
FOR THE CALIFORNIA BAR
EXAMINATION

2022 EDITION

**1440:
ADVANCED
IRAC
TECHNIQUES**

Dominate

1-Hour Essays

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Jurax Bar Prep

1440: Advanced IRAC Techniques

A Step-By-Step Guide For the One Hour Essays on the California Bar Exam

Edward Paul Reyes, Esq.

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INTRODUCTION: HOW TO USE THIS BOOK

This book was written so that you can score at least a 70 on a 1-hour essay. Now that the pass rate was reduced from 1440 to 1390, the author believes that you can gain a great deal of value from this text.

With this said, writing in a “lawyer-like manner” as the bar exam requires is a skill. Master it. Your present level of intelligence and enthusiasm may be important. However, you must also be able to apply the proper skills. With proper practice, you will develop the proper skills to pass the bar exam. This is your goal and this book will help you achieve this endeavor.

Below is an over-simplified model of what you have to achieve to earn a passing essay score. This is just the gist of the required tasks. Notice that the IRAC structure is clearly present (it is in **red** for emphasis along with the other IRAC components).

Write the Issue. This is usually one issue.

Write the Rule. This may have 3 elements.

Analysis.

- i. Present your **argument**.
- ii. Present a **counter-argument**.
- iii. Present a **rebuttal** to the counterargument (or a statement in support of the counterargument). A mastery of the rebuttal can land you a 70 consistently!

Conclusion. Give your conclusion.

This book is written in chapters divided by the IRAC category. As such, if you want to know what is meant by *analysis*, go to the **Analysis** section (**Chapter 3**) of this book and focus on that area.

Caveat: Don’t think that just knowing the structure of the Analysis is sufficient to get a passing score. You still have to use key facts that are given to you (the exam instructions state that you should discuss the facts). Learning to identify these key facts is also a large component of the exam.

This book is also meant to be used as a reference once you have completed reading the entire text. In other words, once you start applying the information by writing practice essays, return to this book and revisit the content as may be necessary. For any questions,

email Edward “Eddie” Paul Reyes at juraxbar@gmail.com. All the best to you on this challenging yet wonderful journey.

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CHAPTER 1

THE “I” FOR “ISSUE” IN IRAC

CHAPTER 1

THE ONE-HOUR ESSAYS – THE “ISSUE” IN IRAC

Introduction To IRAC.

Most of you know that IRAC stands for “Issue,” “Rule,” “Analysis,” and “Conclusion.” IRAC is the most common format for writing exams. This book is broken down in the format shown below.

Chapter 1 pertains to the Issue.

Chapter 2 pertains to the Rule.

Chapter 3 pertains to the Analysis.

Chapter 4 pertains to the Conclusion.

Introduction to the Issue.

This chapter focuses on the “I” for “Issue” in IRAC. The focus here is for you to gain comprehension of the facts in the hypothetical. And more importantly, the purpose is for you to identify the major issues. Do not underestimate this task. The bulk of your grade will come from your analysis. However, if you cannot identify the major issues, you will not be able to perform the major analysis. Considering this, it is extremely important that you know how to locate the major issues.

Here is a breakdown of this chapter.

Section 1: The Issue.

Section 2: The Substantive Law.

Section 3: Issue Spotting.

We will assume that one hour will be the duration of most of your exams. Of course the length may vary between the preference of your professors. Regardless of this, you may use the techniques found here and modify them according to the duration of the exam.

Given that you have one hour to complete your exam, spend no more than 15 minutes identifying the issues. This identification period will be referred to as the *reading* portion. Below is the time limit. Keep this time frame in mind.

Amount of time to read the facts: **15 minutes out of 60 minutes.**

Important note: *the time frames are mere suggestions.* It may take you *less* than 15 minutes to read the facts. You may do it in 10 minutes or less. Also, the time it may take you to outline may differ than what is suggested here. That is perfectly fine. The time frames used here are meant to stay consistent with the personal experiences of the author. Your individual time frames can vary. As such, modification of time frames, of style, or other preferences is suggested and even encouraged. Let’s now talk about the issue.

“Not all issues are created equal.” –Author’s Quote.

SECTION 1: THE ISSUE

Objective.

Understand that *issue spotting* does not literally mean *issue spotting*. Usually, your focus and major points will be at the *sub-issue* level. In other words, some issues are valued at a higher rate than other issues. Practice placing your mindset on this concept.

We will first discuss terms such as “issue,” “sub-issue,” “sub-sub-issue,” and “element.” Much later we’ll discuss the terms “Major Issue” and “Non-Major Issue” to properly conduct an analysis.

Introduction.

I know you’ve been told you should IRAC your answer. However, there is more to it than just that. This is because you don’t give equal treatment to all of the issues. As has already been hinted, issues on the exam are broken down into major issues and non-major issues. There just isn’t enough time on the exam to extend equal treatment to the many issues that appear. We’ll discuss this later under Section 3 of this chapter that deals with Issue Spotting.

For now, let’s discuss the term “issue.” Moreover, take notice that on the bar, your money points will come from analyzing the major issues.

Here, let’s throw in the word “sub-issue.” Let’s break this down to see just what a sub-issue is.

Again, you have been told to analyze an issue. However, the exam may actually require you to analyze a sub-issue. By the same token, they may also be asking you to discuss a sub-sub issue.

Confused? Don’t be. It will make sense when you begin to apply the IRAC method.

Let’s take the subject of Contracts, a favorite on the examiners. Here are some common Contracts issues:

- 1. Governing Law**
- 2. Existence of a Valid Contract**
- 3. Defenses to Formation**
- 4. Terms**
- 5. Performance**
- 6. Excuse**
- 7. Breach**

Now, let's focus on the issue of whether a valid contract exists (stated as number two above). Here is the issue again: "Did the parties form a valid contract?" Next, we will identify the sub-issues under valid contract as listed below.

Sub-issues for a valid contract.

1. Offer.
2. Acceptance.
3. Consideration.

So above, the sub-issues are listed as (1) offer; (2) acceptance; and (3) consideration. Take note that we can take these to a deeper level. For example, if we take the sub-issue “offer,” we can further break this down into sub-sub issues.

Sub-Sub-Issue for Offer:

1. Creates power of acceptance.
2. Communicated.
3. Definite and certain Terms.

To simplify this section, just remember that to properly analyze a major issue, you will probably have to do the heavy part of the analysis at the sub-sub-issue level.

Note.

Sub-issue and sub-sub-issue can also be known as an “element.” In fact, you are probably more familiar with the use of the word “element.” For example, “What are the elements for a valid contract?” That is perfect. Keep it in your vocabulary. To be clear, the words sub-issue (or sub-sub-issue) and element can be used interchangeably. The element is also further expanded upon in Section 3 in this chapter, under Issue Spotting. But don’t bog yourself down with these definitions. For now ... breathe. You’ll soon start applying this and it will make perfect sense. Let’s keep going.

“Life is really simple, but we insist on making it complicated.” –Confucius.

SECTION 2: UNDERSTANDING THE SUBSTANTIVE LAW

Objective.

This section will focus on how to understand the substantive law.

Introduction.

In order to discuss the issues, you need to know the substantive law. Here, I’ll let you in a little secret. There is no way you can know and memorize all of the substantive law. The body of law would be unconscionably massive and overwhelming. So here is what you do: you master the substantive law as found in previously released bar exams *from the state where you intend to practice*. Yes, “master!” This is completely possible!

Area of the Substantive Law That Should Be Mastered.

To emphasize the point, you are required to master the substantive law within the scope of past bar exams. Allow this last line sink in.

So the bad news is that you must *master* some of the substantive law. The good news is that you don’t have to master all of the law. So relax.

Key.

Studying past exams calls into light the 80/20 Principle. That is, you will focus on the 20% that will give you passing results. You may be familiar with the 80/20 Principle. If you are not, below is a brief explanation of this principle.

As explained by Gary Keller in his book *The One Thing*: “Author Richard Koch then labeled it as the ‘80/20 Principle’ and stated the minority of your effort leads to the majority of your results.”

To relate the principle to the exam, and in order to master the exams, you need to honestly ask yourself the following questions:

- 1. What is the one activity in which you better understand the substantive law?**
- 2. Next, how can you do more of that activity to maximize your understanding of the material?**

Here, I state that studying past exams is the “one activity” that you need to perform in order to maximize learning. From personal experience, I am convinced this strategy is by far the better method to understanding the law.

Important Point.

However, I do note that merely understanding the substantive law is not sufficient to pass. Knowing the rules may get you a passing grade. In other words, knowing the “Issue” and the “Rule” in IRAC may get you a passing grade. However, to excel you need to be highly proficient in the “Analysis” part of IRAC. How to analyze and write in a lawyer-like manner is explained in Chapter 3 titled *Analysis*.

Also note that the area of understanding the substantive law and the area of performing a proper analysis complement each other. This is because you cannot achieve a passing score if you do not know the substantive law.

Exam Strategy.

If you do not know the rule to an issue, you have to apply a strategy where you focus on key facts. Keep this in mind when you approach the *Juicy Facts* section of this book. Your analysis will develop from that. In this writing, you will become familiar with *Juicy Facts* and the *Major Issue Analysis Formula*. As long as you remain calm and apply these strategies, you will perform very well.

Real Life Story.

I remember studying my Constitutional Law outlines in law school. I also remember telling myself, “You know, I’m not understanding these outlines. Is there a better way to study Con Law?”

Then during the early phase of studying for the bar, I viewed video lectures. But when it came time to do a written response, these lectures did not help. This is because one of the worst ways to learn is solely through lectures.

For further evidence that lectures are not effective as a learning tool, consider your own learning experiences. Think of the time you learned to ride a bike, a car, or any other skill. I’m sure someone verbally explained these steps to you. You probably even did some reading on the subject. But you really learned when you started pedaling or when you shifted the gear into drive.

In actuality, you learned better when you applied those skills. The same concept applies when studying for these exams. Sure, you can read outlines and you can listen to lectures, but if you want to *maximize* learning, study the past exams.

More Reasons To Study Past Exams.

To emphasize the point, do you remember what your main purpose is when studying? It is to learn to properly apply the law. Based on this, you want to maximize the amount of law you learn.

Here are other reasons for studying previous exams:

1. Major areas of law have been tested before. And what do you know? It turns out that you need to know major areas of law.
2. These major areas of law are likely to appear on future exams. The facts may be different, but the legal principles may be the same.
3. If you insist on using outlines as a major study tool or if you wish to rely on lectures, remember this: the grader will not test you using outline formats. Nor will he test you in lecture format. He will test you on your ability to write in a lawyer-like manner. By viewing past exams and past sample answers, you will get an idea of what your writing should look like. Last, there is a strategy to approach commercial outlines. This will be discussed later.

“Practice does not make perfect. Only perfect practice makes perfect.” –Vince Lombardi.

SECTION 3: ISSUE SPOTTING

Objective.

- 1. Identify the major issues.**
- 2. Understand how to identify and distinguish major issues from non-major issues.**

Introduction.

It is important that you *identify* the major issues. **Do not underestimate the importance of this task.** You will not get a high mark on your exams if you do not identify and discuss these major issues. This chapter is dedicated to establishing a process to systematically identify the major issues. Read this chapter once. Then return to it as you deem fit. The only way you will know if you are making progress is by writing practice essays. Once you do that, you will begin to understand your weak and strong points.

Issue Spotting Techniques.

Here are three steps to properly conduct the issue spotting activities. The steps here will also be the first steps you will take when approaching these essay questions. Practice these steps until they become instinct. Again, proper issue spotting is a skill. You must develop this skill through practice.

The First Steps: Three Steps To Properly Issue Spot.

Here is an overview of the Three Steps to properly spot the major issues.

Step 1: Label your essay exam.

Step 2: Read the call of the questions.

Step 3: Read the fact pattern three times.

Let's go Step 1 now.

STEP 1 TO ISSUE SPOTTING

Introduction.

This is the moment when the exam proctor gives the instructions to begin the exam. As such, this is the first activity you perform. Again, there are three steps. We'll begin with Step One.

Step One.

Major Task: Label your essay.

At the very top of your essay exam question, on the right corner, write down these letters in a vertical manner: *H-O-O*.

H
O
O

The “H” stands for “Highlight.” The “O” stands for “Obstacle.” The other “O” stands for “Obvious.” You will identify and know how to approach obstacles in your reading. Also, you must deal with the obvious. I'll explain further below how to apply these techniques.

Also, write down these words: *Major Issue*, *exceptions/defenses*, and *triggering issues* to the left of your essay. This way, the top of your essay exam question will look as follows (the words in italics represent your writing):

<u>QUESTION 1</u>	- <i>Highlight</i>
<i>Major issue</i> – <i>Exceptions/defenses</i>	- <i>Obstacle</i>
<i>-triggering issues</i>	- <i>Obvious</i>

The purpose of this labeling is so that you won't forget to perform the concepts when the time to write your essay comes before you.

