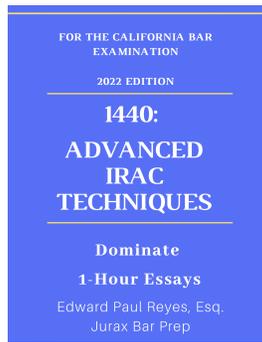


EXTRA 5 POINTS MINI COURSE
==Follow-Along Guide==
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Presented by
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1440: Advanced IRAC Techniques E-Book. [Click Here](#). Refer to Chapter 3 for more details regarding the Analysis.



Link: <https://juraxbar.com/wp-content/uploads/2022/02/1440-IRAC.pdf>

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TABLE OF CONTENTS FOR GUIDE AND VIDEO

	Guide	Video
Introduction to Major Issue	Page 1	0:50
Components of a Story and Rebuttals	Page 5	2:24
Signal Words and Phrases	Page 5	5:02
Template: Major Issue Formulas Issues vs. Elements	Page 6	6:07
Titanic Analysis	Page 7	9:12
Drills	Page 8	12:09
Common Mistakes	Page 9	14:52
Juicy Facts	Page 9	16:16
Review	Page 11	20:42
Next Steps	Page 12	21:50

THE MAJOR ISSUE ANALYSIS

Introduction to the 13-Point Major Issue Analysis Formula:

Welcome! It is here where you will begin to rack up the big points! Before we start, review the next two diagrams. They are model answers from the July 2018 California Bar Exam, Question 3 and Question 6. These essays received 100 points!

Also, I call these the *13 Point Major Issue Analysis*. **If you perform two of these major issue analyses**, you can start getting at least 70's on every essay. I will show you how.

From Question 6.

ABA MODEL RULES

Initial
Arg.

Len would argue that **he reasonably believed** that he could still represent ABC despite the fact that he did not personally agree with ABC's objectives, and believed that the statute was good law. He would argue that it is common for lawyers to personally disagree with their client's positions, but for them to nonetheless do the work as required and necessary to further their interests in the current matter.

Contr-
Arg.

However, it could be argued that Len's belief was **not reasonable**. Len's beliefs **directly and completely** diverged from that of his client's objectives. Such a strong, powerful belief, which even led Len to secretly hope that ABC was not successful in its lawsuit, would have inevitably affected Len's ability to represent ABC fully and to his utmost ability. Accordingly, it could be argued that due to the divergent disparity between his beliefs, and the objectives of his client, which even led him to essentially root for his client's failure, **Len could not have reasonably believed** he could represent ABC despite his personal beliefs.

Rebutl
to
Contr-
Arg.

A court would likely find that Len's belief that he could represent ABC effectively notwithstanding his personal beliefs was likely **to be unreasonable**. While it is common for a lawyer to disagree to an extent with the client's objectives, here Len was completely against them. The severity of his belief, and the likelihood of his personal sentiments materially impairing his ability to represent ABC is strongly evinced by the fact that he was rooting against his own client's victory.

Moreover, as discussed above, Len did not disclose such a conflict in writing to ABC, nor did Len obtain their informed consent.

Concl.

Therefore, Len breached his duty of loyalty in **accepting this representation with a conflict of interest**.

From Question 3.

be of the essence *unless otherwise clearly stated*.

Was Time of the Essence

Here, the contract itself reads "Dirt hereby agrees to commence site work on or before June 1 and to complete all site work on or before September 1." It additionally contains a promise from Dirt to have all equipment ready and to refrain from undertaking other jobs during the duration of the contract. Each party will seek to argue in the affirmative/contrary that time is/is not of the essence. Builder will argue that multiple

Initial
Argument
of Premise

contractual provisions outlining the importance of expediency and availability of supplies mandate a finding that time is of the essence in the contract. However, Dirt can argue

Counter-
Argmnt.

that time of the essence was never explicitly stated in the contract, and that any such reading of such a promise would be implied only. Dirt will additionally argue that, if time is not of the essence, then not having started by June 4 -- three days after the intended start date -- would not constitute a material breach and thus Builder could not treat the contract as discharged. Builder will argue the opposite -- time was of the essence;

Rebutl
to
Countr-
Argmnt.

three days late was therefore a material breach, and therefore the contract can be discharged.

