ments, historical arguments, sociological arguments, literary arguments. All demand systematic thought and adherence to accepted logical methods in that discipline. Perhaps the main distinction of legal argument is that it almost always arises out of particular cases. A political argument, for example, can begin with a general proposition: "The Democratic party is better able than the Republican party to deal with the global economy of the twenty-first century." But legal arguments are based on particular circumstances: "Is the defendant, who told the plaintiff on three occasions that she should be 'nice to him' if she wanted to be promoted, liable for sexual harassment?"

Similarly specific questions may stimulate argument in other fields, however. *Literature*: "Did the narrator in "Bartleby, the Scrivener" do all that he reasonably could have done to aid Bartleby?" *History*: "Did President Truman take into account all available options before deciding to drop the atomic bomb on Hiroshima?" *Business*: "Did America Online make a sound decision in agreeing to merge with Time Warner?" *Environmental Science*: "Has offshore drilling near Santa Barbara harmed the local marine ecology?"

To effectively respond to such questions, it helps to have a method, a pattern, a template for constructing arguments. In arguing legal cases, the most commonly used template goes by the acronymn IRAC: *Issue, Rule, Analysis (or Application), Conclusion.* More specifically: (1) first state the *Issue*, the main question on which the case turns; (2) next, state the *Rule*, or legal principle(s) that apply to cases such as this one; (3) next, *Analyze* the case by Applying the rules, and individual elements of the rules, to the facts of the case; (4) finally, draw a *Conclusion* that represents the answer to the question articulated in the Issue.

This chapter will help you to organize your arguments on particular cases and to present them effectively. It begins with one of the most important selections in this book—Veda R. Charrow, Myra K. Erhardt, and Robert P. Charrow's "IRAC: How to Argue Your Case Systematically and Logically." The principles of organization explained in this selection underlie many of the assignments to come. Next Richard Wydick's "Use Plain English" explains what's wrong with a good deal of legal writing. Wydick's piece is followed by some sound storytelling advice: "10 Ways to Know If Your Story Is Ready to Tell in Court" by professional storyteller Joel ben Izzy, who also serves as a consultant to attorneys. The chapter continues with two sets of "Stories and Exercises" designed to help you practice the skills you will need to successfully complete these subsequent assignments. And because quite a few of the assignments in this book ask you to compose statements to the jury, as if you were a plaintiff's or defense attorney, the chapter concludes with two such compositions: "Models for the Opening Statement and the Closing Argument."

IRAC: How to Argue Your Case Systematically and Logically

Veda R. Charrow, Myra K. Erhardt, and Robert P. Charrow

The following selection is one of the most important you will read in this book. It explains a relatively simple yet highly effective method of organization by which generations of attorneys have been taught to present their arguments. It is useful not just for legal purposes: The IRAC format of Issue, Rule, Application, and Conclusion can be employed effectively in almost any kind of argument in which you are applying rules or principles to a set of facts in order to draw a conclusion about a particular question (the issue). Your success in completing many of the assignments in this book will depend to a considerable degree on your understanding and your application of the principles of effective organization as described in this section.

This passage is excerpted from a widely used textbook, Clear and Effective Legal Writing, *by Veda R. Charrow, Myra K. Erhardt, and Robert P. Charrow. In addition to explaining the IRAC method of writing arguments, the authors also discuss creating arguments based on syllogisms and using analogies to compare and contrast similar cases.*

Note: In "IRAC: How to Argue Your Case Systematically and Logically" the authors indicate that the A *in* IRAC *stands for* Application. *To others,* A *stands for* Analysis. *For our purpose, the two terms mean the same thing: applying the rule(s) to the facts of the case.* Analysis, *broadly speaking, means applying one or more related principles to each element of a subject or study or, alternatively, viewing a subject through a particular perspective or principle in the interest of greater understanding.*

IRAC: Organizing a Complex Legal Document

You must always impose order on your writing. Legal documents, in particular, demand a tight, logical structure. In other documents poor organization may interfere with readers' comprehension, but in legal documents poor organization can cause even greater problems. In an adversarial document, for example, your opponents will be looking for any weak spots they can find. A gap in your logic caused by poor organization can give your opponents an opening for attack. In a nonadversarial document, poor organization can make the reader believe that either your knowledge and research are not thorough or that your thinking is not logical. . . . 1

Excerpted from "Getting Organized," Chapter 9 of *Clear and Effective Legal Writing*, 2d ed. Boston: Little, Brown, 1995. Used by permission of the publisher.