Other Reasons for Labeling.

You may initially think that writing these words may be a waste of time because “There's too many words and so little time!” But consider this: When you write these words, you are telling your subconscious mind what it needs to do to get an excellent grade. You are staying sharp and direct!

Another reason for labeling is that it provides an “automatic” activity that does not mentally drain you. For example, many examinees avoid writing practice exams (which is extremely harmful). This is because there are other activities they can do that are “easier.” For example, they can listen to a lecture on Criminal Law. But if your first step is to label, it will be a smooth introduction to your task. This is because the activity does not require heavy thinking. So it is perfect for a warm-up. The point is, don't be

opposed to the idea of taking a few extra seconds to label your work. Let's now go to Step Two (of three steps).

STEP 2 TO ISSUE SPOT

Step Two.

Major Task: Read the call of the question.

The questions will be located toward the bottom of the hypothetical. As you first read the questions, determine what area of law you are in. For example, are you in Evidence, Torts, or another subject? And then see if you can determine what specific area you are in. For example, you may be in “Privileges” that deal with married couples in Evidence. Or you may be in “Landlord/Tenant” in Real Property. The examiners may tell you explicitly or implicitly.

Furthermore, do not underestimate the art of reading the call of the question. This truly is a skill that must be mastered.

If you can't determine what area of law you are in after reading the questions, don't worry. You will read the entire hypothetical in Step Three. The area of law will become apparent then. We'll get more detailed with this important step now.

“It’s time to get down and dirty.” – Common Phrase

PRACTICAL APPLICATION MATERIAL - THE ISSUE IN IRAC CONTINUED

**ISSUES SPOTTING: 1ST STEP AND 2ND STEP
(3rd Step Is Not Mentioned Here)**

Step 1 of Issue Spotting Steps: Labeling.

We will do a labeling exercise here. Remember that the labeling stage serves as a warm-up phase. Take note that you should perform these steps in a quick fashion. Take comfort in this: the more you practice the faster you get.

Activity.

Here are the key words. An example will then follow. Take notice that “H-O-O” is written in a vertical manner. Again, this stands for “Highlight,” “Obstacle,” and “Obvious.” We’ll get more into the details later.

Also note the following words: “Major Issue.” Then follow it with these words: “Exceptions, Defenses, Triggering Issues.”

It should like something like this:

H O O	<u>QUESTION 1</u>
	Major Issue - Exceptions / Defenses - Triggering Issues
	<p>Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees. At Wendy’s death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy’s sister, Sis, until Sis’s death. At Sis’s death, the trust was to terminate and all assets be distributed to Dot. The sole asset in the trust was Wendy’s ranch.</p> <p>Years later, Wendy prepared a valid will in which she stated, “I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam.”</p> <p>Wendy died. Following her death, both Dot and Sam were surprised to find her will.</p>

Now let’s do some practical application.

**PRACTICAL APPLICATION SECTION.
STEP ONE: LABELING**

Introduction.

Below are three acts. Please perform them now.

Act 1.

Grab a sheet of paper. Recall these three words: “Highlight,” “Obstacle,” and “Obvious.”

Write down the individual letters in a vertical manner as you would on the exam:
H – O – O. It should look something like this:

H
O
O

Act 2.

Then write these set of words as you would on the exam.

Major Issues: Exceptions / Defenses
Triggering Issues.

Act 3.

Find some place where you can store these notes. It should be a place that you can access quickly for reference purposes.

Conclusion.

Let’s do a practical application of Step Two now. Remember that Step Two is where you read the questions.

**PRACTICAL APPLICATION SECTION.
STEP TWO: READING THE QUESTIONS**

Step Two of Issue Spotting Steps: Approaching the Call of the Question.

After labeling your essay, you are going to read the question stems. This sounds like a simple step. However, it is one of the most important steps. If you do not get this step right, you can write an excellent analysis and still not get a passing grade. This can occur when you do not answer the questions properly. In other words, when must be responsive.

We are going to discuss some steps you can take to ensure you are answering the question you are being asked. The objective is to be responsive.

Steps.

Here are four key areas that you should be mindful of: (1) Subject; (2) Jurisdiction; (3) Parties; and (4) Organization. Remember the mnemonic “SUB-JUR PART-O.” In fact, when you begin to practice, make a note of this mnemonic. You can then begin to phase it out once you internalize this principle.

Subject.

Identifying the subject can be a task that varies in complexity. It can be an extremely simple activity or it can be complex. Again, approach this with care.

Jurisdiction.

The jurisdiction is related to the choice of law that you apply. The choice of law can be generally accepted fundamental legal principles. This means that you may not need to mention the choice of law you will be applying. Always be mindful of the jurisdiction.

Parties.

The call of the question usually tells you who the parties are. Of course, there is also the fact pattern. Focus on who the parties are. Also, know who the non-parties to the case are.

Organization.

Start thinking about how you want to organize your essay. You may have to organize your Evidence essay in a different way than an essay on Wills. You will have to engage every subject to develop your organization techniques.

EXERCISES

Mnemonic.

Do you remember the abbreviations “SUB-JUR PART-O”? Think about what this means. If you can’t remember, the abbreviations means *Subject, Jurisdiction, Parties, and Organization*. Let’s do an example together.

Exercise.

Take the time to write “SUB-JUR PART-O” somewhere. Also, take the time to setup a binder or a folder to keep this information together. Think of learning to write like a lawyer as a sport. The material will grow as you develop these skills. Do your best to keep the material organized.

STEP THREE TO ISSUE SPOT

Major Task.

Read the essay a total of three times.

Step 1 and Step 2 were very mechanical. Now comes the reading part. This is where you apply particular attention to your tasks. In order to issue spot, you are going to read the essay a total of three times in a very methodical manner.

Commentary.

Here is an overview of the tasks we have just covered. We'll just call this *The Roadmap* and we'll build on this. Here is the overview:

The Road Map To Issue-Spotting.

The Three (3) Steps:

- 1. Step 1: Label Your Essay (H-O-O).**
- 2. Step 2: Read the question(s).**
- 3. Step 3: Read the Fact Pattern 3 Times.**

Let's now talk about reading the fact pattern three times. At this point in the approach, all is calm. Let's go to the First Read now.

THE FIRST READ UNDER STEP 3

i. Perform 1st of 3rd Read Under Step 3.

We are still in the Issue-Spotting section of IRAC. The same 15 of 60 minutes still apply here. Remember that your principal objective is to read the fact pattern so that you identify the major issues. As such, we will refer to the reading steps as the First Read, the Second Read, and the Third Read.

Step 3 of 3.

Here is the Road Map for Just Step 3 (the reading part).

Step Three: Read the Fact Pattern 3 Times.

i. First Read.

ii. Second Read.

iii. Third Read.

Mood Chart of The Three Readings.

Take notice that the steps in the First Read will be confusing. However, the Second Read and the Third Read will be much more manageable.

Here is a quick chart to prepare you for the feelings you may experience.



First Read = Confusion

Second Read = Clarity



Third Read = Enjoyment

With this said, let's focus on the First Read.

THE FIRST READ

Introduction.

Welcome to the First Read. We are going to add three additional steps here. See the words in red below.

Step Three:

i. **First Read under Step Three** (Perform these three sub-steps contemporaneously.)

- A. **The Smell Test.**
- B. **Look for Obstacles.**
- C. **Look for the Obvious.**

ii. **Second Read under Step Three**

iii. **Third Read under Step Three**

At first, the steps in the First Read may seem excessive and confusing (as stated earlier). However, with practice, this will all make perfect sense. More importantly, you be extremely prepared for any question because you are approaching the exam in a methodical manner. You are in control! Let's get more detailed now.

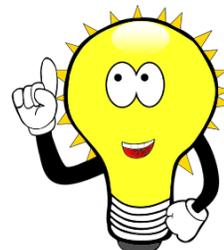
Overview: Take Notice Of Certain Clues.

In the First Read, you have already noticed that there are three sub-steps. Think of these steps as looking for clues to identifying the major issues. These are again listed below. Let's go over these terms now.

1. **The Smell Test.** This is where you take notice of facts that appear as if they are composing a major issue. You are pretty much doing a *smell check* to spot elements. **DO NOT MAKE DEFINITE CONCLUSIONS ABOUT MAJOR ISSUES THAT SEEM TO BE PRESENT.** Many examinees are impulsive. This is dangerous because it can be a trap. The major issues may not be apparent. Remember that this is the first read.



2. **Obstacles.** Here, you are taking notice of *Obstacles* while reading. Obstacles are sentences or words that interrupt the smooth flow of the reading.



3. **Obvious.** This is where you take notice of *Obvious* issues. We'll discuss these terms in detail in a bit.

Commentary.

Again, these three acts will be performed concurrently to each other. Meaning it will take practice to master this. Yes, talk about multi-tasking. Just remember, this is a skill and you must develop it. Be patient and approach this with enthusiasm and determination. Remember that you are training to write like a lawyer. This is not an easy task. But you can excel at this skill and that is why you are reading this material.

During this stage, feel free to use highlighters. You should have a yellow, orange, blue, and pink highlighter (or four different colors of your choice). For the First Read under Step Three, grab that yellow highlighter.

Before continuing, I want to make it clear that during this First Read, you should *not* make any absolute determinations about issues that may be present. You are just reading to get a feeling for the facts. You are exploring what major issues can possibly be found there.

To emphasize the points made here: do not be mechanical in establishing your conclusion. Remember that you must still complete the Second Read and the Third Read. Let's continue discussing the three acts which you must perform during the First Read. These will be discussed in no particular order.

PRACTICABLE APPLICATION TIME.

Introduction to Practicable Application.

Let's take an example. This is the actual hypothetical from the California Bar Exam that was administered in February of 2015.

The entire question is listed below (including the call of the question). See if you can get a feel for the presence of elements to an issue or issues. We'll assume you have read the question and you have determined that we are in Contracts (the question will be placed above the hypothetical for instructional purposes). Please read it once now. Keep in mind that we are under Step Three and doing the First Read.

Call of the Question.

Have Marta and/or Don breached the contract? If so, what damages might be recovered, if any, by each of them? Discuss.

Hypothetical.

On February 1, Marta entered into a valid written contract with Don to purchase a Bait Mate cooler for \$5,500 to be delivered no later than April 15.

On February 15, Don called Marta and told her that he was having trouble procuring a Bait Mate cooler. Marta reminded Don that meeting the April 15 deadline was imperative. "I'll see what's possible," Don responded in a somewhat doubtful tone. Concerned that Don might be unable to perform under the contract, Marta immediately sent him the following fax: "I am worried that you will not deliver a Bait Mate cooler by April 15. Please provide your supplier's guarantee that the unit will be available by our contract deadline. I want to have plenty of time to set it up." Believing that Marta's worries were overblown and not wanting to reveal his supplier's identity, Don did not respond to her fax.

When Don attempted to deliver a Bait Mate cooler on April 16, Marta refused delivery. Marta had purchased a Bait Mate cooler from another seller on April 14, paying \$7,500, which included a \$2,000 premium for one-day delivery by April 15.

Have Marta and/or Don breached the contract? If so, what damages might be recovered, if any, by each of them? Discuss.

End Sample.

The important question is this: Can you see that there are facts that seem to be constructing the elements of an issue? If you spotted the potential issue, then that is outstanding. What is it? You can say it in your mind. The answer is below.

The Major Issue seems to be Anticipatory Repudiation. We'll put an emphasis on *seems* because we don't want to be impulsive. Let's look at the fact pattern again together. This time we'll underline the key facts.

Sample Hypothetical.

On February 1, Marta entered into a valid written contract with Don to purchase a Bait Mate cooler for \$5,500 to be delivered no later than April 15.

On February 15, Don called Marta and told her that he was having trouble procuring a Bait Mate cooler. Marta reminded Don that meeting the April 15 deadline was imperative. "I'll see what's possible," Don responded in a somewhat doubtful tone. Concerned that Don might be unable to perform under the contract, Marta immediately sent him the following fax: "I am worried that you will not deliver a Bait Mate cooler by April 15. Please provide your supplier's guarantee that the unit will be available by our contract deadline. I want to have plenty of time to set it up." Believing that Marta's worries were overblown and not wanting to reveal his supplier's identity, Don did not respond to her fax.

End Hypothetical.

You can see that many facts lead to a reasonable conclusion that an issue to explore may be anticipatory repudiation. Thus, it may be a good idea to write down *Major Issue?* next to the paragraph where you see the most key facts pertaining to this possible issue.

Later, you will learn about *Juicy Facts*. Remember this: The more Juicy Facts you use, the more juicy points you can score. We'll learn more about Juicy Facts and techniques later during the Major Issue Analysis section.

Think In Terms of Percentages For This Area.

For now, just think in terms of percentages. If there is a section with many words that seem to be making up the elements to an issue, there may be a major issue there. Approach with extreme alertness.

