CL500: Fundamentals

Strategies for Success: Essay Writing and IRAC Transcript

Slide 1

Welcome to the presentation on essay writing and IRAC format.

Slide 2

In a prior presentation, we discussed how to take the various materials you will develop in your courses--your case briefs, class notes, and notes on readings and videos--and synthesize and integrate them into a course outline, which will be arranged according to the structure of the law and the issues, and will be at a fairly high level of detail. We also talked about how as you approached the time to take essay exams, you would want to boil that course outline down into a more succinct checklist of the key issues to look for, and the key questions to ask yourself regarding each issue to determine whether a given tort, in the case of your Torts class, or given defense would or wouldn't be met.

Slide 3

In this presentation, we're going to discuss how you would take that checklist and utilize it to help you approach an essay exam, spot the issues you want to discuss, and make sure that you analyze the issues appropriately.

Slide 4

To help us with this, we are going to be utilizing a sample essay exam problem from Torts, which you should have downloaded already. This sample is a bit more simplistic than what you would likely see on a real exam, but for our present purposes it is a useful illustration.

As you look at the sample essay exam, you will notice that it starts by describing a factual situation, and then at the very end, there is a question that we call the "interrogatory" or call of the question.

Our first key exam writing tip is to always read the call of the question first. This may seem counterintuitive: if it comes last, why are you reading it first? The reason is that when you write your answer, you will be responding directly to the call of the question.
As a law student and a lawyer, you want and need to be a strategic reader. You're not reading the fact pattern because it's interesting or amusing. You're reading with a purpose: you're looking to see what issues it might raise, and which facts may be important to those issues.

Reading the call of the question lets you know what it is you're supposed to be looking for when you read the facts. It provides you direction regarding what to look for, and provides some clues as to what to expect from the facts.

In our example, the call of the question reads: "What causes of action could Bill and Ted pursue and against who? What defenses are likely to be raised?" This is somewhat of a general interrogatory, but it still provides us with some useful information. We don't yet know what the facts are, but we know that we have two potential plaintiffs, Bill and Ted. So we know that when we read through the fact pattern we're going to be looking to see what injuries each of them have suffered and who they could potentially sue to recover for those injuries.

Now interrogatories can take on different forms. To illustrate this, two potential alternative forms of interrogatories are printed below the main one. You could have seen an interrogatory to this question which says: "If Ted sues Don and Bill for his injuries what would be the likely result?" This is a little more specific because not only does it identify the plaintiff but it identifies the potential defendants. It tells us that there will be one plaintiff and two lawsuits: Ted will sue Don and, Ted will sue Bill; but it does not tell you the torts involved. It leaves that up to you to determine.

You could see an even more specific interrogatory. The second example says, "What result if Ted sues Don for:

1. Assault? Discuss.
2. Intentional infliction of emotional distress? Discuss."

Here, not only do we know the lawsuit, Ted v. Don, but we know the specific torts upon which will sue Don, assault and intentional infliction of emotional distress. If you saw such an interrogatory, you would know that even if you thought after reading the facts there might be some arguably plausible claim for, say, false imprisonment, you wouldn't want to spend your time analyzing that tort because that's not what this call of the question asked you to focus on. With a more general interrogatory, however, that same tort might be perfectly appropriate to discuss if raised by the facts.

You never know what form the interrogatory may take. It could be fairly broad and general or quite specific. That's why you should always read the interrogatory first, to gather whatever helpful information you can and focus your attention appropriately when you read the facts.

The next step, of course, is to read through the facts. Here, the facts are as follows:

> "Bill and Ted, two college roommates, were leaving a movie theater and about to enter Bill's car for the ride back to their apartment when a stranger, Don, approached within 10 feet of them, pulled a handgun from his pocket, pointed it at them, and said to Bill, 'Give me your money or I'll kill you.'
>
> Bill grabbed Ted and pulled him in front of Bill to use him as a shield. Don fired his gun and the bullet missed Ted but struck Bill in the left shoulder, seriously injuring him. Bill fails to the ground in pain. Ted, who was disoriented by the rapidly developing events, fell to the ground on top of Bill, causing Bill to suffer a sprained ankle. Don was arrested several minutes later as he attempted to flee.
>
> Although Ted suffered no physical injury, he was horrified at the thought of almost being

shot and incurred 5,000 for psychological counseling as result."