Thus, the outline for a complex legal document might look like this: 2

1. Introduction providing a context
2. First claim
   a. What is the *claim* you are making? How are you proposing to resolve the issue or subissue? This can be further subdivided into
      i. A statement of the particular *issue* or subissue you have identified. At this point you may also wish to state how you believe the issue should be resolved.[1]
      ii. The *rule* of law that is most pertinent to the situation.
      iii. Why and how the rule should be *applied* to the facts of your case.
      iv. A *conclusion* based upon your analysis and the application of the law to the facts.
      (IRAC is the mnemonic for this method of organizing a claim.)
   b. What are the *objections* and counterarguments to your claim?
   c. What is your *response* to the objections and counterarguments?
   d. What is your *conclusion*? This section summarizes your reasoning and restates your claim.
3. Second claim
4. Conclusion

This model works well for any level of analysis, from the general analysis of a whole problem down to the analysis of specific subissues. When you have used this model to analyze all of the issues or subissues, you will then be able to come to a conclusion. 3

1. Identifying and Presenting Issues[2]

Your first step in setting up the structure of a complex legal document is to identify the important issues that you will be discussing in your document. Here is an example of a fact situation and the issues that should be analyzed in a brief. 4

> Jones worked as a salesman for the Southern Corporation. His job required him to provide his own car and deliver perishable supplies to customers on his route. Jones had been told a number of times by his supervisor at Southern that it was extremely important that he stay on a strict time schedule with his deliveries.
>
> On March 10, Jones made a delivery during normal working hours. He returned to the parking lot in which he had left his car and found that Warner's car was blocking his car. After waiting ten minutes for Warner to return, Jones finally decided that he had to leave. Jones tried to move his car, but put a large dent in Warner's bumper and broke one of Warner's headlights in the process.

[1]This is especially important in persuasive writing, where you want to make a forceful opening statement.

[2]See also Tourney, "A Short Guide to Writing Effective Issue Statements," p. 91.

> Warner returned just as Jones broke the headlight. Warner demanded payment for the damage to his car and refused to move his car so that Jones could leave. Jones angrily got out of his car and moved towards Warner, yelling that he was already late for his deliveries and that it was Warner's fault. Warner angrily shook his fist at Jones and again demanded payment for the damage to his car. Jones, in anger, hit Warner, knocking him to the ground. Warner had Jones arrested.
>
> After Jones's arrest, Southern Corporation learned from the local police that Jones had been convicted of aggravated assault three years before Southern had hired him. When Southern hired Jones, the corporation did not inquire into his background. Warner is suing Southern for the personal injuries he suffered as a result of Jones's attack.

Issue 1: Did the defendant commit an intentional tort [wrongful act] when he knocked the plaintiff to the ground, or was the action privileged?

Issue 2: Is an employer liable for injuries that its employee intentionally inflicted upon the plaintiff while the employee was trying to make deliveries on behalf of the employer?

Issue 3: Can the defendant employer be held liable for negligence in hiring and retaining an employee who has a criminal record for assault if the employer did not investigate the employee's background and does not know of the record?

Once you have identified the main issues, you may find that you can deal with them more easily by breaking them down into smaller, more manageable subissues (or sub-subissues). For example, you might see the following subissues under Issue 1. 5

1. Did the act of the plaintiff in shaking his fist at the defendant place the defendant in imminent threat of physical injury?
   a. If the plaintiff's act placed the defendant in imminent threat of physical injury, did he have a duty to retreat?
   b. If the defendant did not have a duty to retreat, did he use excessive force in repelling the imminent threat?
2. Did the act of the plaintiff in refusing to move his vehicle constitute the tort of false imprisonment?
3. Did the act of the plaintiff in refusing to move his vehicle constitute the tort of trespass to chattel?