This concludes the first of three activities that you perform on the First Read. Now on to the Second Read. But first, let's get an overview to make the steps clear.

ROAD MAP AND REVIEW CONTINUED

The Road Map.

Here is the Road Map again. Take note that we are still under the First Read under Step Three. At this time, please direct your attention to the three sub-steps under the First Read. The sub-steps appear in **red font**.

In more detail, there are three major reading steps used in reading the hypothetical. The purpose is not to present a confusing format. But you must understand that these are very important steps. Given the limited time and the complexity of the exam, you must exercise patience and relentless pursuit. This applies especially to the First Read. That is really when you begin to perform the heavy tasks.

The Road Map To Issue-Spotting

The Three (3) Steps:

1. Step 1: Label Your Essay (H-O-O).
2. Step 2: Read the question.
3. **Step 3: Read the Fact Pattern 3 Times.**
 - a. **First Read** – Do Three Acts Contemporaneously.
 - i. The Smell Test.**
 - ii. Look for Obstacles.**
 - iii. Look for the Obvious.**
 - b. Second Read
 - c. Third Read

Use this road map as a guide. Remember that many of the steps will have to be performed concurrently. Your mind will be very active and this may cause you to experience fatigue after you complete your writing activities. When this happens, remember that you are learning. And you should feel exhausted.

As a side note, getting exercise and proper rest is important. When you exercise and when you rest, you are allowing your mind to absorb what you have learned. Consider these other activities as part of your studying tasks.

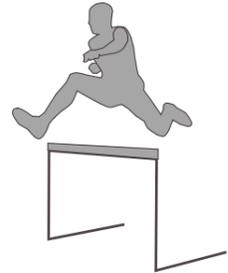
Let's now move on to the second sub-step of the First Read. This is the Obstacle part.

"Obstacles are opportunities in disguise." –Deepak Chopra

**OBSTACLES:
THE SECOND SUB-STEP OF
THE FIRST READ**

Task: Identify Obstacles As You Read.

As stated above, this is the second technique that is to be applied during the First Read. This is yet *another* method that can clue you in to the presence of a major issue. No issue is going to escape our attention! We are on this!



At times, as you have probably noticed, the facts will sound confusing as you read them. In other words, the smooth flow of your reading will be interrupted. When that happens, pay special attention to the facts that apply to the actors in the facts. Also, pay attention to the possible presence of more than one issue potentially being present.

Furthermore, here are some adjectives to describe the writing:

Murky, confusing, ambiguous, and wordy.

Note that this list is not exhaustive. Therefore, go with your natural senses here. Also for this reason, it is important to not be nervous. Feeling nervous or tense is actually counterproductive to your success.

As for these obstacles, there are two ways to look at them. First, you can complain and get angry because the exam may attempt to confuse you.

Or, second, you can thank your lucky stars because you just found a major issue hidden under all that mess! I love the second response better.

Let's look at an example. Let's go with Civil Procedure from the California Bar Exam that was administered in July of 2012. As for the choice of law, the Federal Rules of Civil Procedure applied so you are familiar with those set of rules.

Sample Abstract.

Pam and Patrick jointly filed a lawsuit against Corporation in federal district court in State A. In their complaint, Pam demanded damages for personal injury in the amount of \$70,000 and for property damage in the amount of \$10,000; Patrick demanded damages in the amount of \$6,000.

End Abstract.

Let's recall the words that usually characterize an Obstacle. An Obstacle is probably present when the facts appear *murky, confusing, ambiguous, or wordy*.

If any of these characteristics are present, you may be required to *iron* out the situation. So in the abstract above, you have a lot of ironing out to do. Again, don't worry about the specific issues you have to deal with. Not at this point because this is just the first read. But your senses have told you that an obstacle may be present because the situation is not clear.

Here, you would label the side of the paragraph with the words *Major Issue*? The second time you come across this section, your mind will pay particular attention to this section. There are usually important points underneath all that rubble. Now, let's go to the third and last activity that takes place during the First Read.

“There is nothing either good or bad, but thinking makes it so.” –Hamlet

THE OBVIOUS: THE THIRD SUB-STEP OF THE FIRST READ

Task: Identify Obvious Issues.

Again, we’re still in the First Read. This is the third sub-step. Remember that Step One and Step Two were easy to engage. Step One was to label your exam sheet. Step Two was to read the question. It is Step Three where you begin to meet fierce resistance. This is why we are approaching the exam very tactfully.

However, you should appreciate this process. You can think of these steps as fine-tuning your thought process and I want you to get excited. Like Hamlet said: Nothing is good or bad until you decide how to think about it. Below is a Road Map of Step 3 with the Obvious step highlighted in red font.



Step 3: Read the Fact Pattern 3 Times.

- a. **First Read** – Do Three Acts Contemporaneously.
 - i. The Smell Test.
 - ii. Look for Obstacles.
 - iii. **Look for the Obvious.**
- b. Second Read
- c. Third Read

At times, you will be given an obvious issue. It may be so obvious that you forget to mention it. When you see an obvious issue, label your essay exam. Write *OBVIOUS* next to it. This way, you will remember to transfer it to your outline.



For example, in Contracts, a party in the hypothetical may say, “*On the condition that the city pays the electricity costs.*” This sounds like a condition. Just write *Obvious* because they may give you an obvious issue.

This sounds like a simple step. But when you are under pressure, even simple steps may be overlooked.

This completes the topic of the First Read. Now on the Second Read. The Second Read will have less steps. Remember, the Second Read will have the feeling of clarity associated with it.

THE SECOND READ

Perform The Second of the Three Readings.

Task:

1. Identify the *specific* major issues. If you are still unsure of the possible major issues, repeat the First Read.
2. Apply techniques to confirm the major issues. Use the facts in the essay as a guide to perform the steps.

Commentary.

You have now performed the First Read. Now in the Second Read, you have to decide which *specific* issues are being tested. For example, you have reasonable belief that you are being tested on anticipatory repudiation or supplemental jurisdiction.

Keep these issues in mind as you enter your second reading. Also, grab the orange highlighter (you already used the yellow one). Let's focus here on our location. The Second Read section appears in **red font** below.

Step 3: Read the Fact Pattern 3 Times.

- a. First Read under Step 3 – Perform Three Sub-steps.
- b. Second Read under Step 3 – Think of Specific Issues and Confirm the Issues.**
- c. Third Read under Step 3 – Highlight the “Juicy Facts.”

Now, think about the specific issues you believe you just spotted. We're going to confirm the identity of those issues.

Technique To Confirming The Potential Issues.

Follow these three steps.

First, think about these legal concepts:

EXCEPTIONS, DEFENSES, AND TRIGGERING ISSUES.

Think of these words in relation to the issues you believe you spotted during the First Read. Whoa! Look! You are ahead of the ball game because you have already labeled your essay with these words! In fact, that was one of the first things you did! Do you remember you made notes on top of the essay? Refer to Step One of this section. Also, here is the same diagram.

H
O
O

QUESTION 1

**Major Issue - Exceptions / Defenses
- Triggering Issues**

Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees. At Wendy's death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy's sister, Sis, until Sis's death. At Sis's death, the trust was to terminate and all assets be distributed to Dot. The sole asset in the trust was Wendy's ranch.

Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam."

Wendy died. Following her death, both Dot and Sam were surprised to find her will.

At this point, actually think about the *exceptions*, *defenses*, and *triggering issues* to the issues you spotted on your first read. See if the facts lend themselves to the issues that now come to mind.

If you think an issue is present, but the facts don't support such a discussion, you should not waste much time on that issue. To the contrary, remember this simple quote: "The more facts, the more points." This means that the more facts are present that relate to an issue, the more probable it is a major issue.

Furthermore, when you read the fact pattern during the Second Read, you should be able to start confirming your hunch. Don't force the confirmation. If you can't confirm the major issues, then repeat the previous reading step (the First Read where you perform the Smell Test, the Obstacles, and the Obvious checks). Keep in mind the time constraint. This may put you behind schedule so you may have to modify your timing.

If you can't confirm the major issues during the First Read while you write a practice exam, then it can be a good thing. Take notice of how you react. It is okay if you don't always do great when practicing. But you can be sure that your issue spotting skills and writing are truly being developed.

Examples.

Here are some examples of (i.) Exceptions; (ii.) Defenses, and (iii.) Triggering Issues. Keep in mind that the facts will vary.

(i.) Example of Exceptions: In Evidence, when you have the issue of marital communication privilege, an exception would be *waiver*. Did a holder of the privilege waive his right? If so, a waiver may have occurred and that may destroy the privilege.

Facts to look for: Husband and wife are having a private discussion. It may be that a third party may be eavesdropping.

(ii.) Example of Defenses: In Real Property, in Tenant Landlord areas, did a constructive eviction occur? If so, the tenant may have a defense.

Facts to look for: The landlord refused to repair the elevator even though the tenant had complained for three consecutive months.

(iii.) Example of Triggering Issues: In Civil Procedure, is there more than one plaintiff and did the claims occur in the same controversy? If so, supplemental jurisdiction may be raised.

Facts to look for: Two plaintiffs are suing one defendant in federal court. One of the plaintiffs does not meet the amount in controversy that exceeds \$75,000. Is there supplemental jurisdiction?

The golden rule to remember about major issues is that you *must* explore the exceptions, defenses, and all other triggering issues. Also, when looking for exceptions, defenses, and other triggering issues, apply a *reasonable standard of review* approach. That is to say, would the facts reasonably support such an argument?

As stated above, by the time you complete your second reading, you should know what major issues are being triggered. Also, the highlighted areas should be used as reference points on your essay. As such, you should be able to identify your steps during the second reading. Furthermore, consider the highlighter as training wheels. Once you internalize these steps, you may want to use just color to highlight. Or you may want to discontinue the use of any highlighter.

Real Life Story.

On the first day of the bar exam (February 2015), I used just one yellow highlighter for the one-hour essays. I wasn't thinking of highlighters on the second day since you can't

use highlighters for the MBE section. Also, after the second day was over, I left the center feeling great.

This confidence continued onto the third day of testing (back when it was three days of testing). So I am sitting there and I had my laptop and my pens. I had everything. At least I thought I did. Then the time starts running. I then realized that I did not have my highlighters.

I could have run outside of the testing room and grabbed my highlighters. But I said “No.” I had done many practice essay exams by that point. I felt I didn’t need them. Of course it turns out later that I passed the exam. The point is that you should use different color highlighters at the outset, but you can disregard them after much practice if you desire.

PRACTICAL APPLICATION SECTION – ISSUE SPOTTING

RECAP OF THE FIRST READ AND THE SECOND READ

Task: We will now perform methodical reading. We will do this by reviewing the First Read and Second Read (of Step Three). A diagram is included on this page. Note that the Third Read exercise is not yet included.

We'll briefly go over the steps and then you'll take it from there. This means that you will perform a practical application exercise. First, let's look at that road map again. Focus on the activities for the First Read and the Second Read. These areas are in **red font** below. As for timing, do not time yourself. The exercise is not lengthy.

Road Map To Issue Spot

The Three (3) Steps:

1. Step One: Label Your Essay (H-O-O)
2. Step Two: Read the question.
3. **Step Three:** Read the Fact Pattern 3 Times
 - a. **First Read** – Look for elements to an issue. Do these three acts contemporaneously:
 - i. The Smell Test
 - ii. Look for Obstacles
 - iii. Look for the Obvious
 - b. **Second Read** – Confirmation or Reevaluation Stage
 - i. Two possibilities:
 1. Confirmation or Reevaluation
 2. If reevaluation, you may have to repeat the First Read
 - ii. Will use three key concepts to accomplish the purposes. Here are the concepts:
 1. Exceptions
 2. Defenses
 3. Triggering Issues
 - c. Third Read – Highlight the “Juicy Facts”

End Road Map.

First Read. (Focus on the *Smell Test*, *Obstacles*, and the *Obvious* points.)

This is now the practical application section. There is a complete essay question on the next page. We will work from this exam and develop other concepts so it is important that your approach be engaging. The exam uses generally accepted principles of law. This is

the set same set of laws taught in law school. Note that it is the property of the State Bar of California. Please print out the question that appears on the following page. Afterward, perform the activities for the First Read (which of course include the Smell Test, the Obstacles, and the Obvious steps). Here is the gist of your goal: look for possible elements that may be part of a larger issue.

Also, here are the keywords that you will use for labeling. We'll assume you have labeled the exam. This will help you identify those possible elements. Remember that H-O-O stands for "Highlight," "Obstacles," and "Obvious." Also, write down the words "exception," "defenses," and "triggering issues."

H O O	QUESTION 1
	Major Issue - Exceptions / Defenses - Triggering Issues
	Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees. At Wendy's death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy's sister, Sis, until Sis's death. At Sis's death, the trust was to terminate and all assets be distributed to Dot. The sole asset in the trust was Wendy's ranch.
	Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam."
	Wendy died. Following her death, both Dot and Sam were surprised to find her will.