And then again, we have the call of the question: What causes of action could Bill and Ted pursue and against who? What defenses are likely to be raised?

Okay, we've read the interrogatory, read the facts, and re-read the interrogatory. Especially with a longer and more involved fact pattern such as those you are likely to see on a real exam, you will likely want to read the facts a second time to drill down on a deeper level. Now that you've read the problem, it's time to start your analysis.

Slide 5

At this point, it is critical that you start by outlining your answer.

You see, too many times, students will make a major mistake here. They'll be eager to get going, especially if it is a timed exam, which it generally will be. And so they will just immediately start writing out their answer. They'll just think about things as they go along and write them down. If you do that, you're going to produce an answer that is disorganized, and the chances are very great that you're going to forget to talk about certain important issues or concepts that could be worth a lot of points. You would be relying on memory, which will likely fail because you're thinking about so many things are your writing through the answer. You need to produce an outline of the question before you ever start writing.

Now, to clarify, when we talk about outlining your answer to an essay problem, this is a different use of the term "outline" than we used previously. Before, we were talking about a course outline, which is a synthesis of all of the key issues and rules covered in an entire course. That outline may be dozens of pages long, and may include references to cases or other examples to help you recall and understand the doctrine. Here, we're talking about a much shorter sketch of the key issues and topics you will want to address for the specific essay exam at hand.

Most essay exams will be one hour exams. You should count on devoting at least 15 minutes of that hour, at least a fourth of that hour, to reading and outlining the question before you ever start writing. You may be thinking: but I only have an hour, I can't afford to spend a fourth of that time just reading and outlining.

But rest assured, the time you spend doing careful reading and outlining will be more than worth it. That time spent is what is going to enable you to produce an answer that is well organized and well thought out, and that is what is going to going to get you a good grade. Blurting out whatever comes to mind in a stream of consciousness will not get you a good grade, even if you have fifteen extra minutes to blurt.

Slide 6

Let's go to our example. What do we know? We know we have two potential plaintiffs, Bill and Ted. We have got to figure out who are they likely to sue, and on what basis? You can assume that they are each going to sue whoever they can on whatever plausible basis they can.

Well, Bill is going to sue Don because Don threatened him when he said "give me your money or I'll kill you," and Don then shot him.

But Bill's also going to sue Ted. Why? Because Ted fell on top of him, causing Bill to suffer a sprained ankle. So, Bill's going to sue two people. He's going to sue Don and he's going to sue Ted.

What about Ted? Well, Ted's going to sue Bill because Bill grabbed Ted and pulled him in front of Bill to use him as a shield. And he's also going to sue Don because Don caused Ted to suffer emotional distress. So we now know we have four lawsuits that are going to take place here. Bill will sue Don and Bill will sue Ted. And Ted will sue Bill and Ted will sue Don.

So I would grab my piece of paper that I'm going to use for my outline and I would put those four lawsuits down, but I would spread them out so I have room under each one to take notes. I would put Roman numeral I, Bill v. Don. I would skip some room and put Roman Numeral II, Bill v. Ted, the second lawsuit. Skip some more room, then Roman numeral III, Ted v. Bill. Skip some room; Roman numeral IV, Ted v. Don.

Now I start thinking about the potential basis of the causes of action, starting with Bill versus Dob. This is the point at which that essay exam checklist that we discussed previously comes into play. Remember that that checklist, which was itself based on my course outline, organized intentional torts based on the type of injury: bodily injury, emotional injury, injury to property. Here, Bill suffered bodily injury. Bill was threatened by Don and was hit by the bullet Don fired. Both are bodily injuries.