2. Presenting the Rule

The rule of law that you use in your analysis can come from case law or enacted laws. Once you have established the applicable rule in a particular case, you should present it in a way that will make it easy to apply the law to the facts. For example, if you are discussing a particular tort or crime, or the definition of a particular legal 6

concept, describe it by breaking it up into its elements. Thus, if the issue is whether a defendant has committed a battery, a good way to present the rule would be to take the definition from section 13 of the Restatement (Second) of Torts.

> [Section] 13 *Battery: Harmful Contact*
> An actor is subject to liability for battery if
> a) he *acts intending* to cause harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
> b) a harmful contact with the person of the other directly or indirectly *results* (emphasis added).

If you have to synthesize the rule from case law, this will probably take more time and space. This is because you will often need to go through the steps that you took and the sources that you used in your distillation of the rule. 7

3. Application: Analyzing Facts and Law

The next step is to examine the facts and decide whether a rule is satisfied or the elements of an offense or tort are present. You should organize this section so that it follows the order of the *elements* of the rule. For example, you could discuss the facts in the Jones case by applying them to the elements of battery. 8

> First, the defendant, Jones, *acted* when he attempted to strike the plaintiff in the parking lot. Second, the defendant *intended* to harm the plaintiff, since he spoke angrily to the plaintiff, shook his fist at the plaintiff, and then struck him. Third, the defendant struck the plaintiff and knocked the plaintiff to the ground. Thus, the defendant's act *resulted in* the harmful contact to the plaintiff.

The application section of your document is the most crucial, for it is here that you have to convince your audience that your analysis is sound and that your conclusions follow logically. We have presented only the most basic application of facts to law in the example above. . . . 9

4. Anticipating Counterarguments

One of the best ways to ensure that you have treated an issue thoroughly is to try to anticipate all possible counterarguments and defenses. Put yourself in your opponent's position: List all of the ways that you can attack or weaken your own argument. Be ruthless. After you compile the list, develop responses or rebuttals for each area of attack. 10

There are a number of counterarguments that the defendant might raise in the battery case. The defendant might attack the way in which you applied the law to the facts; or the defendant might raise the defense that he was using reasonable force to prevent the plaintiff from committing a tort against his property (the plaintiff refused to let the defendant remove his car from the lot) or against his person (the plaintiff prevented the defendant from leaving by holding something of great value to the defendant). 11

5. Providing a Conclusion

The contents of your conclusion will depend upon the length and complexity of the information that you have presented in the other portions of your analysis. For example, if your application section is long and intricate, then you might want to refresh your reader's memory by briefly recounting the steps in your reasoning. If the application section is short, however, you would probably not want to reiterate your reasoning. In either case, you would finish with a statement of your position or your interpretation of the facts and the law. Here is an example of a simple way to conclude the battery issue: 12

> Because all three elements of battery are present in the defendant's conduct, the defendant is liable for the tort of battery.

6. Organizing a Complex Legal Document: An Example

Now that we have presented and explained the different parts of the model on page 60, look at the following fully developed issue analysis. This analysis follows the standard IRAC—issue, rule, application, conclusion—outline. 13

Issue[3] The issue presented in this case is whether one spouse can sue the other for injuries caused by the negligence of the other spouse.

Rule In *Sink v. Sink*, 239 P.2d 933 (1952), this court held that neither spouse may maintain an action in tort for damages against the other. Although a number of states have recently enacted legislation which allows these suits, Kansas has not joined them. This can be seen in the fact that the Kansas legislature has just enacted, in 1981, a law which authorizes any insurer to exclude coverage for any bodily injury to "any insured or any family member of an insured" in its insurance policies. Even though this law does not go into effect until January 1, 1982, it is clear that Kansas's position on interspousal tort immunity has not changed.