To complete the First Read, use that yellow highlighter. After you are done, we'll go to the Second Read (which is to confirm or reevaluate what you have read). Don't think too much about it. Just jump into it!

Please go to the next page and complete the exercises for the First Read.

Question

Owner owned and operated a small diner where Cook and Waiter worked. After closing one day, Cook called in sick for the following day. Owner knew that an acquaintance, Caterer, owned and operated a catering business. Owner asked Caterer to fill in for Cook. Owner told Caterer: "I want you to run the kitchen for one day. I will pay you your standard catering fee. I just need somebody who knows what he's doing." Caterer agreed, telling Owner, "I'll bring my own knife set, but I assume the kitchen is fully equipped." Owner did not check Caterer's references. If he had, he would have learned that Caterer's business had once been shut down by the health department.

Caterer went to Owner's diner and started to cook. Patron, a customer, ordered chicken wings from Waiter. Waiter gave the order to Caterer.

A notice posted on the kitchen wall, entitled "Health and Safety Code Section 300 Notification," stated: "To avoid food poisoning, all poultry products must be cooked at a minimum temperature of 350 degrees." Upon observing that the oven was set at 250 degrees, Waiter informed Caterer that the oven should be set at 350 degrees. Caterer responded: "Just worry about waiting tables, and leave the cooking to me." Caterer did not raise the temperature of the oven, and removed the chicken wings shortly thereafter.

Waiter served Patron the chicken wings. Patron ate the chicken wings and suffered food poisoning as a result.

Under what theory or theories, if any, might Patron bring an action for negligence against Caterer, Waiter, and/or Owner, and what is the likely outcome? Discuss.

End Question.

This is the end of the exercise for the First Read. Please continue to the next page.

Sample Response To First Read.

Here is a sample approach. You may have something similar. Keep in mind that responses can vary. After you compare, go to the next page please.

Question

Owner **owned and operated a small diner** where Cook and Waiter worked. After closing one day, Cook called in sick for the following day. Owner knew that an **acquaintance, Caterer, owned and operated a catering business**. Owner asked Caterer to fill in for Cook. Owner told Caterer: "I want you to **run the kitchen for one day**. I will pay you your standard catering fee. I just need somebody who knows what he's doing." Caterer agreed, telling Owner, "I'll bring my own knife set, but I assume the kitchen is **fully equipped**." Owner **did not check Caterer's references**. If he had, he would have learned that Caterer's business had once been shut down by the health department.

Caterer went to Owner's diner and started to cook. **Patron, a customer**, ordered chicken wings from Waiter. Waiter gave the order to Caterer.

A notice posted on the kitchen wall, entitled "Health and **Safety Code Section 300** Notification," stated: "**To avoid food poisoning**, all poultry products must be cooked at a minimum temperature of 350 degrees." Upon observing that the oven was set at 250 degrees, **Waiter informed Caterer that the oven should be set at 350 degrees**. Caterer responded: "Just worry about waiting tables, and leave the cooking to me." Caterer **did not raise the temperature** of the oven, and removed the chicken wings shortly thereafter.

Waiter served Patron the chicken wings. Patron ate the chicken wings and suffered food poisoning as a result.

Under what theory or theories, if any, might Patron bring an action for **negligence** against Caterer, Waiter, and/or Owner, and what is the likely outcome? Discuss.

End Question.

Recap.

Make a list of the issues or elements that you think are present. Feel free to include facts to match those possible issues or elements. Also, check to see if there is an obstacle or obvious issue. Don't think too much time on this task. On the next page, you'll see a sample listing.

Reader's List and the Possible Issues:

Obstacles or Obvious Issues (H-O-O Section).

End writing activity.

SAMPLE RESPONSE TO THE FIRST READ

Annotations That May Form An Element, Rule, Or Issue.

By looking at the yellow highlighted words, it looks like we may have the following issues.

1. A business owner and an independent contractor (Caterer).
2. Respondeat Superior (Owner may be responsible for Caterer's *and* Waiter's actions).
2. Negligence by Owner.
3. Duty owed to a member of public (Patron). Not sure if it's a major issue.
4. Negligence Per Se (a government note was posted).
5. Negligence by Caterer.
6. Negligence by Waiter.

H-O-O Section.

Obstacle.

1. The issue of an independent contractor. Here are questions that I have: does being designated an independent contractor help or harm Caterer? It will probably help Caterer him since the Owner may be found liable. Keep this issue in mind and *don't* make a conclusion yet. Write *Obstacle* next to the paragraph where this appears.

This area can be murky. Again, label this as an "Obstacle."

Obvious.

Also, I noticed something obvious. There is a governmental notice. We could have negligence per se here.

Do you have something similar? It doesn't have to be super organized. You will take care of the organization once you perform your outline. Now let's do the Second Read. Please see the next page.

PRACTICAL APPLICATION AND THE SECOND READ

Second Read.

Remember that here, we are trying to confirm the specific issues. Also, by writing “major issues: exceptions, defenses, triggering issues,” you have already warmed up. We have let our mind know what we are looking for. This is great because we’ll *add* a heading to address these concepts below. You will not add the heading when you perform your practice essays. You’ll do it here just to get an idea of how these steps function. The headline will look like this:

Obstacles/Obvious (H-O-O)” and the “Exceptions, Defenses, and Triggering Issues.”

Now with that orange highlighter, look for facts that will confirm the list we have already created. Let’s see if we can confirm. If not, we may have to do another First Read.

Use the same sheet where you performed the First Read. Begin your exercise now.

List the issues that you confirm:

Reader’s List and the Possible Issues:

Obstacles/Obvious (H-O-O)” and the “Exceptions, Defenses, and Triggering Issues.”

End writing activity.

Sample Response.

Here is a sample response. Instead of using an orange highlighter, it is marked in red. This is because the color orange was not available on Word.

h
o
o

major issues: exceptions, defenses, triggering issues.

Question

Owner owned and operated a small diner where Cook and Waiter worked. After closing one day, Cook called in sick for the following day. Owner knew that an acquaintance, Caterer, owned and operated a catering business. Owner asked Caterer to fill in for Cook. Owner told Caterer: "I want you to run the kitchen for one day. I will pay you your standard catering fee. I just need somebody who knows what he's doing." Caterer agreed, telling Owner, "I'll bring my own knife set, but I assume the kitchen is fully equipped." Owner did not check Caterer's references. If he had, he would have learned that Caterer's business had once been shut down by the health department.

Caterer went to Owner's diner and started to cook. Patron, a customer, ordered chicken wings from Waiter. Waiter gave the order to Caterer.

A notice posted on the kitchen wall, entitled "Health and Safety Code Section 300 Notification," stated: "To avoid food poisoning, all poultry products must be cooked at a minimum temperature of 350 degrees." Upon observing that the oven was set at 250 degrees, Waiter informed Caterer that the oven should be set at 350 degrees. Caterer responded: "Just worry about waiting tables, and leave the cooking to me." Caterer did not raise the temperature of the oven, and removed the chicken wings shortly thereafter.

Waiter served Patron the chicken wings. Patron ate the chicken wings and suffered food poisoning as a result.

Under what theory or theories, if any, might Patron bring an action for negligence against Caterer, Waiter, and/or Owner, and what is the likely outcome? Discuss.

End Second Read Activity.

SAMPLE RESPONSE TO THE SECOND READ

Here is a sample response to the Second Read activity. Again, the issues will be organized during the outlining sections (later in this text). As such, you can view this list as a draft. Also, a conclusion is not meant to be stated.

Annotations That May Form An Element, Rule, Or Issue.

1. Negligence action by Patron against Waiter. Waiter could argue that his actions did not fall below the standard of care.
 - Note that Owner can be liable for Waiter's actions under a theory of Respondeat Superior. (This could be a triggering issue. Analyze this.)
2. Defense of Owner: Caterer can be an independent contractor. Analyze this.
3. Negligence claim by Patron against Owner. Duty of people on land. Is Patron an invitee? (Note: this can probably fit under the category of a triggering issue. But it does not seem that there are enough facts. If there are *not* enough facts, do not waste valuable time assuming details. Remember this catchy phrase: The more facts. The more points!)
4. Negligence claim by Patron against Owner for contracting Cook.
5. Negligence Per Se discussion regarding Patron against Cook.

There seems to be a lot of discussion around Owner. When it comes time to outline, you will have the opportunity to organize your thoughts. Now, let's go on the H-O-O section.

“Obstacles/Obvious (H-O-O)” and the “Exceptions, Defenses, and Triggering Issues.”

Now pay close attention to this as we will add to the “H-O-O” activity. This is key! This can get you extra points. In the Second Read is where you have to systematically explore these concepts: *exceptions, defenses, and triggering issues*. Let's go to the Obstacle section first. Notice that we did not discuss the “H.” We'll talk about that later since that is just a note associated with highlighting.

Obstacles.

Under the heading of Patron v. Caterer, we can have the issue of an independent contractor. Is there an *exception* to this? Can the duty be delegated by the Owner to the Caterer? Is this considered inherently dangerous work? These are things you have to think about. Therefore the status of an independent contractor may not be allowed as a defense and the Owner may be liable for Caterer's actions. This may definitely be worth discussing.

The learning objective here is that you can get points by exploring obstacles. During the First Read, the relationship between the Owner and Caterer was murky. But during the Second Read, you can definitely discover key issues.

Review.

Did you have something similar? This is from Question 6 of the July, 2016 California Bar Exam. Feel free to scan the model answers. But we suggest you wait till later to read the model answer. We'll return to this question later. Let's move on now. At any rate, here is the link just in case you wish to view it now:

<http://juraxbar.com/wp-content/uploads/2016/04/July-2014-CBX.pdf>

We have now performed steps for the First Read and Second Read. Next time we'll do an exercise for the Third Read. Please keep this activity readily available for future use.

THE THIRD READ

Introduction.

This is the last focused thorough read. By the time you enter into this stage, you should know exactly what issues you are going to discuss. Now it's time to decorate your response. By the way, this is a *very important part*. Let's first look at the Road Map. Focus on the Third Read below (which is in **red font**).

Step Three.

Read the Fact Pattern 3 Times.

- a. First Read.
- b. Second Read.
- c. Third Read.**

We're now going to identify words that add juice to your writing. Let's call them Juicy Facts. These Juicy Facts may be found throughout the fact pattern. When you outline and when you write, these words will be used to enforce your analysis. At that point you will be able to put them into a specific and powerful context.

Here is what you will be looking for:

In particular, you will be looking for *adjectives, verbs, or adverbs*. Also, you will be looking for words *that seem out of place*. Furthermore, be on the lookout for *phrases that are descriptive*.

You may want to use a different color highlighter in this section. You already used yellow and orange. Use the blue highlighter.

Here are clues to spotting Juicy Facts: 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.

By the time you complete the Third Read, you should be extremely familiar with the fact pattern. If you feel as if you don't understand the facts, by all means, read the fact pattern again. You will then have to modify your timing schedule. If you do, set up a time schedule where you finish your response. Remember that if you go over 60 minutes in one essay, you risk running out of time when you approach another essay (or running out of time as a whole).

Let's now do a practical exercise on the Third Read of course. But wait. Before moving to the next section, I'll give you another reason as to why this is a very important step. You will use the facts you highlighted to discuss major issues. Let me emphasize this: the

Juicy Facts will *directly* go towards discussing major issues. We'll make the connection when we get to the outlining section so hold that thought!

PRACTICAL APPLICATION AND THE THIRD READ (JUICY FACTS)

Task:

Review the meaning of Juicy Facts and apply them to a hypothetical.

Exercise.

Now it is your turn to perform the Third Read exercise. At this time, locate the hypothetical that we performed at the last lecture. Yes, Question 6, the Torts essay. Go ahead and briefly refresh your memory by looking at your notes.

For this next step, grab the blue highlighter. Since we already defined the Juicy Facts, go ahead and highlight them as you read the facts. Start now and we'll reconvene after this task.

Question

Owner owned and operated a small diner where Cook and Waiter worked. After closing one day, Cook called in sick for the following day. Owner knew that an acquaintance, Caterer, owned and operated a catering business. Owner asked Caterer to fill in for Cook. Owner told Caterer: "I want you to run the kitchen for one day. I will pay you your standard catering fee. I just need somebody who knows what he's doing." Caterer agreed, telling Owner, "I'll bring my own knife set, but I assume the kitchen is fully equipped." Owner did not check Caterer's references. If he had, he would have learned that Caterer's business had once been shut down by the health department.

Caterer went to Owner's diner and started to cook. Patron, a customer, ordered chicken wings from Waiter. Waiter gave the order to Caterer.

