

CIRI(P) Compared to IRAC in Writing Out Law Exam Arguments by Professor John Delaney

As you have learned from my article, “Law School Essay Exams,” these essay exams differ markedly from the college and LSAT exams that got you into law school. The archetypal college-type exam question asks you to display your knowledge and at best your understanding of a topic, including the typical “compare and contrast” questions. In sharp contrast, essential doctrinal knowledge and even understanding are just threshold requirements for the performance of your understanding on essay exams in two challenging ways. The first is spotting the legal issues posed by the usual dense fact pattern at the end of which is the question: What are the rights and liabilities of the parties? Fn1

Once issues are spotted from the fact pattern, the second challenge is to resolve each issue with an advocacy argument that stands out for its lawyerly qualities. fn2 While the often recommended **IRAC** formula fn3 (**I**ssue, **R**ule, **A**pplication, **C**onclusion) for writing exam arguments is certainly better than the typical disorganized and often unresponsive arguments that law professors repeatedly see in grading their essay exams, it suffers from a number of core defects.

The central defect is that the simple, one-size-fits-all character of the IRAC formula misses the complexity of legal argument — the different architectures that the diversity of law and law exams require, that professors expect to see, and that students need to practice. In addition, any substitute for IRAC that presents *only one narrow method* for organizing and presenting an exam argument is similarly reductive.

The *series of writing formats* unfolded in the CIRI(P) alternative [**C**onclusion, **I**ssue, **R**ule, **I**nterweaving, (**P**olicy)] detailed below remedies this one-size-fits-all reduction. In contrast to IRAC, the CIRI(P) formats unfold into four major variations for writing out exam arguments with additional subcategories. The foundational CIRI(P) One exam format is straightforward and follows. fn4

CIRI(P) One Writing Format

The following simple hypothetical illustrates and explains the CIRI(P) One format as applied to these uncomplicated facts that are likely too obvious for inclusion in an actual exam: “A shoots B, who dies immediately from the shooting, while saying to B: ‘Go to thine ancestors quickly.’” The classic question at the end of the criminal-law-essay problem that poses this hypothetical, along with a bunch of others, asks: “What are the rights and liabilities of the parties?” In criminal law, this means: Which crimes, which defenses, apply? After figuring out the simple issue and brief outlining of the rule, the student applies the CIRI(P) One writing format as follows.

She begins, as briefs and legal memorandum do in practice, with a specification of the legal conclusion, so that her professor, as judges and legal supervisors later, know immediately the point of the argument and can assess its quality and sufficiency as it is read.

“A LIABLE FOR INTENTIONAL MURDER”

The student next pinpoints the issue [I] in one brief sentence: *Is A, who shoots and kills B, liable for this form of murder?* [Since many professors use a grading sheet organized by issues, specifying the issue is generally advisable.]

You next meticulously specify the applicable rule [R] by elements: *Intentional murder requires 1) an intent to kill (mens rea) 2) expressed in 3) a voluntary criminal-law act (actus reus) 4) that causes, both factually (but-for) and legally (proximately) 5) the death of another person.*

The critical next step is interweaving [In], a blending together of the relevant key facts with each element of the rule: *When A shoots B, this behavior proves the voluntary criminal-law act element (the actus reus); and when B dies “immediately” from the shooting, this proves the element of factual (but-for) and legal (proximate) cause, and the death element.* [Compare this specific direction to perform the usual interweaving with the broad requirement of “application” in IRAC.] *The intent-to-kill element, A’s conscious objective to kill B (the mens rea), is clearly established from his shooting of B while saying: “Go to thine ancestors quickly.”*

The last step in applying CIRI(P) One directs the student to ask herself: What is the policy purpose served by the application of the intentional-murder rule (e.g., deterrence, retribution?), and does specifying it on these facts add any analytical or persuasive value? The clear answer with this simple iconic example of intentional murder is no and the policy statement is therefore omitted.

Voila! You have a strong legal argument in only four sentences after the heading. Incidentally, these CIRI(P) writing formats are for writing out your exam arguments; they are not for figuring out what to write. At least quick outlining before writing does that.

CIRI(P) Two Writing Format

In CIRI(P) Two, the second version of the CIRI(P) writing formats, the student applies *a step up in legal architecture* that is much favored by many professors. The student is expected now to see two issues (sometimes three) arising from just a segment of a much larger essay problem. Here, a tort essay details in part: “A silently approaches B from behind and punches B on the back of his head.” From the student’s learning of the rule of battery with iconic examples (and a few counterexamples), she immediately identifies such an iconic example of battery in these facts; she briefly outlines the issue and the elements of the rule, and then applies the first format as follows.