Application In the present case, the plaintiff, who is the defendant's wife, was injured when the car the defendant was driving crashed into a telephone pole. The plaintiff was sitting in the passenger seat at the time of the accident. She sustained a broken leg and cuts and bruises. Although the defendant may have been negligent, the accident obviously involved injuries inflicted by one spouse upon another.

[3] See "A Short Guide to Writing Effective Issue Statements," p. 91.

Conclusion Therefore, this case clearly falls within the mandate of *Sink*, and the plaintiff's case should be dismissed on the basis of Kansas's very viable interspousal immunity.

Counterargument The plaintiff has claimed that a decision upholding interspousal immunity violates logic and basic principles of justice. She notes that the new law has not yet gone into effect, so that it does not apply to the present case. She also contends that the foremost justification for immunity laws is illogical, since it is based on the premise that personal tort actions between husband and wife would disrupt the peace and harmony of the home. She cites the Restatement of the Law of Torts, which criticizes this justification by stating that it is based upon the faulty assumption that an uncompensated tort makes for peace in the family.

Response However, it is no more logical to contend that family harmony will be better served if a husband and wife can drag each other into court and meet each other as legal adversaries. In addition, the plaintiff has overlooked a far more persuasive argument for interspousal tort immunity: under Kansas law, any recovery that the plaintiff-wife would obtain if this action were allowed to proceed would inure to the benefit of the defendant-husband. All property acquired by either spouse during the marriage is "marital property" in which each spouse has a common ownership interest. If the injured spouse (plaintiff) should die, the surviving spouse could maintain an action for wrongful death, and could share in any recovery of losses. This result would allow a negligent party to profit by his own actions. This is a result which would be truly offensive to anyone's sense of justice.

Conclusion The doctrine of interspousal immunity is as viable today as it was when initially enunciated by this court. It not only fosters family harmony, but also prevents a spouse from profiting from his or her own negligence.

For some types of documents, you will want to abbreviate or rearrange the scheme presented above. For example, if you are answering an opponent's brief, you could begin by stating the opponent's objections and then follow with your own claims and conclusions. With this order, a separate "response" section may no longer be necessary, since the response may become part of your main argument. For example: 14

Issue The issue presented in this case is whether one spouse can sue the other for injuries caused by the negligence of the other spouse.

Subissue Does Kansas law presently require interspousal tort immunity?

The plaintiff in this case has claimed that a decision upholding interspousal immunity violates basic principles of justice and current Kansas law. She acknowledges that Kansas has enacted a law which authorizes any insurer to exclude coverage for any bodily injury to "any insured or any family member of an insured" in its insurance policies. However, she points out that this law does not establish blanket interspousal tort immunity. Also, because the law has not yet even gone into effect, it does not apply to the present case.

Rule The plaintiff's reliance on the nature and effective date of the legislation is misplaced. The law to which the plaintiff alludes is one that the Kansas legislature has just enacted, in 1981. Even though this law does not go into effect until January 1, 1982, Kansas' position on interspousal tort immunity was established long ago and has not changed. In *Sink v. Sink*, 239 P.2d 933 (1952), this court held that neither spouse may maintain an action for tort for damages against the other. Although a number of States have recently enacted legislation which explicitly allows these suits, Kansas has not joined them. In fact, the legislation mentioned by the plaintiff makes it clear that Kansas is not attempting to establish a new policy on interspousal immunity, but is merely incorporating its current policy into the laws which govern insurers.

Application As the plaintiff has pointed out in her brief, she was injured when the car her husband was driving crashed into a telephone pole. Whether or not the defendant was negligent, the accident involved injuries inflicted by one spouse upon another. As such, Kansas' policy on interspousal tort immunity would apply.

Subissue Is the rationale behind interspousal immunity illogical?

The plaintiff further contends that the foremost justification for immunity laws is illogical, since it is based on the premise that personal tort actions between husband and wife would disrupt family harmony. She cites the Restatement of Torts, which criticizes this justification by stating that it is based upon the faulty assumption that an uncompensated tort makes for peace in the family.