A notice posted on the kitchen wall, entitled "Health and Safety Code Section 300 Notification," stated: "To avoid food poisoning, all poultry products must be cooked at a minimum temperature of 350 degrees." Upon observing that the oven was set at 250 degrees, Waiter informed Caterer that the oven should be set at 350 degrees. Caterer responded: "Just worry about waiting tables, and leave the cooking to me." Caterer did not raise the temperature of the oven, and removed the chicken wings shortly thereafter.

Waiter served Patron the chicken wings. Patron ate the chicken wings and suffered food poisoning as a result.

Under what theory or theories, if any, might Patron bring an action for negligence against Caterer, Waiter, and/or Owner, and what is the likely outcome? Discuss.

End Question.

This is the end of the hypothetical. Please continue to the next page.

Sample Response.

Here is my response. My Juicy Facts are highlighted in the light blue/aqua color. You may have something similar. Keep in mind that responses can vary. Also, take notice that the activity is “easier” to accomplish as compared to the activity you did for the First Read. The First Read was tough but you carried it out with strategy. Now you are applying advanced techniques. Take a look now at the relevant highlighted words.

h

o

o

major issues: exceptions, defenses, triggering issues.

Question

Owner owned and operated a small diner where Cook and Waiter worked. After closing one day, Cook called in sick for the following day. Owner knew that an acquaintance, Caterer, owned and operated a catering business. Owner asked Caterer to fill in for Cook. Owner told Caterer: “I want you to run the kitchen for one day. I will pay you your standard catering fee. I just need somebody who knows what he’s doing.” Caterer agreed, telling Owner, “I’ll bring my own knife set, but I assume the kitchen is fully equipped.” Owner did not check Caterer’s references. If he had, he would have learned that Caterer’s business had once been shut down by the health department.

Caterer went to Owner’s diner and started to cook. Patron, a customer, ordered chicken wings from Waiter. Waiter gave the order to Caterer.

A notice posted on the kitchen wall, entitled “Health and Safety Code Section 300 Notification,” stated: “To avoid food poisoning, all poultry products must be cooked at a minimum temperature of 350 degrees.” Upon observing that the oven was set at 250 degrees, Waiter informed Caterer that the oven should be set at 350 degrees. Caterer responded: “Just worry about waiting tables, and leave the cooking to me.” Caterer did not raise the temperature of the oven, and removed the chicken wings shortly thereafter.

Waiter served Patron the chicken wings. Patron ate the chicken wings and suffered food poisoning as a result.

Under what theory or theories, if any, might Patron bring an action for negligence against Caterer, Waiter, and/or Owner, and what is the likely outcome? Discuss.

End Response.

Review.

Did you have something similar? Again, answers can vary. Did you notice that some of the highlighted words overlapped? This is fine. This means you already made the fact a target. Did you also notice that you now have a clear understanding of the facts? At this point, hold on to these notes. Later in the major issue analysis segment of this writing, we will return to a discussion of Juicy Facts.

This now completes the discussion of the Issue in IRAC. Let's now talk about the Rule in IRAC.

CHAPTER 2
THE “R” FOR “RULE” IN IRAC

CHAPTER 2

THE ONE-HOUR ESSAYS – THE “R” FOR “RULE” IN IRAC

Introduction.

This chapter focuses on the “R” for “Rule” in IRAC. It is broken down in the following format.

Section 1: **Writing Your Outline.**

Section 2: **Timing.**

Section 3: **Organizing The Issues and Rules.**

Section 4: **Memorizing The Rule.**

Time allotted on exam to outline: **10 minutes out of 60 minutes.**

“Every battle is won before it’s ever fought.” –Sun Tzu.

SECTION 1: THE RULE

Objective.

Write your outline.

Introduction.

Your outline is where the success on the essays is largely determined. The major issues and facts will be written here. Also, you will allocate time to each major issue.

When Doing Practice Essays (Not On Actual Exam).

When writing your outline, use at least five sheets of scratch paper. Number these pages 1 to 5. Number them at the bottom. This will allow for reference and organization. You have at least five pages for outlining and that should be enough. There is no need to feel claustrophobic here.

The first task is to write the question number and subject on your scratch paper. You will have five one-hour essays to perform. Just write which of the five questions you are dealing with. Of course, if you are doing an exam from February 2017 or earlier, you will have 6 one-hour essays. The question number will already be labeled as shown below. Here, you would write “Question 1” on the first page of your outline.

<u>QUESTION 1</u>	Highlight Obstacle Obvious
<p>Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees. At Wendy's death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy's sister, Sis, until Sis's death. At Sis's death, the trust was to terminate and all assets be distributed to Dot. The sole asset in the trust was Wendy's ranch.</p> <p>Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam."</p>	

Using Your Prior Knowledge To Outline.

Once you reference your scratch paper, then you can begin to outline. For this first stage of outlining, you can largely rely on your prior knowledge when it comes to outlining. We'll then add some strategies to that approach.

Abbreviations.

You may use abbreviations and make up your own if need be. Let's look at an example.

If we're in Civil Procure, a heading on your outline can reflect the following without using abbreviations. Also, we'll suppose that "Question #1" refers to the question *within* the hypothetical:

Question. #1, Corporation's Motion to Dismiss appeal regarding: lack of personal jurisdiction.

Here is the same version using abbreviations: *Q. #1. Corp's Motion to Dismiss Appeal re: lack of per. jx.*

Try to be specific and to duplicate the actual question. This way, you will understand clearly what the question is asking you.

This may sound untrue but many examinees answer the wrong question. They are not responsive to the question that is being asked. You want to avoid this and there are strategies which we'll cover in a bit. For example, you can use headlines and this will serve as a transition to the next topic.

Placing Headings On Your Outlines.

Your next step will be to write the issue as a heading. The definition of *issue* is broad here. It is pretty much a reflection of the question stem. The major issue may be stated in the question. Or it may not. Then below the heading, write down the elements to the issue.

Example:

(1) SMJ (Commentary: Just write the abbreviation. SMJ stands for Subject Matter Jurisdiction.)

1. Fed Ques.

2. Diversity

A. Exceeds \$75K

B. Plaintiff(s) and Defendant(s) from different states

Notice how you use the key words for the rule. Then briefly add the facts.

Key Facts.

Focus on identifying just the key facts. If necessary, write down *See Essay* if you feel that looking at the actual essay-hypothetical will develop your outline. Also, you should do this when there are many facts that are clustered together. We'll do an example now.

Here is a sample using Question #1. Note that relevant issues, rules, elements, and the facts will be added.

Q. #1. Corp's Motion to Dismiss Appeal re: lack of pers. jx.

1. Fed Ques.

No.

2. Diversity

A. Exceeds \$75K

Pam

- meets \$75K

See notes

Patrick

- does not Meet

B. Plntf and Defs different state

Yes. *See essay for facts.*

Commentary.

Notice the “*see essay for facts*” statement above. It is shown here for instructional purposes. If you can quickly refer to the facts in the hypothetical, write this brief statement on your outline. Then refer to that part of the hypothetical when you are in your analysis and typing/writing stage. Having specific information may be absolutely necessary. We’ll talk more about the necessary words during the Analysis section.

More on the Use of the Words: See Essay.

There is a lot of information being conveyed. This information will make sense once you start rehearsing these steps. With this said, let’s continue.

There is another reason for using the note “*See essay for facts.*” Do this when it feels like a major issue is present.

You then have to go to that part of the essay and draw out the Juicy Facts. Remember that the Juicy Facts have already been highlighted and are just waiting to be used. For now, let’s continue building on the outline.

Exam Tip.

Leave obvious space between major issues or sub-headlines under Question #1. This is because you may need to add additional issues or sub-headlines. This is a very important step. In fact, let’s go there now.

Commentary.

Also, notice that it states *Yes, see essay for facts.* As stated above, do this when it feels like a major issue is present. You then have to go to that part of the hypothetical and draw out the Juicy Facts.

Furthermore, your outlining method will be refined with drills. As such, it is okay if you don't do exactly as it is stated here. The important thing is for you to develop and master your own style.

Advanced Technique.

Let us assume you have one major issue and two elements. We'll also assume that one of the two elements does not require much discussion. This may be because there is no controversy there. However, the second element does require much more discussion.

Place the element that does not require much discussion first on your outline. Briefly talk about it to move it out of the way. Then advance towards the element that requires a heavy discussion. This is because you may need more space on your outline. Moreover, by the time you transfer the content to your computer, it will flow much better.

Example.

We're in Civil Procedure and we're discussing Diversity Jurisdiction. The element of "Different States" is not in controversy. However, the "Exceeds \$75,000" element is a hot topic. What you want to do is to write the "Different States" first on your outline. Then add "Amount in Controversy" after that. This is because you may discuss other issues after the amount topic. For example, you may be required to analyze supplemental jurisdiction. If so, you'll have more space on your scratch paper to deal with that issue.

Advanced Outlining Tip.

See this brief clip. It deals with structuring your outline. This is important because the order of your content may directly impact the quality of the written essay you submit. Here is the video: https://www.youtube.com/watch?v=tT_MRWCXZmU Note: if you are unable to access it with a click, please copy and paste the link onto your browser.

Moving On The Next Question Within The Same Hypothetical.

Once you are done with outlining Question #1, move on to Question #2 (the question within the same hypothetical). Perform Question #2 on the next sheet of scratch paper. You will then repeat this step until you have answered all of the questions. At this time, let's do a practical application exercise relating to the outlining activity.

PRACTICAL APPLICATION OUTLINING CONTINUED

Let's do a quick outline for the torts question we have been working on (Question 6, July 2014 California Bar Exam). Don't worry. We are not going to write a full outline. At least not at this point because you are still familiarizing yourself with these advanced steps.

However, let's do a fraction of outline to get the gist of this. Let's just focus on Patron v. Caterer (we'll leave the Waiter and Owner segments out for now). Also, just perform "Duty" and "Breach." Again, "Causation," "Damages," and "Defenses" are pretty straightforward here so don't write on that for now.

Performing A Fraction Of An Outline.

At this time, please do an outline for Patron v. Caterer. There will be a sample below. Remember that your skills improve when you perform the actual work (versus reading or listening to a lecture). Again, just focus on "Duty" and "Breach".

Please start now. We'll reconvene after you complete the outline.

Sample Outline

Here is a model based on this activity. It does not have to be exact. There will be commentary on key points below. These annotations will be in *italics*.

Patron v. Caterer

Duty

Maj/Min View

(The majority and minority view do not take long. So I threw them in there.)

Patron customer at diner.

Standard of Care

Reasonable person
in similar position?

Reasonable person
acting as a cook in
restaurant.

Breach

Fall below standard of care?

See facts. *(Here, I will refer back to the hypothetical. I will use the Juicy Facts to make my point. Grader will base his score on whether the facts are used.*

- Poultry should be cooked at 350

degrees

- Cooked at 250
- Waiter informed to set at 350
- Did not raise temp.
- Served to Patron.

Negligence Per Se *(Again, notice how this falls under Breach. This saves you time. It also let's the exam grader know that you understand the substantive law. Otherwise, as stated earlier, a lack of structure can result in a non-passing score.)*

Statute Present
i. Type of harm
ii. Plaintiff within class

Yes. See facts.
Food poisoning (ate chicken)
See facts. Statute.

End Sample Outline.

Self-Evaluation Stage.

How did you do? Do you notice how the issues and the facts were well organized? Remember that the organization is just one large part of a passing exam. Writing a concise analysis is the other large part. We'll get to that later.

Also, notice that a conclusion was *not* written. This was done for two reasons: (1) To save time in performing the outline. (2) Because you should make a final determination once you begin to write *and* analyze the content.

Let me give you an example. Let's use this same hypothetical. Let's say I would have concluded that Caterer is an independent contractor on my outline. After all, it is very likely that he meets the criteria.

Let's further assume that I would have written the conclusion as such: "Caterer is an independent contractor. Thus, there is no liability to Owner." Then that issue would be settled. However, there are exceptions to where an owner would be found liable (as we discussed earlier, non-delegable duties could apply). Remember to keep an open mind for exceptions, defenses, and triggering issues. Can you see how everything is coming together now? This ends the outlining section. However, there is one more step that involves a 4th reading. Let's go there now.

End Practical Application Section.

THE FOURTH READ

Introduction to the Fourth Read.

This is somewhat of a surprise because this is the first time a *Fourth Read* is mentioned. It's not really a thorough read.

Key:

Do not underestimate the simplicity found in this step. You may find extra points here. Or you may also discover a new word that substantially impacts your analysis.

Task: Skim the Hypothetical.

Once you are done performing the outline, you will just *skim* the essay. By this time, you should be extremely familiar with the facts in the essay so if something is left out, you will catch it. During this step, you will catch anything that you didn't catch during the initial three readings. Consider this a safety net.



The point is that this 4th Read is an action that is not taken lightly. Moreover, the first letter that you labeled is an *H* for *Highlight*. The diagram is shown below.

