff made with the intent to bring about a harmful or offensive contact and that actually causes such a contact. In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. Dennis should be able to prove the intent element because nothing in the facts suggests that Margaret did not intend to hit him with the apple when she threw it. However, Dennis will not be able to prove the harmful or offensive contact element of battery because ultimately, Margaret missed – her apple never actually touched Dennis. In conclusion, a battery claim brought by Dennis against Margaret would probably fail. The next issue is whether Margaret committed assault when she threw the apple at Dennis but missed. The *prima facie* case for assault is stated above. In this case, Dennis will be able to prove the affirmative act element because Margaret picked up an apple and threw it at him. Regarding Margaret's intent, although the facts do not indicate that Margaret intended to cause *apprehension* in Dennis, her actions demonstrate that she actually intended to hit Dennis with the apple. Under the doctrine of transferred intent, the intent to inflict a battery on a person satisfies the intent requirement for assault. Therefore, because nothing in the facts suggests that Margaret did not *intend* to hit (batter) Dennis with her apple, under the doctrine of transferred intent, she also has the intent necessary for assault. Finally, regarding Dennis' actual apprehension, that element is somewhat unclear, because nothing in the facts clearly indicates whether Dennis did or did not experience apprehension. On balance, given the lack of clear evidence in the facts of apprehension on Dennis's part, it is unlikely that Dennis would be able to prove the apprehension element. As such, in conclusion, an assault claim brought by Dennis against Margaret based on her throwing an apple at him would probably fail.



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## **Dennis v. Margaret**

### **Battery: Throwing the Apple**

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### **Assault: Throwing the Apple**

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# Tip 3: Use IRAC (or CRAC, or ...)

Despite minor differences,  
notice the universal similarities:

IRAC	CRAC	CRRPAC	CREAC	TREAT
<u>I</u> ssue	<u>C</u> onclusion	<u>C</u> onclusion	<u>C</u> onclusion	<u>T</u> hesis
<u>R</u> ule	<u>R</u> ule	<u>R</u> ule	<u>R</u> ule	<u>R</u> ule
		<u>R</u> ule <u>P</u> roof	<u>E</u> xplanation	<u>E</u> xplanation
<u>A</u> pplication	<u>A</u> pplication	<u>A</u> pplication	<u>A</u> pplication	<u>A</u> pplication
<u>C</u> onclusion	<u>C</u> onclusion	<u>C</u> onclusion	<u>C</u> onclusion	<u>T</u> hesis







## More tips before discussing each part of IRAC:

- **On audience:** Pretend you are writing to a younger sibling, or a friend – *not* your professor.
- **On preparation:** Realize that you can (should) have significant portions of your answer written *before* stepping foot into the exam room. Which parts? **THE LEGAL RULES** (this is more about outlining).
- **On a common mistake:** Do not rewrite the facts. No sentence should be just a fact unless it follows naturally from the preceding sentence as part of application. Facts should be used as part of “A” (application / analysis) portion of IRAC. They should not be restated for their own sake.



# IRAC: Issue Statement

Important, but nothing that will set you apart. It is almost like a header, telling your reader: **“I’m going to talk about this now.”**

- If you don’t spot an issue, you can’t discuss it or get points for it.
- But, there is no issue statement alone that is going to earn you an A (or a B+) – it is expected.



# Issue Statement Template:

**Whether / when**

**Whether / where**

**Whether / if**

See sheet for examples.

Good issue statements paint pictures & encapsulate key parts of the hypothetical.



# Examples from midterm

- The issue is whether Able committed murder when he had a seizure and hit and killed Zelda.
- This issue is whether Ben committed vehicular homicide when he drove despite his knowledge of seizures, had a seizure, and hit and killed Yolanda.
- The issue is whether Carla committed vehicular homicide when she hit and killed Xena and Xena's unborn baby while traveling 62 mph in a 40 mph zone.
- The issue is whether Dennis committed larceny when he picked up the \$20 bill he found lying on the ground.



# Prefer CRAC?

Converting is simple:

- IRAC: This issue is **whether** Ben committed vehicular homicide **when** he had a seizure and hit and killed Yolanda.
- CRAC: ~~This issue is whether~~ Ben committed vehicular homicide when he had a seizure and hit and killed Yolanda. **OR**
- CRAC: ~~This issue is whether~~ Ben *did not* committed ~~vehicular homicide~~ when he had a seizure and hit and killed Yolanda.