So we're thinking about that first grouping of torts, which include assault, battery, and false imprisonment. Then I think about what is involved in each tort. Bill was threatened by Don that's a potential assault, since that involves reasonable apprehension of imminent harm. So that's the first tort I'm going to talk about on that lawsuit. And when Bill was hit by the bullet, that's harmful touching, so that's a potential battery. So that's the second tort I'm going to talk about in that particular lawsuit.

So I put down underneath Bill v. Don, A-assault. Then I skip some room, and put: B-battery.

Bill v. Don: Assault

Now I call up my checklist, my mental checklist of the elements of an assault. And I know that those elements involve finding a volitional act by the defendant, finding that the defendant acted with a requisite intent, which for assault was the intent to place in apprehension of an immediate battery. Satisfying the causation requirement. And determining that the plaintiff suffered the resulting harm, which for assault is the apprehension of being of suffering an immediate battery.

Do we have a volitional act? Well that's pretty clear. When Don approached them, pulled the handgun, and made the threatening statement, that's a very clear volitional act. That is something Don did of his own free will. So that is clear, that's something that's not going to take a lot of discussion.

Did Don act with the intent to place Bill in apprehension? Well, we don't have a direct statement that that was Don's intent. But I think when you looked at what he said, give me your money or I'll kill you, it's pretty clear that in making that statement his intent was that he wanted Bill to be apprehensive of being shot, as that was what was supposed to coerce Bill to give over his money.

Did Don's actions cause whatever Bill suffered here? That's pretty clear, there's not much to

argue on this point. Well that's pretty clear I don't think we would argue that at any point.

The last point, did Bill suffer a reasonable apprehension of battery, of harmful contact? Again, we're not told specifically that Bill did, but it's pretty safe to argue that a reasonable person, a normal average person, when encountering a stranger holding a gun, saying to them give me your money or I'll kill you, that that normal average person would be apprehensive of being touched, harmed, even killed. It's perfectly appropriate to use not only the facts themselves, but also reasonable inferences from the facts, in arguing whether an element is or isn't met. In fact, it's essential: a fact pattern is never going to give you all of the facts in black and white that establish whether all the elements are met. You will have to make inferences, and it's up to you to decide which inferences would be reasonable and persuasive.

So it looks like we have a strong argument to establish all of the elements of an assault. Can Don assert any defense? No, none of them really seem applicable. So that would be our discussion of an assault. It would center on those four elements, spending most of our time discussing the intent to place an apprehension and then the apprehension of a battery. So that's the first tort, assault. Let's do that again with battery.

Bill v. Don: Battery
Remember Bill was hit by the bullet that Don fired. Volitional act? Yeah, Don pulled the trigger causing the bullet to strike Bill.

The intent to touch? Well, we're told that Don aimed the gun at Bill and fired. So I think if you fire the gun at a particular person that shows your intent to cause contact with that person.

As for causation, his firing the gun clearly caused Bill's resulting harm, which was the harm of an offensive touching.

It's also pretty clear that if someone is shot they would consider that to be a harmful or offensive touching. So all of the elements of battery appear to be there, with no applicable defense.

So we've now completed our outline of the first law suit Bill v. Don. We know we're going to talk about the two torts of assault and battery, and we've made notes on those elements that were going to talk about. Now let's look at the second law suit, Bill v. Ted.

Bill v. Ted: Battery

Here, we have another bodily injury problem, because Ted fell on top of Bill, causing Bill to suffer a sprained ankle. Since we're dealing with a touching here, we would be dealing with a potential battery.

If you think through the elements of battery, which one do you think would be the key concern in deciding whether or not Ted is liable for a battery? Well the answer's going to be the very first one, the volitional act. The volitional act of doing something of your own free will. Not a reflex, not an involuntary action. What are we told here? Ted, who was disoriented by the rapidly developing events, fell to the ground on top of Bill, causing Bill to suffer a sprained ankle. There was obviously contact made between Ted's falling body and Bill's ankle, and that contact caused Bill the harm of a sprained ankle. So the causation and harm elements are not in dispute. But it all comes down to the volitional act, and because Ted caused Bill's harm by falling after he had already become disoriented, it is likely that there was not a volitional act.