Rule The plaintiff and the Restatement have overlooked the even greater illogic behind a premise that family harmony can be better served if a husband and wife can

drag each other into court and meet as legal adversaries. In addition, the plaintiff has overlooked a far more persuasive argument for interspousal immunity: under Kansas law, any recovery that the plaintiff-wife would obtain if this action were allowed to proceed would inure to the benefit of the defendant husband.

Application In the present case, the husband and wife could be forced to endure years as legal adversaries, waiting for an interspousal lawsuit to slowly wend its way through a complex legal system. In addition, the defendant could stand to profit by any recovery his wife receives from the couple's insurance.

Conclusion The doctrine of interspousal immunity is as viable today as it was when initially enunciated by this court. It not only fosters family harmony, but also prevents a spouse from profiting from his or her own negligence.

SOME CAVEATS There are several caveats to consider when you use IRAC or any similar outline to analyze the issues in a law school problem. Students sometimes get the impression that they have done a complete, well-rounded analysis of a question once they have taken the obvious issues through the IRAC outline. IRAC can give you a false sense of security if you mistake the thorough analysis of an issue for the thorough analysis of a whole problem or question. Once you have completed analyzing the obvious issues, make sure that you reread the problem to search for subissues or elements of issues that you might have overlooked. These are important and can influence the outcome of your problem. 15

IRAC is merely a framework within which to build your analysis: It should not appear to your readers that you have merely plugged information into a rigid formula. Edit your writing to eliminate the mechanical effects of a series of statements that the issue is W, the rule is X, the analysis is Y, and that, therefore, the conclusion is Z. . . . 16

Developing a Logical Argument

In order to create a logical structure, think about what you are trying to accomplish when you deal with a problem in law. You will often find that you are trying to establish that a specific set of facts fits within a well-settled rule of law. One way to do this logically and systematically is to use the principles of deductive reasoning to set up the skeleton of your legal analysis. 17

1. Deductive Reasoning in Law

You are probably familiar with the basic categorical syllogism. For example: 18

Major premise: All men are mortal.
Minor premise: Socrates is a man.
Conclusion: Socrates is mortal.

Deductive reasoning is the thought process that occurs whenever you set out to show that a minor premise (a specific situation, event, person, or object) fits within the class covered by a major premise (an established rule, principle, or truth) and to prove that, consequently, what applies to the class covered by the major premise must necessarily apply to the specific situation. In short, deductive reasoning allows you to prove that your particular case is covered by an established rule. 19

Deductive reasoning is a cornerstone of legal thought. Lawyers are often called upon to decide how a rule of law applies to a given case. Since the rule is usually stated in general terms and a client's problem is generally very specific, deductive reasoning can be used to bridge the gap between the general and the specific. For example: 20

Rule of Law (major premise): Courts have held that any agreement made in jest by one party and reasonably understood to be in jest by the other party will not be enforced as a contract.
Facts of our case (minor premise): Robert agreed to paint Lee's entire house, but both Robert and Lee understood that Robert was only joking.
Conclusion: Robert's agreement is not an enforceable contract.

These basic steps of deductive reasoning form the skeleton of a legal argument. In fact, the rule, application, conclusion sequence of IRAC forms a simple syllogism: The rule contains the major premise, the application contains the particular facts of the minor premise, and the conclusion sums up the information. . . . 21

2. Expanding the Syllogism into a Legal Argument

The syllogism serves as the skeleton of a legal argument. Once you have created the skeleton, you must flesh it out. For example, once you have the major premise in a particular case, you must present evidence that your specific fact situation does indeed fit within the class covered by the major premise. In the example about painting Lee's house, you would have to show that there was a promise but that both parties knew that it was made in jest, as "jest" has been interpreted by the courts. 22

In the rest of this section, we discuss techniques for expanding the different parts of a syllogism. We present the parts in the order of the standard syllogism, even though you may not always work in this order when you construct your argument. 23