<u>QUESTION 1</u>	Highlight Obstacle Obvious
<p>Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees. At Wendy's death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy's sister, Sis, until Sis's death. At Sis's death, the trust was to terminate and all assets be distributed to Dot. The sole asset in the trust was Wendy's ranch.</p> <p>Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam."</p>	

If there is an *obstacle* or an *obvious* fact you didn't use, highlight it in pink. Generally speaking, you want to use all of the facts. At this point, just decide if the fact(s) you did

not use are relevant. As such, you may or may not use it depending on your judgment. If you discover that you indeed missed something, transfer it to your outline at this moment. This will probably be the last time you get to check because after this, you will begin writing. As stated above, H-O-O is a guide and a checklist. If you feel you have covered all of your bases, then, let's move on.

Why the “H” is the First Letter in *H-O-O*.

As a concluding point, the “H” in *H-O-O* is written first. This is done to emphasize the importance of this step. In other words, this step ensures that you have captured all of the important facts that may lead to a major issue. This now concluded the topic on outlining. We'll next move to the A in IRAC.

Conclusion.

So far so good! There is a lot of work to be done. But this will pay off because your lawyer-writing skills are getting stronger. You are making progress. Let's now discuss timing.

SECTION 2: TIMING

Alert: Very Powerful Timing Techniques. Note that we are still under the Rule section of IRAC.

FAQs.

Here are some common questions that examinees deal with. We will address them in this section.

- 1. I don't have much to say. How can I find more to say?**
- 2. I run out of time. How do I not run out of time?**

These questions can be answered by applying timing techniques. Here are the steps to determine how much time to dedicate to each question, or issue.

First, here is a recap of the time that has already been used:

1. Reading the Essay: **15 minutes**
2. Outlining: **10 minutes**

Total Time Used: **25 minutes**

Time Remaining: **35 minutes**

So the question is, how do we break up those 35 minutes that remain? Let's go to the next page.

Example.

(1) SMJ

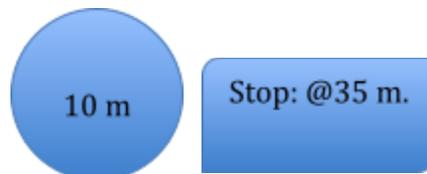
1. Fed Ques. No.

2. Diversity

A Pltfs / Def different state Yes. See essay for facts..

B. Exceeds \$75K Pam
- meets > \$75K
See notes

Patrick
- does not Meet

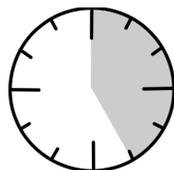


*Supplemental
Jurisdiction?*

Same t/o Yes, see essay for facts.

End Display.

In the example above, let's say you have two major issues. In such a case, the first major issue/headline would be *Subject Matter Jurisdiction* ("SMJ"). The second major issue/heading would be, let's say, *Personal Jurisdiction*. You would then divide the time you have between the two major issues. We'll also suppose you are going to allocate 10 minutes to the first issue (to the *Subject Matter Jurisdiction* issue). Again, this would include the major and non-major issues within SMJ.



Keeping Track of Time.

Let's take this from the beginning. If you stop at 25 minutes from the point you started the essay, you have 35 minutes remaining (the total amount of time is 60 minutes). The initial "25 minutes" here were taken up between reading the hypothetical and

constructing your outline. If you are a bit perplexed by this, do not worry. We'll use diagrams to refresh your memory and to better illustrate this point.

For instructional purposes, we'll assume you began the exam at 12 o'clock. Again, you have already used 25 minutes. For this reason, focus on the 25 minute mark of your clock.

- At 12:25, you begin to discuss the first major issue (SMJ).
- At 12:35, 10 minutes later, you move on to the next major issue (Personal Jurisdiction).
- Between 12:35 and 1 o'clock, you would discuss Personal Jurisdiction.

Here is how the time marks would look like. The 1pm signifies the end of the time to write the essay.



In the event you have two issues, the labeling should look like this:

Display.

Question 1.



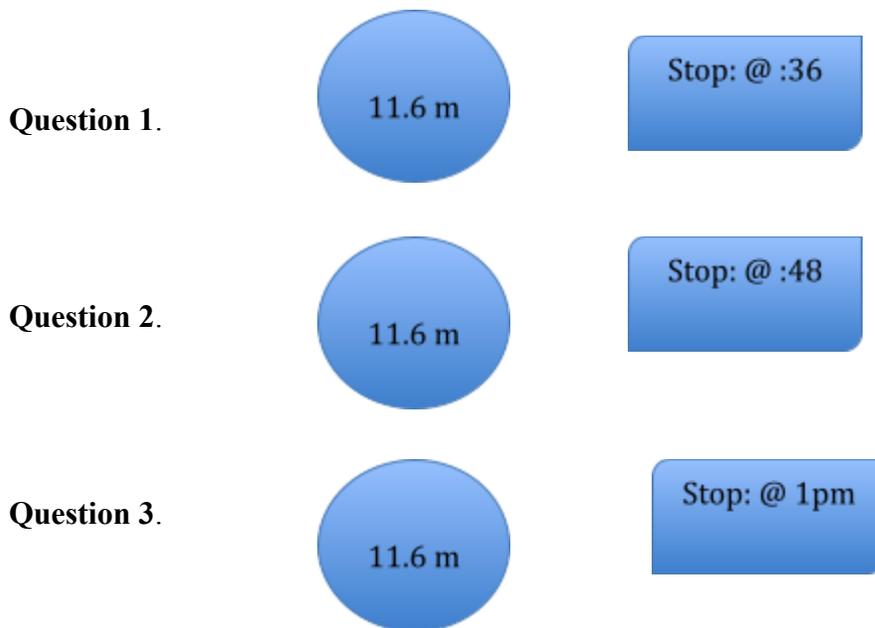
Question 2.



This is a basic setup since only two major issues are discussed. However, you may not always have just two major issues to discuss. What if you have three issues? Let's go there now.

When Three Major Issues Are Present.

Here is the timing layout if you have three major issues *and* they each get an equal amount of time. That is to say, each gets 11.6 minutes a piece. :36 / :48 / 1pm



It is important to have discipline when dealing with these time limits. This is because it is easy to get carried away with one issue. So be careful not to run out of time.

FAQs Answered.

Re: Not Enough To Discuss.

As you can see, the amount of time you give to each issue determines how much content you are going to discuss. If you have very little to discuss, then maybe you are not focusing on a major issue. With major issues, the facts will make themselves available to much discussion. Again: the more facts on an issue, the more points you can rack up. This being the case, you should not run out of content to discuss.

Re: Running Out Of Time.

If you are running out of time, then you may be giving too much time to non-major issues. Or, you may be discussing a major issue for too long at the expense of another major issue. Let's go to an advanced tip now.

SECTION 3: ADVANCED TIMING TECHNIQUES

Introduction.

Use this timing technique once you feel comfortable with keeping track of time. In summary, here is what you will do: set your clock to *12:05* to begin (instead of 12 o'clock).

You are going to keep your timing-schedule for reading and outlining with the expectation that you will improve your timing in that area. Even if you do not improve immediately, you will see that you will complete writing your outline at around 12:30.

If your outline is complete around 12:30, it will be easier to see and to make a note of the remaining time for each Major Issue.

You want to spend a very minimum amount of time with annotating your time schedule. As a bonus, by the time your clock indicates you have hit the hour, you still have five minutes left.

On test day, you ideally want to have 5 minutes left to look over your written exam. It is possible to practice in the area of improving your speed. Expect your time to improve with practice.

Also, on the actual testing day, you can take *two* clocks with you. I did. The first clock began at 12 o'clock. I stopped it at 3 o'clock when the testing session was completed for that portion of the day. My other clock was set for 12:05. After starting a new essay, I would reset it to 12:05 after completing any given essay. Practice these techniques during your preparation sessions (keep in mind that the afternoon session will include the 90 minute Performance Test so be careful with setting the time).

Real Life Story.

When you take simulated tests during your preparation period and when you take the actual bar, your speed may change. When you take these types of exams, you will notice that your adrenaline will be pumping at a very high level! As such, it may be that you will read the hypothetical *and* write your outline in about 20 minutes or less (versus at the suggested 25 minutes).

Aside from the natural adrenaline, you should also have plenty of practice under your belt. This will also account for the improved speed in completing the reading and outlining steps.

At first, I thought the extra time would give me a cushion at the end. However, that extra time is used when you have an essay with many issues. Or even if you don't have many issues, you may find yourself juicing out those facts when doing your analysis. Also, you may want to do a quick revision. The point is that you should control time. Do not let time control you.

The Next Step.

This section focused on outlining. However, to properly outline, you must know the substantive law. As such, the next section covers the area of organizing the many issues and rules you will come across.

“The facts are your friend.” –Enlightened Student.

SECTION 4: BIRD'S EYE VIEW TECHNIQUE

Bird's Eye View Technique.

This section serves as a review for the material that has been covered up to this point. This is also an advanced technique. The reason for this is twofold. First, it takes practice for you to *briefly* recognize what you are looking for in a hypothetical.

Second, you must recognize *what* it is you are looking for. There are various components within the hypothetical and they all play different roles. For example, there are major issues, non-major issues, and supporting facts. Even if you had sufficient time for the identification of components, the development of this skill requires its time.

As a bonus feature here, this section also serves as a preface to the content that is forthcoming. That content will deal with major issues as distinguished by non-major issues. Let's now define this Bird's Eye View Technique.

Definition.

Bird's Eye View Technique definition:

Ability to glance at the hypothetical and know which facts to analyze.

Commentary.

A *glance* is defined as a hurried look. Thus, you have to quickly spot the facts and know which of those facts you will analyze and to what *extent* those facts will be analyzed. When the instructions state *analyze the facts*, this is what they mean. In the end when the smoke settles, analyzing the facts will get you the superior grade. By the same token, if you don't analyze the facts you are viewing, you will *not* get a good grade. Remember this simple statement: "the facts are your friend."

As mentioned earlier, this is a developed skill. At first, you may be able to spot the key facts and its dynamics after the third read. With more experience, however, you may be able to identify those facts after the first read.

Exam Tip.

It is helpful to draw lines between the facts relating to different questions. We'll first show you a diagram of what a hypothetical looks like in plain view. The second diagram will have the key facts highlighted in yellow. Moreover, it will have lines between the paragraphs. Feel free to draw these lines if it helps your overall approach. The lines can be drawn usually after the First Read. Again, this may require practice.

Diagram 1.

This is what the viewer sees with the untrained eye. There are no visual aids.

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

Diagram 2.

This is the view that is captured by applying the Bird's Eye View. You will have a general sense of the key items that you must discuss. Aside from the obvious yellow highlighted phrases, also notice that *solid lines* are drawn between paragraphs. Usually, a paragraph will relate to a question within the hypothetical. For example, the first paragraph will deal with question 1 of the question stem. See the example below.

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

Moreover, you may have to draw the line *within* the paragraph. See the diagram below. This helps when one paragraph contains material facts that deal with more than one question. You may choose to label the side of the hypothetical with *Question 2*, or *Question 3*. You would do this for easy reference.

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

It is ideal when the first paragraph corresponds with the first question. And the second paragraph corresponds to the second question, and so on. However, such an easy-flowing correspondence does not always happen. For example, question four may be scattered throughout the hypothetical.

Timing Techniques.

You can also determine how much time to dedicate to one question by applying the Bird's Eye View Technique. If a large percent of the fact pattern deals with question 2, then you will apply a bulk of your time there. Again, *this is a developed technique*. Practice the content that is found within this section.

Precursor to the Next Sections.

Earlier we discussed a major issue and a non-major issue. In the next chapter, we'll discuss these extensively. After you finish reading the chapters, return to this section. Moreover, after you complete some practice exams, return to this section. Apply this technique until you master the content. Thus, it will be convenient for you to place a

bookmark here for continued future reference. For now, watch this clip that sites the movie *A Beautiful Mind*. This is how you will eventually view a great outline.

<https://www.youtube.com/watch?v=qF-QwJhLfow>



A Beautiful Mind is the property of Universal Pictures.

SECTION 5: ORGANIZING THE ISSUES AND THE RULES

Objective.

1. Organize the issues and the rules.
2. Create an index of templates for every major area of the tested subjects.

Introduction.

Take note that as you take practice exams, you will come across many issues and rules. It is important that you organize them because you are almost certain to come across them again.

It is highly suggested that you follow these steps: Look over past exams in a methodical manner. For example, we'll assume you will start from the year 2001 (or the earliest one that you can access) and work your way up to the current year.

Steps To Organizing The Issues And Rules.

Here are three steps that will help you organize the issues and the rules.

Step One.