And note that without a volitional act in the first place, you're not going to be able to establish that Ted committed the act with actual intent to make contact. Based on this, we would likely conclude that Bill would not have a successful tort claim against Ted.

Plausible Claims

One important thing to note is that it may have been very obvious to you, when first reading the fact pattern, that Ted shouldn't be liable to Bill for battery, because he only ended up hurting Bill when he got disoriented and fell. And because it was so obvious, you might have thought: I shouldn't even bother discussing this, because we all know what the outcome is going to be. That would be a significant strategic mistake on an essay exam. You should discuss plausible claims even if you know they are ultimately going to be unsuccessful. By "plausible claims," I mean claims that are fairly raised by the facts. The author of the fact pattern included the fact that Ted fell on Bill spraining his ankle for a reason. That fact triggers the issue of whether Ted committed a battery upon Bill. And the call of the question is broad enough that that potential claim should be discussed. Remember, the call of the question was: "What causes of action could Bill and Ted pursue and against whom?" This is broad, and doesn't exclude any potential defendants or any potential claims, like the narrower alternatives might have. So don't think that just because you know the claim won't succeed, you shouldn't at least discuss.

Ted v. Bill: Battery

Okay, our third lawsuit, Ted v. Bill. Well this is another bodily injury problem because Bill grabbed Ted to pull him in front of him to use him as a shield. So that's a potential battery.

If you think thought the elements of battery here, they all seem to be here. Bill acted volitionally, not reflexively or unconsciously, that's pretty easy. He also had the intent to make contact, as he grabbed Ted and moved him in Don's path. What he did caused Ted to be touched. And it resulted in a harmful and offensive touching. It's safe to say that being pulled into the path of somebody that's about to fire a gun would be considered to be a harmful and offensive touching. So all of the elements of battery would appear to be there.

Ted v. Bill: Defenses

But Bill would try to argue some defense. He might try to argue he acted in self-defense, as he was trying to protect himself. Without going through all of the elements at this point, it is clear that that defense won't work because as you will learn, the only time you can act in self-defense is when you are acting against the person who is threatening you. The person who is threatening Bill was Don. If Bill had acted towards Don, say, if Bill punched Don in the face to stop Don from shooting him that would've been self-defense. But here, he wasn't acting towards Don; he was acting towards Ted so he can't call that self-defense.

The other defense Bill may raise is necessity. But as you will learn when you study necessity, necessity will allow you to inflict property damage on somebody else to prevent some injury to you. But it won't' allow you to physically hurt somebody else to prevent some injury to you. In addition, necessity usually involves some danger from a natural force, not a person. So Bill may raise the necessity defense but would lose on that point as well. So Ted's going to recover from Bill for battery. And by the way, don't worry if you're not familiar with the actual rules regarding these torts and defenses at this point; you're not expected to be. We are just using these to illustrate the skill of how to approach an essay exam.

Ted v. Don: Assault

And then the last of our four lawsuits, Ted v. Don. This is another bodily injury problem, because Don likely committed assault against Ted by shooting at Bill with Ted right in front of him as a human shield. Don may have been aiming at Bill, and was indifferent to the effect that firing at Bill would have on Ted.

But we know from our course outline that intent includes not just what you desire to happen but what you know with substantial certainty is going to happen. Here, Don arguably knew with substantial certainty that by firing at Bill, his human shield would suffer apprehension of an imminent battery. We would want to make sure we would touch on the other elements of volitional act and causation of harm, all of which seem to be easily met here.

Ted v. Don: IIED

But we are also told that Ted suffered emotional distress, as he was horrified at the thought of almost being shot and incurred 5,000.00 for psychological counseling as a result. We're going to have to deal with that emotional distress. Now it may be something that would be recoverable under the assault.

Or it may be something that we would deal with under that separate tort of intentional infliction of emotional distress. We would then use our checklist to then think through the elements of that tort.

By this point, we don't even need to go through the analysis of those elements for you to get the picture on what the process is.

Slide 7

Now that we've introduced you to the skill of outlining your answer, we won't go through the process of putting together an entire exam essay in detail, but I want to provide an introduction to a core skill of essay writing itself, and that is IRAC. Not the country. It's an acronym: I-R-A-C.