“A LIABLE TO B FOR THE INTENTIONAL TORT OF BATTERY [C]”

The issue is whether A, who punches B, is liable for this intentional tort [I]. Battery requires a) an affirmative act b) with the intent to touch another that c) results d) in an unprivileged harmful or offensive contact with another [R]. When A punches B on the back of B's head, this is an affirmative act that expresses A's intent to touch B and that results in unprivileged harm to B, the blow landing on his head [In].

Comment: Again, the policy purpose served by the application of this tort (protection of bodily integrity) can be omitted with these iconic facts since it adds *no* analytical or persuasive value to the argument. Note that this strong argument is only three sentences after the heading. Yes, *sometimes* a strong argument can be as short as three or four sentences. But the student notes something else in these iconic facts: that A punched B from behind, and these facts mean that B *lacked apprehension* of the imminent battery. Thus, the usual accompanying tort of assault is *not* established. The argument for this “negative” issue, meaning that it results in an absence of liability, should be quickly added in very succinct form.

“A, HOWEVER, NOT LIABLE FOR THE INTENTIONAL TORT OF ASSAULT [C]”

This tort requires an *apprehension* by the victim of an imminent battery [R]. Here, A's attack is entirely unexpected by B (A punched him from *behind*), and there is therefore *no basis* in the facts that permit an inference that B experienced an apprehension. Without such an apprehension by B, A is *not* liable for assault. [In].

Comment: While each of these two arguments just embodies the CIRI(P) One writing format, together they *illustrate* a straightforward version of the CIRI(P) Two writing format; they specify the two-way argument necessary to resolve the two-issues arising from the same mini-fact pattern. What follows, however, is somewhat exceptional and clearly more challenging: a three-way arguments necessary to resolve three issues that arise from just a one-sentence fact pattern.

CIRI(P) Two burglary example

The mini-fact pattern from a larger multi-issue problem

Harry, who does not know Jack, enters Jack's barn through the open door in the daytime to steal a valuable horse, and actually does so. The student is asked at the end of the problem to discuss the “rights and liabilities of the parties.” In teaching burglary, her professor stressed in class and/or materials the different requirements for the common-law and modern rules for burglary and the different formulation and analysis that result from these contrasting requirements. As is typical, the teacher also taught common-law larceny.

CIRI(P) Two writing format again

“APPLYING THE COMMON LAW RULE, HARRY IS NOT LIABLE”

The issue presented is whether Harry, in entering the barn through the open door in the daytime, is liable for common law burglary. This rule requires 1) a breaking and 2) entering of the 3) dwelling of another 4) at night 5) with the intent to commit a felony therein. Here, Harry entered through an “open door” (no breaking element) of a barn (no dwelling element) during the day (no night element). Three required elements are missing; one would be enough to reject liability. Lastly, the policy purpose of common law burglary — to protect *dwelling*s and *their occupants* from invasive felonies committed at night — is obviously *inapplicable*.

“APPLYING THE MODERN RULE, HARRY IS LIABLE”

A typical modern burglary statute broadens the scope of burglary beyond dwellings to include other structures and has eliminated the breaking, night and felony elements. Such a statute authorizes a finding of liability for burglary if a person a) knowingly b) enters or remains in c) a building d) without license or privilege and e) with intent to commit a crime therein. Thus, when Harry enters Jack’s barn in the daytime to steal a valuable horse, Harry is knowingly entering a building (the barn) without Jack’s permission (he doesn’t know Jack) to steal the valuable horse therein (larceny). The policy purpose underlying the modern statutes is to greatly broaden the scope of burglary to protect barns, offices, and many other structures in addition to dwellings.

“HARRY ALSO LIABLE FOR COMMON-LAW LARCENY”

This crime requires a) a trespassory taking and carrying away of b) the personal property c) of another d) with the intent permanently to deprive the owner of it. Here, when Harry takes and removes the valuable horse from Jack’s barn, this behavior plainly spells out the elements of “taking” “of the personal property” of “another.” Jack’s required intent is a given in the facts: he entered the barn to “steal” the valuable horse.

Comment: Please note that the specification of policy in the first two responses strengthens each argument but is omitted in the third argument since it (protection of personal property) adds no analytical or persuasive value to the argument given these iconic facts of larceny. Note also that the first response argues against liability while the second argument finds liability, a typical juxtaposition in resolving spotted issues in most, but not all, of the two-or-three-way arguments. Lastly, note that exceptionally and as mentioned, three issues and arguments, rather than the more usual two issues and arguments, arise from this one-sentence mini-fact pattern; and the

three resulting arguments to resolve these issues add up, aside from the headings, to only twelve sentences. With weekly practice throughout the semester, students can learn to write such concise lawyerly arguments.