A. THE MAJOR PREMISE In most cases, your major premise will either be a given (you are told what the rule of law is and you must apply it to a set of facts), or you must extract the rule from legal authorities such as constitutions, statutes, regulations, and reported cases. You must then draw the appropriate information from these authorities and present the information so that your rule is well substantiated. In addition, you must define the abstract terms in the rule in order to clarify the rule and make it easier to apply the rule to the facts in your case. . . . 24

B. THE MINOR PREMISE The most important techniques for expanding your major premise are citing authority and defining terms. The most important technique for expanding your minor premise is analogy, either to the facts of other cases or to the policies underlying other decisions. 25

Arguing by Analogy: Similarity of Facts

When you argue by analogy, you reason that if two or more situations are the same in some significant respect, they are likely to be the same in other significant respects as well, so they ought to be classified together. (If you want to *distinguish* your case from others, you show that it is *not* analogous.) 26

You could link the major and the minor premises of the general welfare case by using the following analogy: Funding should be provided for X Auto Company because the case is similar to cases in which the Court has approved Congress's funding in the past. Here is a way you might express this. 27

The facts in the X Auto Company case are very similar to the facts in cases that have already established the scope of "general welfare." In all of these cases, the courts agreed that 28

1. Private individuals or entities may receive funds from the federal government.
2. Individuals and entities may receive money that they did not personally contribute to the government.
3. Individuals and entities may receive money from the government when it helps them continue to earn money and spend money.

Arguing by Analogy: Similarity of Policy Considerations

Another way to link the major and minor premises is to show that the facts of your case are covered by a particular rule because your case furthers the same social goals as other cases already covered by the rule. For example, in the X Auto Company case, you might argue that your case and the previously decided cases all fulfill the following goals, regardless of the similarities or differences in their facts. 29

1. They keep individuals from turning to the state for support.
2. They keep the economy balanced and functioning.
3. They show people that the government will intervene if a segment of the population is about to experience an economic crisis.

The first step in making a policy arguments is to identify what the authors of a rule intended when they created the rule. If you are investigating legislation, try looking at and analyzing legislative history or policy statements in the legislation itself. If you are investigating an opinion, try comparing your case with other cases that have been decided under the rule and showing that your case will help 30

to further the same goals. You can look at any language in these opinions that sheds light on the objectives of the ruling.

Once you have established the purpose of the rule, i.e., what it was intended to accomplish, you can alter your major premise to include this purpose and emphasize the specific facts in your minor premise that suit the major premise. You would then argue that the authors of the rule intended that the rule cover cases like yours and that the principles behind the rule will be dangerously eroded if the court excludes your case. 31

If you were arguing that by analogy to the *Steward Machine* case X Auto Company should get federal funds, you might use this analogy on policy considerations: 32

> The courts have found that federal payments to particular groups or individuals such as the unemployed or the elderly can serve the general welfare because, in the long run, these payments benefit the entire nation. This idea is reflected in the words of Justice Cardozo in *Steward Machine* 301 U.S. 548, 586–587 (1937):
>
> > During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. . . . The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare.
>
> X Auto Company employs hundreds of thousands of employees. In addition, there are thousands of other employees who work in industries that depend on X Auto Company. Even though the problems of X Auto Company are not on the scale of the problems of the Great Depression, the loss of part of a major U.S. industry would have devastating effects on the U.S. economy as a whole. If federal funds can help X Auto Company continue to employ its workers, then thousands of private individuals will continue to earn and spend money. This will help protect the health of the nation's economy.