# IRAC: Rule



- No clever segue necessary. Immediately after issue, state the governing rule(s). Start with “To...”
- State **complete** rule: Don’t state & apply one element just because other two are not applicable – you need to demonstrate that you know the *whole* rule.
- State the rule accurately: You can (should) have **perfect rule statement** before you step foot in the exam. Think about it: you *know* what major rules you will have to recite and apply. If closed book, memorize. If open note, even better: *have them drafted perfectly ahead of time*.
- Rules are 2<sup>nd</sup> most important part of success (see %s)



# Rules about rules / Subrules

To prove negligence, a plaintiff must prove that defendant had a duty, that the duty was breached, and that the breach was the actual cause and the proximate cause of plaintiff's injury.

Primary  
**rule** about  
negligence  
("prima  
facie" rule)

To prove actual causation, courts apply the but for test, which asks if the injury would have happened "but for" defendant's breach.

**Subrule**  
about  
actual  
causation  
*element* of  
primary  
rule.



# IRAC: Application:

- Usually most important part (see %s)
- You've proven that you know the rule. Now you show how it applies to the given facts and *why*.
- Avoid common exam criticisms:

*Too conclusory  
Needs more analysis.*

*Why?*

- What word answers the question, “*why*”?



# "BECAUSE"

**Trick = "Because" + Fact(s) from the hypo**  
(this is where it's OK to restate facts).

See handout for examples.



# Example from the midterm

**Issue:** The issue is whether Ben committed vehicular homicide when he had a seizure and hit and killed Yolanda.

**Rule:** Crim. Code Sec. 3(a) states that a person commits VM by causing the death of a person while driving recklessly or while driving more than 20 mph over the speed limit.

**Rule about [part of] the above rule:** Common law defines recklessness as being aware of but consciously disregarding a substantial and unjustifiable risk.

So far so good...



# Now for the application...

“In this case, Ben probably acted recklessly.”

- **Bad!** “Conclusory.” Begs the question, *why* do you assert he acted recklessly?

“In this case, Ben probably acted recklessly *because* he was aware of but consciously disregarded a substantial and unjustifiable risk.”

- **Bad!** This is a tautology, effectively saying, “Ben was reckless because his actions meet the definition of recklessness.” You haven’t shown that you know *which* actions were reckless.

“In this case, Ben probably acted recklessly as defined by the common law *because* the facts state that he was fully aware of his history of seizures and of his doctor’s orders not to drive without medication, but he chose to do so anyway.”

- **Good.** This is actual analysis using specific facts from the hypo.



# IRAC: Conclusion

- Bottom line: One sentence. Two *maximum*.
- Not a summary of your argument.
- If purpose of issue is to tell reader, “I’m going to start talking about this now,” then purpose of conclusion is to tell reader, “**I’m done talking about this now.**”
- Again, see %...



# Final points

- A single essay answer **will** contain multiple “IRACs.”
  - Every section (Able, Carla, Ben) can start a new IRAC cycle.
  - Every *element* can start a new IRAC cycle (duty, breach, etc.)
- Try to keep sentences “pure” – either I, R, A, or C. Possible (easy) to conflate them, which gets you in trouble.
  - E.g. “Ben committed VM because he knew he had seizures but chose to drive anyway and so was reckless under the statute.”
  - This is R, A, and C all bundled into one. Good/clever? NO! Break it out as we did in prior slides...
- On order (which issue goes first?): Decide during planning stage, but relax: order is less important than structure *within* each section.



“Many IRACs”?

The rule *defines* the structure...

To prove negligence, plaintiff must show that defendant had a duty, that he breached the duty, that the breach was the actual cause and the proximate cause of plaintiff's injury.



# Think in terms of ELEMENTS

To prove negligence, plaintiff must show (1) that defendant had a **duty**, that (2) he **breached** the duty, (3) that the breach was the **actual cause** and (4) the **proximate cause** of (5) plaintiff's **injury**.



# Each element requires $R \rightarrow A$

To prove negligence, plaintiff must show (1) that defendant had a **duty**, that (2) he **breached** the duty, (3) that the breach was the **actual cause** and (4) the **proximate cause** of (5) plaintiff's **injury (damages)**.

As an initial matter, Alice can easily prove that she suffered **injury** because...

In this case, Alice can show that Tom had a **duty** because...

Alice can show that Tom **breached** the duty because...

Alice can show that the breach was the **actual cause** of her injuries because...

However, she may have trouble showing that the breach was the **proximate cause** of her injuries because...







# Exercise

1. Review the Tips
2. Read the question
3. Read the legal rules / reread question
4. Complete “pre-writing exercise”
5. WRITE. *You may (should) use sentences from the exercise in your written answer.*
6. Compare your answer to model answers

**Remember: Goal is to practice the Tips!  
(not to get “right answer”)**