Select a full past exam containing the one-hour essays. Note that the model answers are also available free of charge compliments of the State Bar of California. For the most part, these answers are thorough. They may range in the area of an 80. Don't be intimidated. It is okay if your writing does not mirror the 80 model answer. You want to shoot for scores of at least 70 although 65 is passing. Furthermore, it is recommended that you sign up for BarEssays.com. Use this code for \$25 off the membership cost: **JURIS**. At that site, you can look and compare your answers with graded answers from previous bar exams. Take the time to explore what a 65 and other scores look like.

Moreover, plan on saving and organizing the printed used essay exams that you go through. Save these along with the outline that you created for that question. Make these notes readily available for future reference.

For example, if you start from 2001 and work your way to the present, you will have covered a substantial amount of past exams. We'll go over organizing this data in Step Two below.

Step Two.

Create and maintain templates (a.k.a. cheat sheets). This step is very important in approaching the one-hour essays. After writing or outlining essays, you are going to start asking yourself, "Didn't a similar question appear in a prior exam?" The answer is probably *Yes*. So you need to have a library of templates. Here is what I recommend:

Step Three.

Develop your own templates to every major area of law that you encounter. However, due to the high quantity of major areas, this is a task that you must perform in a quick manner. Think of the version of drawing cartoon sticks. They should be simple enough to understand.

In the illustration that follows, I use an example of a template I created for Contracts. As you can see, I typed it out. But this was *very* time consuming. During preparation, I just hand wrote the templates for every issue and had them ready for reference.

Exam Tip and Adding To Your Templates.

I then added information to the templates as I approached the same subject again. If you did not get a rule correct, consider adding the rule to your template. Also, if there is an area of law that you do not understand, add to your template. This is a great strategy for learning the substantive law and for memorization purposes. The premise being that once you make a mistake, you will not make it again. Your mind will respond properly to this. I also emphasize that these templates don't have to look pretty just as long as you understand them.

I strongly advocate the use of these templates because they help organize large areas of the substantive law. And believe me when I tell you that approaching this exam in an organized manner has substantial rewards. Thus, the templates provide an organized structure of the big picture.

The Use of Mnemonics.

Also, you will notice that the illustration contains mnemonics. These mnemonics are written next to the issues. I like mnemonics as they serve as a checklist for issue spotting purposes. They are also useful as memorization techniques. It is also a good idea to search for mnemonics when you are having difficulty remembering issues and rules. Moreover, you can write the mnemonics on your templates. Furthermore, you can create your own mnemonics.

Here is an example of how these templates function. The illustration is shown on the following page. It is from the main heading in the lower end of the sheet. The illustration is titled *Defenses to Formation*. The mnemonic is *ID FILM US*. It then has the legal terms next to it. Notice the *S* for *Statute of Frauds*. Also notice that there is another section that leads to *Statute of Frauds Exceptions*. Then that section has *Q PIGS* as its mnemonic. Do something similar as part of your essay writing and outlining activities.

Distinguish between CL and UCC contracts.

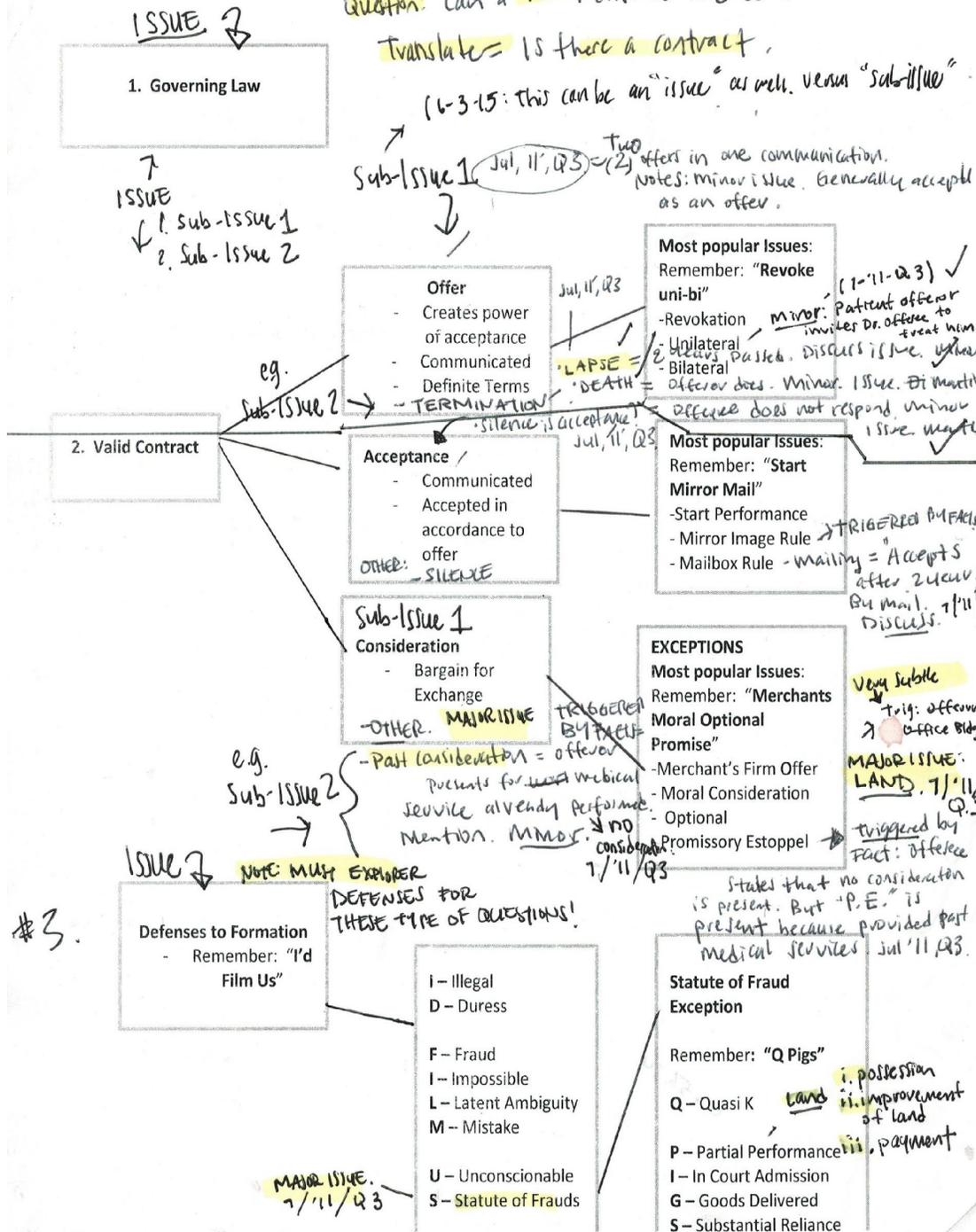
MAJOR ISSUE: IS IT A CONTRACT FORM?

QUESTION: Can a Party enforce the contract?

Translate = Is there a contract?

(6-3-15: This can be an "issue" as well, versus "sub-issue")

Sub-Issue 1: Jul, 11, Q3 - Two offers in one communication. Notes: minor issue. Generally accepted as an offer.



SECTION 6: CARVING OUT THE RULE

Objective.

1. Identify key elements in the rule.
2. Stay organized as you deal with a bombardment of elements.

Introduction.

This is an advanced technique that will help you identify and deal with key elements. Remember that identifying an issue is one thing. But you also have to systematically discuss the elements. You'll now become familiar with the technique known as "Carving Out The Rule."

What to Do:

When you first begin to write rules, underline the element(s) that you think are important. You can then phase this step technique as you develop in this area.

Example 1.

Let's do an example. You will see that the key elements are already underlined.

Standing Rule:

1. *To establish standing, the party must show that he suffered an injury in fact;*
2. *That a causal relation between the injury and the challenged conduct existed, and*
3. *That the court can redress the harm.*

Simple enough right? Let's do another example.

Example 2.

Here is another example. This time, read the rule. Then underline an element that you think may be relevant and that may earn you points. Let's go with the exception to the Free Exercise clause. Let's assume the exception to the rule is what is relevant and important. Here is the rule:

Under the free exercise clause, a general statute of neutral applicability is valid even if it incidentally burdens religious practices.

Which element did you underline. Here is a possible response.

Under the free exercise clause, a general statute of neutral applicability is valid even if it incidentally burdens religious practices.

By underlining a general statement of *neutral applicability*, you will know which content to analyze. Even if you just underlined neutral applicability, this may still be correct. This

is because you will use the content in your analysis. Again, we'll get to the analysis part in Chapter 3. For now, trust this statement: focusing on certain elements will help you keep your writing clear, organized and will help you earn points.

SECTION 7: THE USE OF TEMPLATES TO ORGANIZE RULES

More on the Use of Templates to Achieve Organization.

Before concluding the Rule section in IRAC, let's talk a little more about organization. Do not overlook the importance of writing a well-organized outline. Many times, the submitted essay will not receive a passing score because of a lack of structure. The reason for this is that a lack of structure can translate to a weak analysis.

I have said that the outline section is where your score will largely be determined. Case in point, I examined the database site BarEssays.com where responses for essays can be accessed (this is a private resource available in California). I looked closely at the responses that received a passing score for the torts question we have been tracking. *See* Question 6, California Bar Exam, July 2014.

The essays that received a passing score were usually well organized. That is to say: the parties were clearly identified and the issues were also easy to identify. The ones that did not pass were poorly organized. Of course, the latter did not perform many of the required analysis. In other words, many major issues were missing or they were difficult to locate.

How to be More Organized With Your Rules.

The reason I mention this is because I would like you to be more organized with your rules. Also, I would like you to convert certain areas of your commercial outlines into templates that you develop along the way. Not all of the rules, just certain rules as has already been explained. Let's talk more about this now.

Jurax Cheat Sheet Templates

You can order the Jurax Cheat Sheet Templates at this website:

<https://juraxbar.com/cheat-sheets/>

PRACTICAL APPLICATION MATERIAL

THE RULE IN IRAC CONTINUED

Introduction.

We'll start by discussing fundamental rules of negligence. When teaching negligence, did your professor tell you to remember "A-B-C-D-E"? Many of you know that this stands for "a duty," "breach," "causation," "damages," and "explore defenses." A very basic outline will probably look like this:

Negligence.

- A duty
- Breach
- Causation
- Damages
- Explore Defenses

This is fine for now. Let's add some concepts to this.

Activity On Organizing Issues.

For this activity, we'll present rules and elements that usually appear on negligence questions. It will be like the *A-B-C-D-E* activity that was just referenced. Except you will add relevant terms. Here are some of the basic terms.

Basic Terms:

- **Duty Owed (Cardozo Majority View and Andrews Minority View)**
- **Negligence Per Se**
- **Standard of Care**
- ***Res Ipsa Loquitur***

Let's now present these rules on a template. The template is located on the next page.

TEMPLATE FOR NEGLIGENCE

Introduction.

What now follows is a template that we will refer to as the *Negligence Template*. If you happen to have a template already, you may access it and use it for future reference. Also, the issues stated on this template do not directly apply to the torts question you just outlined (for Question 6 of the July 2014 California Bar Exam). This is because we added additional issues.

Let's now go through it. We are now checking the organization. Pay close attention to where the additional concepts are placed. Also, see if you organized the issues in a somewhat similar fashion.

TEMPLATE

Negligence.

To prevail on a negligence claim, the person must prove (1) a duty, (2) breach of duty, (3) causation, (4) damages, and (5) absence of defendant's defenses.

Duty.

Every person owes a general duty to not place others in unreasonable risk of harm. There is a majority and minority view as discussed below.

Cardozo View (Majority). (Notice that this falls under "Duty.")

The Defendant is liable to those who could be reasonably foreseen to be within the zone of danger.

Andrews View (Minority). (Notice that this also falls under "Duty.")

Defendant owes a duty of a care to all.

Standard of Care. (Notice that "Standard of Care" is also under the category of "Duty.")

A defendant has a duty to act as a reasonable person would have acted in the same or similar circumstances.

Breach (Getting away from "Duty" now.)

Breach occurs when the defendant's actions fall below the applicable standard of care. The standard of care under negligence is reasonableness.

(Commentary: There are other categories that can be used to meet the element of breach. These are (1) Negligence Per Se and (2) Res Ipsa Loquitur. These two categories are discussed below.)

Negligence Per Se. **(Commentary:** Notice that “Negligence Per Se” falls under “Breach.”)

Negligence that is established as a matter of law and a jury need not make this determination. A statute must be present. Additionally, all three elements must be met: (1) the injury caused by defendant’s conduct is the type that the statute was intended to prevent; (2) plaintiff is a member of the class intended to be protected; and (3) the defendant’s acts caused the harm.

Res Ipsa Loquitur. (Notice that this also falls under “Breach.”)

A Latin phrase that translates to *the thing speaks for itself*. A plaintiff must prove these three elements: (1) the injury is the kind which does not occur in the absence of someone’s negligence; (2) the injury was caused by an instrumentality within the exclusive control of the defendant; and (3) the injury was not the result of any voluntary action or contribution on the part of the plaintiff.