On the other hand, you could counter an argument based on similarity of policy considerations by showing that giving X Auto Company federal funds would widen the scope of the rule beyond the limits intended by those who derived the rule. This widening would have all kinds of adverse effects or troublesome consequences, such as opening the courts to a flood of frivolous litigation. 33

Setting up an analogy. To set up an analogy between two cases, using both the facts and the policy issues, begin by making a list of similarities and differences. Here is how you might expand the general welfare example to show that one case that has already been decided involving the old-age benefit provisions of the Social Security Act is or is not analogous to the X Auto Company case. 34

SIMILARITIES	DIFFERENCES
In both situations the recipients may receive money that they only directly paid into the system. For example, Social Security recipients may receive funds in excess of the amount they actually put into the fund. The X Auto Company will receive funds that it indirectly paid in the form of taxes, etc.	The recipients of old-age benefits have paid into an insurance fund over the years, while the X Auto Company would be receiving money from a nonspecific tax fund that it has not contributed to. Taxes and insurance are not the same thing.
Many individuals who need support will benefit from the federal funds; employees in the case of X Auto Company, and older members of the population in the case of old-age benefits.	It is quite a different thing for the federal government to provide funds to a private corporation than to provide them to individuals. The government is set up to benefit members of the general population. It is not the government's purpose to benefit a large private corporation.
The X Auto Company funds will help keep the economy healthy because it will keep a major industry alive and will keep X's employees (and employees of other companies that depend on X) off of welfare and other forms of state subsidy. Similarly, the old-age benefits of Social Security assure citizens that they will have an opportunity to put money into a fund that they can draw on in their old age, provided they have worked the requisite amount of time to qualify. This keeps older people from having to turn to the state for support.	Giving funds to a private business may actually unbalance the economy, disturbing the free market and fair competition.

C. THE CONCLUSION After you have established and developed your major and minor premises, you are ready to reach a conclusion that follows logically from them. You may need to use a cause-and-effect argument to show *how* you came to the conclusion. 35

In law you will often be required to show that there is a cause-and-effect relationship between certain events or actions. . . . 36

Here is an example of how a cause-and-effect relationship can be established within a deductive argument. First, set up the skeleton of your argument. 37

General rule (major premise): Under the law of State X, the operator of a motor vehicle is liable for his or her wrongful act, neglect, or default if it causes death or injury to another person.

Specific facts (minor premise): The plaintiff was riding in her car on the freeway when the defendant's car hit her from behind. Two days later, the plaintiff suffered severe back pains and headaches.

Conclusion: Therefore, the defendant should be liable for the damages the plaintiff has suffered.

If you terminated your argument at this point, it would appear that you had based your conclusion on a faulty premise or assumption: "All pain that occurs within two days of an accident is necessarily caused by that accident." Or your conclusion may appear to result from a *post hoc* fallacy, in which you assert that because event B follows event A in time, event A has therefore caused event B. To avoid the appearance that your conclusion does not follow logically from the premises, you must articulate the causal link between events. You could do so by beginning your conclusion with the following information. 38

> There is a good deal of evidence that the plaintiff's injury was caused by the defendant's act of hitting the plaintiff from behind. First of all, the plaintiff's medical records show that the plaintiff did not have a history of back problems or headaches, so there is no possibility that her injuries are part of a recurrent or chronic problem. Also, she has not engaged in any activity or suffered any other injury within the last few years that might have led to back pain or headaches. In addition, Dr. Jones, the plaintiff's physician, has examined the plaintiff and will testify that the pain the plaintiff is experiencing is the kind that the plaintiff would be likely to feel several days after a rear-end collision in an automobile.

You would finish your argument by qualifying your conclusion to reflect the evidence you have presented: 39

> Because the evidence from medical records and from an expert demonstrates that, in all probability, the plaintiff's injuries were caused by the defendant's conduct, the defendant is liable for the damage the plaintiff has suffered as a result of that conduct.

When you are constructing a cause-and-effect argument, keep the subject matter in mind. If you are working with causation in a complex statistical argument, you must comply with the generally accepted principles of statistical analysis. For example, you may have to adhere to a scientific definition of causation. However, if you are writing about more common types of problems, try to appeal to your readers' sense of how the world works: Present a cause-and-effect relationship that your readers will recognize from their own experience. You can appeal to your readers' common sense and to the "common wisdom of the community." Remember that judges and other attorneys are part of the community 40

and that they will share this sense of what probably did or did not happen in a given situation.

