

## ORGANIZING A LEGAL DISCUSSION: IRAC / CRAC / CREAC

Legal writing should follow a clear structure; otherwise your points risk being lost or misunderstood. Most legal writing in the U.S. requires the writer to analyze a set of facts using legal rules gleaned from sources including cases, statutes, regulations, and secondary materials. In this context, legal writing has a very specific organizational structure that you may see described as IRAC (Issue, Rule, Application, Conclusion), CRAC (Conclusion, Rule, Application, Conclusion), or CREAC (Conclusion, Rule, Explanation, Application, Conclusion).

While CRAC and CREAC are more often used in persuasive writing, the underlying structure for all three methods is the same: 1) clearly state the issue and/or conclusion, 2) set forth the relevant legal rule(s), 3) apply and analyze the pertinent facts based on the governing rule(s), and 4) state—or restate—the conclusion.

### Placement of IRAC / CRAC / CREAC

Use IRAC, CRAC, or CREAC to evaluate specific legal issues in the argument or discussion section of your brief, memo, or paper. Each discrete legal topic should have its own IRAC, CRAC, or CREAC structure, with subissues under separate subheadings. For example, in analyzing various affirmative defenses to a claim, each affirmative defense would receive its own complete, independent IRAC, CRAC, or CREAC section.

### Elements of IRAC / CRAC / CREAC

#### 1) Issue and/or Conclusion

State the issue in the first paragraph at the beginning of the section or subsection. Clearly state the legal issue you will analyze and/or the conclusion. If you are using IRAC, state the issue inclusive of the likely conclusion, if possible. If you are using CRAC or CREAC, state the conclusion in a way that makes the issue clear.

In a memo, you will be objective in your analysis and may use IRAC, CRAC, or CREAC.

#### **Examples:**

- *Best:* A court will likely find that Re-Shoes is excluded from VARA since it constitutes advertising or promotional material.
- *Generally Avoid:* Is Re-Shoes excluded from VARA?

In a brief, or other persuasive writing, you will likely be using CRAC or CREAC and advocate for your conclusion upfront.

**Examples:**

- *Best:* Re-Shoes is excluded from VARA protection because it promotes the ideal of sustainability and qualifies as advertising or promotional material.
- *Generally Avoid:* The court will need to decide whether Re-Shoes is excluded from VARA protection.

## 2) Rule and Rule Explanation

Next, describe and explain the legal rule(s) that govern the issue. Your rule section should resemble a funnel: set out the broadest principles first, with the smaller, secondary components or exceptions to the rule following afterwards. You can create a funnel by discussing authorities in order from most important to least important.

State holdings of cases briefly, and only include relevant facts and conclusions. Your rule section should *not* simply list cases that apply. Rather, you should synthesize and explain the governing rule(s) you extracted from those cases. Depending on the nature of your case, you may also wish to include a paragraph discussing particularly relevant precedent in order to establish how the rule works in practice, or a definition of a relevant term or phrase.

Keep in mind the following points:

- Order of Authorities: Constitution, statutes, regulations, Supreme Court cases, appellate court cases, trial court cases, and, if necessary and applicable, secondary sources.
- Outline general rules first, then more specific ones.
- Start with the baseline rule, then note any exceptions.
- For concise use of legal sources, use ellipses (Bluebook R. 5.3), and minimize use of block quotations.

**Example:**

VARA covers only “works of visual art,” which exclude “advertising and promotional material.” 17 U.S.C. § 101 (2016). The statute does not define the terms “advertising” or “promotional.” Instead, courts have turned to the dictionary definitions of these terms. *Martin*, 982 F. Supp. at 632; *Pollara*, 206 F. Supp. 2d at 337.

In *Martin*, the court defined advertising as “to call public attention to especially by emphasizing desirable qualities so as to arouse a desire to buy or patronize.” 982 F. Supp. at 632 (quoting Webster’s Third Int’l Dictionary (1993)). Following suit, *Pollara* further characterized advertising as “the act of attracting attention to a product or business,” and promotion as “advertising or other publicity.” 206 F. Supp. 2d at 337 (citing American Heritage Dictionary). Even promotion of a non-commercial nature excludes a work from VARA protection. *Id.* at 270.

## 3) Application

In the application section, apply the rule(s) to the facts, using the legal authority outlined in the rule section to draw analogies or distinctions. You should follow the order and use the same key phrases as

in the rule section so your reader can easily follow along. Don't be afraid to repeat key terms and phrases—you will frequently need to do so to show that your case follows precedent. The application section will usually be the bulk of your argument.

**Example:**

Based on the dictionary definitions of advertising and promotion, a court will likely find that Ms. Sund's work promotes the idea of sustainability. Similar to *Martin*, Re-Shoes calls public attention to something desirable, namely ideas of sustainability in order to encourage the public to patronize environmental efforts. The imagery of a tree, created by shoes that are themselves upcycled materials, clearly signals a message of environmental advocacy. Finally, media coverage of the sculpture notes that it has promoted awareness of environmental sustainability, similar to *Pollara*.

**4) Conclusion**

End with a sentence or two that concisely states or restates your conclusion.

**Example:**

Therefore, as it constitutes advertising or promotion material, Re-Shoes is likely excluded from VARA protection.