There are virtually endless examples where this CIRI(P) Two format with two-way (or three way) argument is necessary. Many, probably most, professors in class and materials and on exams compare and contrast the majority and minority rule; the traditional, often the common-law rule, with the modern rule; the common law rule with the Restatement rule (e.g., in contracts, real property or torts); the common law rule with the Model Penal Code (in criminal law); and the common-law contract rule with the Uniform Commercial Code rule. While the three arguments set forth above are only a total of twelve sentences in this example, other arguments with more complex facts and rules can, of course, be much more extensive. fn6

In stressing two-way (and sometimes three-way) arguments, professors demonstrate that legal reasoning is not simply one-dimensional as illustrated in the basic legal architecture embodied in the CIRI(P) One format. In many legal contexts presented in practice, a lawyerly response mandates that you frame at least two possibilities for arguing from the facts. The law exams mirror this reality of both law-in-action, law-in-the-books, and the underlying jurisprudential visions of law with their diverse framings, functions and purposes. fn7

CIRI(P) Three Writing Format

In contrast to the prior formats where the applicable rule can be stated in one (or two) sentences, more complex rule statements and thus interweaving are set forth in the CIRI(P) Three writing format presenting yet another and different legal architecture. A criminal law example of the more complex fact pattern, rule statement and interweaving is detailed below in what could be a short essay problem with perhaps thirty five or forty minutes allotted. Plainly, this one-paragraph example could also be part of a larger multi-paragraph problem with fifty, sixty or more minutes allocated.

The exam fact pattern

A lends her car to B, a friend, who later fails to return A's car even though A repeatedly asks B to return it. One night, A goes to B's house, sees her car on the street and decides to reclaim it. As she unlocks and opens the car door, B bursts out of her house, grabs the open car door, and remonstrates with A about everything B has done for A in the past. Since B is still holding the car door, A gently shoves B away. Unhappily, B falls, hits her head and dies. The police arrest A for felony murder, robbery and larceny. The district attorney asks you, an intern in her office, to analyze A's liability on these facts. Incidentally, A, as a prank, had convinced C to help A to "steal" B's car, which actually, of course, was A's car that she had lent to B. C, an old friend of A, reluctantly agreed to help "steal" the car. The police also arrest C as an accomplice to A in the felony murder, robbery and larceny. You are also asked about C's liability.

A very strong CIRI(P) Three criminal-law argument follows:

“A NOT LIABLE FOR FELONY MURDER (OR ANY OTHER CRIME)”

The main issue is whether A, who “gently shoves B” to regain her car, is liable for felony murder when B falls and dies. Felony murder requires a killing, intentional or accidental, in furtherance of the commission of a dangerous felony (or in immediate flight therefrom). Larceny (the alleged stealing of the car) is not such a dangerous felony that triggers felony murder liability when B accidentally dies. In addition, robbery (“forcible larceny”), which is such a dangerous felony triggering felony murder liability for accidental death in the commission of common law larceny, does not apply. Robbery is the use of actual force, or the threat of force, in the commission of common law larceny. This form of larceny requires, *inter alia*, a *trespassory taking of the personal property of another*.

Since A initially lent B her car, the *trespassory-taking* element is not established; nor is the taking of the *personal-property-of-another* element established since A owns the car. A plainly cannot steal her own car. Without any one of these elements, there clearly is no larceny. Without the larceny, there is no robbery. Without the robbery, there is no felony murder. The additional required rule is that A can use reasonable force to recapture her property – “a gentle shove” easily qualifies, and the fact that death results does not retrospectively transform her authorized shove into a culpable use of force.

“C NOT LIABLE AS AN ACCOMPLICE FOR ANY CRIME”

Though C has the *mens rea*, an intent to aid A to “steal” B’s car, there is no actus reus, i.e., no criminal-law act. C’s subjective intent to steal cannot manufacture an external larcenous act that simply does not exist on these facts. C has arguably sinned but committed no crime; C cannot be an accomplice, an aider and abettor, to a crime that never occurred.

Comment: From three or four sentence arguments in CIRI(P) One and even sometimes in CIRI(P) Two, the first argument here *escalates* to twelve packed sentences in the principal argument. From prior rule statements in one or two sentences, you have here a five-sentence rule statement. From interweaving in one or a few sentences, you have interweaving in six sentences. From clear-cut division of the rule statement and the interweaving, you have a few key facts inserted in the mainly rule statement. Finally, the brief second argument about C’s lack of liability is derivative of the first argument. The two arguments are sophisticated and impressive to a grader: the student demonstrates focus, deep understanding, issue-spotting and lawyerly argument-making skills. This sophistication in writing arguments, and related issue spotting, requires relentless practice during the semester.