● ● ● ●

Discussion and Writing Topics

1. How does IRAC resemble or differ from other approaches to organizing essays that you have been taught?
2. Choose a situation involving a conflict in which you or someone you know has been involved. Alternatively, select a situation experienced by a character in a novel, short story, play, or film, one that also involves a conflict. Discuss this situation in IRAC format, as if it were the basis of a legal case. Before writing your draft, identify the main elements you intend to discuss. What is the main *issue*, the central question on which the conflict turns? What *rules* or principles most properly apply to situations such as this one? How can you *apply* these rules or principles to the particular set of facts that comprise the incident? Finally, how does a *conclusion* emerge from the application of rules to facts—a conclusion that resolves the issue one way or the other?

Use Plain English

Richard C. Wydick

Although lawyers have an often richly deserved reputation for writing unreadable prose (or to use the more legal term, committing homicide upon the English language), there is no reason why writing about legal cases has to be bad writing. Attorneys often defend the kind of interminable sentences that appear in contracts or insurance policies by claiming that they have to get every possible contingency into one sentence. Otherwise, potential adversaries would be able to quote out of context ("Well, this sentence doesn't say anything about . . .") and their clients may be left legally vulnerable. (Lay people often suspect—and rightly so—that the real reason for "legalistic" jargon is to intimidate and hold at bay possible adversaries, in the same way that sorcerers use portentous mumbo-jumbo to ward off evil spirits.) But such arguments are increasingly being met with skepticism both by the general public and by attorneys and judges themselves. Not only in law, but in business, government, and other professions, plain English has been slowly but steadily gaining ground.

Plain English for Lawyers. Durham, NC: Carolina Academic Press, 1994: 1–17, 23–32. Footnote 6 and 7 omitted, following footnotes renumbered.

The following selection by Richard C. Wydick, Professor of Law at the University of California, Davis, should be a worthwhile cautionary note about how not *to write in responding to the kind of assignments you'll find in this book. And it should be helpful for courses other than writing. Turgid, lifeless writing is just as likely to turn up in sociology, literature, and environmental studies papers as it is in business and law assignments. The remedies Wydick suggests are as effective in one discipline as another.*

This selection is excerpted from Wydick's book Plain English for Lawyers *(3rd ed. 1994) and was based on an article that originally appeared in* 66 California Law Review 727 *(1978).*

Why Plain English?

We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is "(1) wordy, (2) unclear, (3) pompous, and (4) dull."[1] 1

Criticism of legal writing is nothing new. In 1596, an English chancellor decided to make an example of a particularly prolix document filed in his court. The chancellor first ordered a hole cut through the center of the document, all 120 pages of it. Then he ordered that the person who wrote it should have his head stuffed through the hole, and the unfortunate fellow was led around to be exhibited to all those attending court at Westminster Hall.[2] 2

When the common law was transplanted to America, the writing style of the old English lawyers came with it. In 1817 Thomas Jefferson lamented that in drafting statutes his fellow lawyers were accustomed to "making every other word a 'said' or 'aforesaid' and saying everything over two or three times, so that nobody but we of the craft can untwist the diction and find out what it means. . . ."[3] 3

Starting in the 1970s, criticism of legal writing took on a new intensity. The popular press castigated lawyers for the frustration and outrage that people feel when trying to puzzle through an insurance policy, an installment loan agreement, 4

[1]David Mellinkoff, *The Language of the Law* 23 (1963).

[2]*Mylward v. Welden* (Ch. 1596), reprinted in C. Monro, *Acta Cancellariae* 692 (1847). Joseph Kimble has pointed out that the person who wrote, and subsequently wore, the offending document may have been the plaintiff's son, a non-lawyer. Professor Kimble dryly notes that the son was probably following a lawyer's form. Joseph Kimble, *Plain English: A Charter for Clear Writing*, 9 *Cooley L. Rev. 1*, n. 2 (1992), relying on Michele M. Asprey, *Plain Language for Lawyers* 31 (1991).

[3]Letter to Joseph C. Cabell (Sept. 9, 1817), reprinted in 17 *Writings of Thomas Jefferson* 417-18 (A. Bergh ed. 1907).