The "I" stands for Issue. The R stands for Rule. The A stands for the Application. And the C stands for Conclusion. Issue, Rule, Application, Conclusion = IRAC.

This is the format you are going to want to use for approaching essay exams. You are going to be utilizing this approach for your entire law school career. The important thing to note is that this is not just some trick or formatting guideline. It represents the underlying structure of much of legal analysis.

1. First, you state what the issue is you're addressing. There's no point in answer a question unless you're clear about what the question is.

2. Second, you state what rule or principle applies to the issue at hand. Different questions in life may get answered in different ways. But the way you typically answer a legal question is by determining what rule or principle of general applicability pertains to the issue at hand. Depending on the issue and depending on the facts, there may be more than one rule that applies.

3. Third is your application of that rule to the particular facts, which can also be referred to as your analysis of the facts.

4. Fourth and finally is your conclusion. Your conclusion should follow logically from your application of the rule to the facts.

It is critically important that you understand that of these four components, the least important is usually the conclusion. In this regard, the study of law is different than most other professions. Most other professions like accounting or engineering, are conclusion oriented professions. We care about the bottom line, the result, the practical outcome. That's not the case in the law. Because the conclusion rests on an interpretation of facts. And you will discover this as you get into reading more and more cases and working more and more with the law, that reasonable minds can differ when it comes to looking at facts, and they can differ regarding how a given rule or principle applies to the facts. You may look at a particular set of facts and the question is whether or not the plaintiff should've been reasonably apprehensive and you say, you know, I think that under these facts that a reasonable plaintiff would be apprehensive. And I might look at the same facts and say no, under these facts, I think a reasonable plaintiff would not have been reasonably apprehensive. And you know something? We may both be right. As long as our interpretations are grounded in facts, and in reasonable inferences drawn from the facts, there may well not be a "right" answer. And the job of a lawyer is to be able to identify and articulate the inferences and arguments that would lead to one or another conclusion.

So again, the conclusion is the least important part of the analysis. To be clear, you need to reach one--that is, you need to have a conclusion--but what is far more important is the application of the law to the facts that leads you to that conclusion. Far more important is your legal analysis leading up that conclusion. Explaining why you reached that particular conclusion.

So for example, if we were discussing the first point when Bill sues Don for assault we might state an issue as a question: did Don commit an assault? We might state a rule then by defining assault. By saying something like assault is the volitional and intentional placing of another in apprehension of an immediate battery. And then we would analyze and apply the facts by discussing whether or not the fact can be used to satisfy the elements of assault. And then based on that discussion we would reach our conclusion. And that's IRAC.

The things we've already discussed, and what you will learn over the course of law school, will help you with all of these steps.

Your course outline and checklist will help you spot issues by helping you recognize what facts trigger what legal issues.

Your outline will also help you refine your understanding of the law, which is the rules you will apply in the second step of IRAC. In addition, it is very important that you develop and practice articulating crisp rule statements that you can use on an exam. Whereas the checklist example you saw was phrased in terms of questions to ask yourself regarding each claim or defense, you will engage in separate rule statement exercises that will help prepare you for how you would actually state those rules on an exam. In the example above, defining assault as the volitional and intentional placing of another in apprehension of an immediate battery. That's an example of something you might put word for word on an exam.

But your rule statement only sets the stage for your application of the rule to the facts, which is the most important part. You will get lots of practice applying law to facts, and predicting

conclusions based on that analysis, through practice essays and other exercises.

And to end where we started, reading judicial opinions and developing case briefs based on them will help you with all of these steps. You will learn to identify and distill rules and principles from opinions. Perhaps more importantly, you will identify and articulate the reasoning the court employed to reach that holding, which is like the application or analysis on an essay exam that is so critical.

So to conclude, although many of the skills we've discussed may not yet be familiar to you, they will be as you progress through law school. And rest assured, everything we ask you to do is designed to prepare you to do your best in law school and ultimately after graduation as a professional.