Conclusion.

Conclusion

A court is more likely to find in Dirt's favor based on these facts. Firstly, the contract did not explicitly state time is of the essence, despite multiple references to the timeliness of

Elements of a Story and Rebuttals.

Think of the Elements to a Story. You will tell the bar grader your “story.”

1. Exposition = Think of non-major issues that lead up to the Major Issue Analysis
2. Rising Action = Initial argument of premise
3. Climax = Counter-argument
4. Falling action = Rebuttal to the counter-argument
5. Resolution = Conclusion

Signal Words.

Below is a collection of signal words and phrases. These are broken down into initial arguments, counter-arguments, rebuttals to the counter-argument, and conclusions. Signal words will guide the grader through your “story.”

Initial Argument to the Premise:

Here (to begin the first line of the analysis). Other signal words after the word “Here” include: *in addition; Moreover; Additionally; Furthermore; Similarly; The party may also argue.*

Counter-argument.

However; A counterargument; The other party will counter.

Rebuttal to Counter-argument.

Ultimately, a court will likely find that ...; In rebuttal; This is a close call, however, the court will agree that ... ; The party will correctly argue that; Overall.

Conclusion:

Therefore; Thus; As such; In conclusion.

Now let’s discuss the difference between the issue and elements.

ISSUES VS. ELEMENTS

TEMPLATE: BASIC 13-POINT MAJOR ISSUE ANALYSIS FORMULA

(I) Issue – Is Issue ABC present?

(R) Rule – Here is the Rule and it's Three Elements: (i) Element 1; (ii) Element 2; and (iii) Element 3.

(A) Analysis

Initial Argument: 3rd Element *is* present because of Fact 3.

Counter-Argument: However, 3rd Element *is not* present because of Fact 4.

Rebuttal to Counter-Argument: Ultimately, a court will decide that Element 3 *is* present because of Fact 5.

(C) Conclusion – Issue ABC is present.

DETAILED 13-POINT MAJOR ISSUE ANALYSIS FORMULA

Issue – Is Issue ABC present?

Rule – Here is the Rule and it's Three Elements: (i) Element 1; (ii) Element 2; and (iii) Element 3.

Analysis – (We'll call this the “2 of 3 Element” rule.) Expect that in many cases the facts will stipulate that 2 of the 3 elements for a one major rule will be present. The 3rd element will be up for debate.

1st Element is present because of Fact 1. (Optional but suggested. NOTE: This is the *E + B + F* formula. *Element + Because + Fact*. 90% of essay can be EBF.

2nd Element is present because of Fact 2. (Optional.)

Commentary.

Discussing the two elements as described above is not required for a 65 response. However, I would suggest you discuss at least one of the elements briefly. This is because you want to write a thorough response. Also, you can have the smooth transition that leads to your next discussion pertaining to the counter-argument.

Initial Argument: Here, **3rd Element** is present because of Fact 3. **Do *Titanic* movie example.**

Counter-Argument (oppose your previous position here): **However, 3rd Element is not present because of Fact 4.**

Rebuttal to Counter-Argument: Ultimately, a court will decide that Element 3 is present because of Fact 5.

(Note: Alternatively, you can also write a *Statement in Support of the Counter-Argument*. This is when you wish to make an argument in favor of the counter-argument).

Conclusion to 3rd Element: **3rd Element is present. (Optional. Helps enforce distinction between the Issue and Element)**

Overall Conclusion – Issue ABC is present.

Commentary.

Notice the heavy discussion around the 3rd Element. It is highly recommended that you write out the above formula many times as a practice activity.