A CIRI(P) Three contract example

The following uncomplicated contract example of the CIRI(P) Three writing format illustrates the use of *tests or factors* in legal argument and is based on the following mini-fact pattern that could be part of a larger multi-issue problem. The argument is just seven sentences after the heading and note that the focus of the interweaving is with the *two factors* that are decisive on these facts. Such interweaving with critical tests or factors is characteristic of this type of CIRI(P) Three argument where generally a broad rule is supplemented with tests or factors that enable its application.

The mini-fact pattern

A, the president of a carpet company, agrees to level the floor and carpet of the office of B Company for \$30,000. But A, who performs the work over the weekend when B's office is closed, instructs her workers not to level the floor and to install the carpet in a manner that hides the failure to level the floor. B Company nevertheless discovers A's failure to have the floor leveled. When A submits her bill for the agreed \$30,000, B Company refuses to pay. The value of the leveling is \$10,000 of the \$30,000 contract. A initiates a cause-of-action for breach of contract against B Company for non-payment and argues that it has substantially performed its obligations under the contract with B Company. B defends by claiming that A has materially breached its contract with B. As a judge, how do you decide?

A strong CIRI(P) Three contract argument follows:

“JUDGMENT FOR B COMPANY”

The issue is whether A, who intentionally fails to fulfill her duty to level B's floor worth \$10,000 of a \$30,000 contract may recover on a theory of substantial performance. This doctrine provides that where a contract is made for an agreed exchange of two performances, one which is to be rendered first, substantial performance rather than exact, strict or literal performance by the first part of the terms of the contract is adequate to entitle the party to recover on it. In applying this doctrine, *factors* to be considered include whether the breach was intentional, deliberate and therefore *willful*, and the *extent* of the breach.

Here, A willfully breached her duty to level B's floor in accordance with the agreement by instructing her workers to carpet the office in a manner that *hides their failure* to level the floor. This breach is an *intentional and deliberate variation* from the contract and is therefore *willful*. It is also a *substantial* breach, not insubstantial, since the cost of the leveling is \$10,000, one third of the total contract price of \$30,000. Thus, the doctrine of substantial performance does not apply

Conclusion

While there is a separate CIRI(P) IV writing format applied to invalidate, not apply, relevant rules, as well as varied subdivisions within the first three writing formats that are not presented here and policy arguments^{fn8} that are also omitted, the examples already set forth are sufficient to demonstrate that *any one-size-fits all writing format*, such as IRAC, does *not* match the complexity of arguments, the different architectures and deeply embedded histories, purposes, and functions, that are embodied in a variety of subjects tested in challenging law-school essay exams. The diversity of CIRI(P) formats, especially when applied flexibly, better capture this complexity.

If a professor nevertheless instructs students to apply the still popular IRAC formula, students should, of course, apply it for that professor's exam but inform such application with the variety of CIRI(P) formats abbreviated above and detailed in Chapter Five of "How To Do Your Best on Law School Exams."

1 See *How To Do Your Best On Law School Exams*, Chapter Four, by Professor John Delaney

2 Ibid. at Chapter Five

3 Ibid. at pp. 108-109

4 Ibid. at pp. 78-87

5 Ibid. at 87-92

6 Ibid. at pp. 93-102

7 Ibid. at pp. 102-105

8 Ibid. at pp. 106-107

[For critical explication on law school pedagogy including exams from which this article springs, see: *How To Do Your Best On Law School Exams*; Planet Law School II by Atticus Falcon, Fine Print Press LTD., 350 Ward Avenue, Honolulu, Hawaii 96814 – 4091; "The MacCrate Report An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap; American Bar Association Section of Legal Education and Admissions to the Bar, July 1992 <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>; *Scoring High on Bar Essay Examinations*, Mary Campbell Gallagher, J.D., Ph.D.; Motley, "A Foolish Consistency: The Law School Exam," 10 Nova L.J. 723 (1986); Nickles, "Examining and Grading in American Law Schools," 30 Ark. L.Rev. 411 (1977); Feinman & Feldman, "Achieving Excellence: Mastery Learning in Legal Education," 35 J. Legal Educ. 528 (1985); Coutts, "Examinations for Law Degrees," 9 J. Soc'y Pub. Tchrs. L. 399 (1967); Cramton, "The Current State of the Law Curriculum," 32 J. Legal Educ. 321 (1982)].