If all you do today is to write this formula, then you will have achieved an incredible task. This is the type of formula that you want to commit to muscle memory as well. Whatever you do, keep this formula readily accessible because we are going to refer to these throughout the remaining lectures.

REVIEW

BASIC 13-POINT MAJOR ISSUE ANALYSIS FORMULA

(I) Issue – Is Issue ABC present?

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(A) Analysis

Initial Argument: 3rd Element *is* present because of Fact 3.

Counter-Argument: However, 3rd Element *is not* present because of Fact 4.

Rebuttal to Counter-Argument: Ultimately, a court will decide that Element 3 *is* present because of Fact 5. .

(C) Conclusion – Issue ABC is present.

Do drills. Example.

Issue: Is ABC present?

Rule: Requires E1, E2, and E3.

Analysis:

Here, Element 3 is present because of Fact 1.

However, the other party will say that Element 3 is not present because of Fact 2.

Ultimately, a court will agree that Element 3 is present because of Fact 3.

Conclusion. Thus, Element 3 is present.

Thus, the Issue is met.

Common Mistakes.

1. Using more than two major issue analyses.
 - a. You run the risk of running out of time.
 - b. You run the risk of not focusing on the proper issues. They can be discussed with merit both ways.
2. Discussing more than one element. Overlapping the rules. See this YouTube video. https://youtu.be/ri_BPdjtI7k
3. Not focusing on the proper facts. Story of being invited to eat at someone's house. I have a strategy called the Juicy Facts. See the ebook titled *Advanced IRAC Strategies* on page 46.

Juicy Facts and Three Reads. (Note: You should add an additional reading step of the hypothetical.)

Look for words that come before or after a noun. For example: “extremely doubtful,” “excited,” “immediately recorded,” “shortly after the incident,” or “would have been useless to Mr. Plaintiff.” Highlight these words because they translate to major points as you will later see in the analysis section. July 2014, Q.4, Cal. Bar Exam.

Question 4

One summer afternoon, Officer Prowl saw Dan, wearing a fully buttoned-up heavy winter coat, running down the street. Officer Prowl ordered Dan to stop. Dan complied. As Officer Prowl began to pat down Dan's outer clothing, a car radio fell out from underneath. Officer Prowl arrested Dan and took him to the police station.

At the police station, Officer Query met with Dan and began asking him questions about the radio. Dan stated that he did not want to talk. Officer Query responded that, if Dan chose to remain silent, he could not tell the District Attorney that Dan was cooperative. Dan immediately confessed that he stole the radio.

Dan was charged with larceny. He retained Calvin as his attorney. He told Calvin that he was going to testify falsely at trial that the radio had been given to him as a gift. Calvin informed Dan that he would make sure he never testified.

Calvin filed motions for the following orders: (1) suppressing the radio as evidence; (2) suppressing Dan's confession to Officer Query under *Miranda* for any use at trial; and (3) prohibiting Dan from testifying at trial.

At a hearing on the motions a week before trial, Dan, in response to Calvin's motion for an order prohibiting him from testifying, stated: “I want to represent myself.”

1. How should the court rule on each of Calvin's motions? Discuss.
2. How should the court rule on Dan's request to represent himself? Discuss.

Review 100 Point Essays

ABA MODEL RULES

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Arg.

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Initial
Argument
of Premise

Counter-
Argmnt.

Rebutl
to
Countr-
Argmnt.

Conclusion.

Conclusion

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Next Steps.

Book a 15 minute call with me as part of this package. Write out your Major Issue Analyses. We will review it on Zoom.

For more information on outlining, juicy facts, timing techniques, see the ebook *1440: Advanced IRAC Strategies*. [Click here](#).

Or get the video version on Teachable.

<https://cal-bar-exam-1-hour-essays-strategies.teachable.com/p/california-bar-exam-advanced-strategies-for-1-hour-essays-for-february-2019>

Until soon.

-Edward “Eddie” Paul Reyes, Esq.
Jurax Bar Preparation, Inc.