Causation **(Commentary:** This moves away from breach.)

Commentary and Purpose of This Activity.

The area of “causation,” “damages,” and “defenses” deserve similar attention as well. However, we are not going to go in depth with these areas for now. The important thing here is to remember that every issue falls within a category. This will help when it comes to performing the outline. For now, let’s talk about the differences between “outlining” and the “templates.”

Outlines Versus Templates.

There is an ocean of a difference between commercial outlines and templates. I don’t mean the type of outlining activity you did earlier. I mean the commercial outlines that most students use to study for exams (whether commercial or not). I will be very frank with you here. If you approach the essay questions with some type of template in mind, this may mean that you have a strong understanding of the substantive law.

To the contrary, if you focus just on the outlines, you may have difficulty synthesizing the issues with each other. If this happens, you run the risk of not performing a proper analysis. This is because you may be missing a structure. Also, keep in mind that the templates serve as checklist to prevent the omission of an important issue.

Impact of Template On Your Outline.

If you have a template in mind, the probability of creating a concise outline will improve when you approach your essays. This will transfer over to your writing and to your analysis and on to your grade.

Reason Why Many Fail The Bar Exam.

I highly encourage you to start creating templates for every subject. Every issue that you encounter should be classified under a category. Allow me to point something out here. The reason many people fail the bar is because they do not have a strong understanding of the substantive law. They may know the rules and elements on their outline. However, if the student cannot *synthesize* the issues, a proper analysis will be missed (as stated earlier).

Consider this a sincere plea for you to take the time to create templates. The definition of *templates* is broad. It can be a basic organized approach to any given subject. They don't have to be masterpieces of art. The standard of review is subjective. The templates should be something that you understand. No one is going to criticize you for your style. However, if you miss issues, the grader is going to notice. So train properly.

Take a moment to examine this graph.

Use of Outlines	Use of Templates.	Level of Substantive Knowledge.	Analytical Skills.	Probability of Passing Bar Exam.
Yes.	No.	Weak.	Weak.	Less than 50%.
Yes.	Some templates.	Average.	Average.	May or may not pass bar exam.
Yes.	Many templates.	Above average.	Above average.	Higher than 50% chance of passing bar exam.

Here is the breakdown. Most students approach the exam by the use of outlines. However, you want to do more than outlining. The point here is for you to do the following: work on *both* the substantive law and your analysis.

When you work on templates, you are developing your knowledge on the substantive law. We'll deal with the analysis later in the course.

Moreover, when you create templates, you are doing more than you should. You are outperforming others. It has been said that you should show competence to pass the bar. However, this is a weak thought process. Go beyond that. Dominate these subjects and attain above-average analytical skills.

With proper organization skills, creating templates will not be very time consuming. For more information on this, look for the lecture titled “Organizing the Rules.” It will appear later in the Rule section of this course.

Templates For Sale.

The author of this text has templates of the most common issues and rules that have appeared on the essay portion of the exams. Here is the link:

<http://juraxbar.com/cheat-sheets/>

Special Message To Law Students.

Here are the seven multi-state subjects (in alphabetical order) listed again:

- 1. Civil Procedure**
- 2. Constitutional Law**
- 3. Contracts/Remedies**
- 4. Criminal Law and Procedure**
- 5. Evidence**
- 6. Real Property**
- 7. Torts/Remedies**

As you prepare for your law school exams, begin creating templates along with your outlines. Save your work and also use these for bar preparation.

You may do the same for the California specific subjects. Here is a list of the California specific subjects:

- 1. Business Associations**
- 2. Community Property**
- 3. Professional Responsibility**
- 4. Remedies**
- 5. Trusts**
- 6. Wills and Successions**

A full listing of the 13 subjects are found at this site from the State Bar:

<http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope>

Let’s move away from organization for now. Keep in mind that we’re still under the outlining section.

“Simplicity is key to brilliance.” –Bruce Lee.

SECTION 8: MEMORIZING THE RULE

Objective.

Understand and apply memorization techniques to memorize a maximum amount of rules.

Introduction.

Up to this point, we have not established a specific section to discuss memorization techniques (although we briefly touched on mnemonics in the last chapter).

Let me give you some great news. You have already been applying memorization techniques. You see, the way to better memorize the rules is by attempting to *recall* the rules in your mind. Let’s get more specific here. When you write an outline in order to issue spot, you are required to recall the rule. That activity in itself is a memorization technique!

I know that you have been told to sit in front of a desk and memorize your commercial outlines. No! That is a mistake! This is not the most efficient way to memorize content. This does not mean that your outlines are not useful. You still have to go through your outlines. But you will do so in a *methodical manner* as described in a later section titled *Strategy To Approaching Commercial Outlines*. For now, keep in mind that your main strategy for memorization is being taken care of when outlining and when writing out practice exams.

Technique.

When taking simulated practice exams (or even when just performing the outlining portion), write down elements for the rule. Apply this strategy even if you don’t know the substantive law or the elements of a rule.

I can already hear some of you say: “But, I don’t know the rule. How am I going to write a decent answer?” Here is the answer: You will guess what the rule is. Yes! Guess! After you check your answer, you will then know if you understand the substantive law or not. If you understand it, pat yourself on the back. Great job! If you don’t understand, you will study the sample answers. You will then compare your answer. You should also add the rule somewhere on the templates that you are developing.

As you can see, you will also effectively learn by making errors. Once you have found to be in error, you will not make the same mistake again. This sounds counterintuitive from what you have been taught since grade school. However, remember that this is the process of developing a skill. This requires practical application. And just like in the real world, you learn from your mistakes. And this is also one of the best, if not the best, memorization technique at your disposal.

“Tell me, I’ll forget. Show me, I’ll remember. Involve me, I’ll understand.” –Chinese Proverb.

Strategy to Approaching Commercial Outlines.

Am I asking you to not look at your outlines? No. Here is what I am saying: master memorizing the rules in past essays.

However, make time throughout your preparation to go through your outlines. After writing a decent number past exams, you will notice that you have mastered many major areas of the substantive law.

At that point when you go through your commercial outlines, you will say: “I already know that rule! And that rule!” This will make it easier for you to understand new rules that you are not familiar with.

If there is a rule that is really eating at you because you simply do not understand it, add it to a template that you are creating. Categorize it somewhere. It will fit because every single rule fits somewhere. It is a piece of a larger puzzle.

CHAPTER 3

THE “A” FOR “ANALYSIS” IN IRAC

CHAPTER 3

THE ONE-HOUR ESSAY – THE “A” FOR “ANALYSIS” IN IRAC

THIS AREA IS IMPORTANT! YOU CANNOT ACHIEVE A CONSISTENT PASSING SCORE ON THE ESSAYS WITHOUT MASTERING THE CONTENT IN THIS SECTION!!!

Introduction.

This chapter focuses on the *A* for *Analysis*. It is broken down in two sections. The first part of this section covers the non-major issue analysis. The second part of this section covers the major issue analysis segment.

The time allotted on the exam to perform your analysis *and* to write the response is 35 minutes. Thus, we are dealing with 35 minutes out of 60 minutes.

NON-MAJOR ISSUE FORMULA

Introduction to Non-Major Issue Analysis Formula.

We are going to start with the formula for a non-major issue analysis. Notice that we have not even defined a non-major issue analysis yet. But here is the formula. I suggest you write it out at least three times. This is one formula that you will have to know using muscle-memory. Muscle-memory is developed through repetition.

Formula:

Element of the Rule” [is/is] not present “because” of this “fact” (or reasoning).

Here is another version that is distilled:

Element is present because of fact.

You should write the distilled phrase out three times. Notice that we took out the words *is not*. Also, the word *reasoning* is dropped. This is just for simplifying the formula. So keep in mind that these “dropped” words still apply. Eventually, your judgment in any case will determine whether the element is present or not. Or whether your analysis is based on fact or reasoning deduced from a fact.

You can also later drop the word *because*. For now, we’ll exploit that word here. Next, we’ll start with explaining what a non-major issue is. But keep this formula in mind for now. Write it in a place where you can easily refer to it.

NON-MAJOR ISSUE DEFINED

Non-Major Issue Defined.

Let's give this type of discussion a name. Let's keep it simple. We'll call it a Non-Major Issue Analysis Formula. There is usually no factual dispute when discussing this type of issue. For example, note the following formula we discussed earlier:

Element is present because of fact.

As stated above, in this type of analysis, there is no point of contention. As such, you should be brief in your discussion of them.

Here is one way to think of facts. Think of facts as stipulations. The stipulation is between you and the world. No one will likely challenge you on the facts that you stipulate to.

The Non-Major Issue Analysis Formula In Action.

Let's review the formula again before we apply it. It goes like this:

Element is present because of fact.

Note that the *Element* as it is used here is part of a rule (a Rule as used in IRAC). For now, we'll say that there are three elements for each rule, although this number can vary. Let's do an example together. We'll do standing in Constitutional Law.

Standing will be the rule. We'll further state that standing has three elements. An element there is *Injury In Fact*. If we apply the Non-Major Issue Analysis Formula, injury in fact would look something like this when the formula is applied:

Injury In Fact is present because the facts state that Plaintiff was harmed by Defendant when his application for a driver license was denied.

Notice where the element injury in fact is located: at the beginning of the phrase. This is highlighted below. Then the word *because* is used. After *because*, then at least one fact is used.

Injury In Fact is present ***because*** the facts state that Plaintiff was harmed by Defendant when his application for a driver license was denied.

Now, let's get you involved.

PRACTICAL APPLICATION SECTION

First Sample of Non-Major Issue Analysis.

Let's again assume that you are discussing an issue in Constitutional Law. Furthermore, you are once more required to discuss the issue of *standing*. Moreover, we'll again determine that standing is a non-major issue. Rather, the major issue will involve something else. For example, it may involve Equal Protection under the 14th Amendment.

Let's read the abstract. Let's see how this develops. Read the abstract below please.

Abstract of Facts.

State X passed a law last year that banned issuing driver licenses to only males who have not reached the age of 21 and who would otherwise qualify for a driver license. Females may apply for a similar license upon reaching the age of 18. Mr. Plaintiff is 19 years of age. On June 1, he was denied a driver license on the grounds of his age and gender.

End Abstract.

Discussion of Non-Major Issue:

Let's do this together. Does Mr. Plaintiff have standing? Let's do the analysis using the formula. We'll write out the rule for *Standing* first.

Standing Rule:

- 1. To establish standing, the party must show that he suffered an injury in fact;***
- 2. That a causal relation between the injury and the challenged conduct existed, and***
- 3. That the court can redress the harm.***

Now, here is a basic discussion using the Non-Major Issue Analysis Formula. Remember that the discussion is used without rebuttal because the issue is usually not in controversy. You'll run out of time if you do thorough discussions.

Notice that there are three elements to this rule. For this section, we'll refer to these as Elements 1 through 3. Let's perform the Non-Major Issue Analysis formula on one of the elements. To do this, we'll first skim over a sample fact pattern together.

Fact Pattern:

State X passed a law last year that banned issuing driver licenses to only males who have not reached the age of 21 and who would otherwise qualify for a driver license. Females may apply for a similar license upon reaching the age of 18. Mr. Plaintiff is 19 years of age. On June 1, he was denied a driver license on the grounds of his age and gender.

End Abstract.

Let's do *Injury* (Element 1) together. Then we'll do *Causation* (Element 2) and *Redress* (Element 3). We'll begin with *Injury*.

Element 1: Injury In Fact.

First, let's grab that formula:

Element is present because of fact.

The next step is to apply a *plugin* strategy. Look at the sample abstract and go from there. We'll do the first one. The analysis for *Injury in Fact* would look like this:

Here, an Injury in Fact (the element) is present because (use of the word "because") Mr. Plaintiff has been denied the driver license and he cannot operate his vehicle (a fact from the hypothetical).

Nice and easy right? Now, you do Element 2 and Element 3.

Element 2: Causation.

For Causation (Element 2), we'll provide the element. You provide the fact or the reasoning. Just fill-in the information after "because." Ready? Go!

Here, Causation (the element) is present because (state the fact. Clue: who caused the legislative act?) _____.

Here is the answer:

Causation is met because the driver license was denied as a result of the law that State X passed last year.

Pretty mechanical stuff right? Remember that you can add additional facts. Just don't spend too much time here since the bulk of your points will come from performing the analysis for major issues. Let's go to Element 3 now.

Element 3: Redress:

Now you do Element 3 on your own. Just add the element before *because* and at least one fact after that same word. Here is the formula again and then followed by the rule for Redress.

Rule: That the court can redress the harm.

Formula: Element is present because of fact.

The element of _____ [is / is not] present because

Let's share answers now.

(3) *The element of redress is present because the court can invalidate the state law.*

Again, notice how the elements are first mentioned and then followed by the word *because*. Then supporting reasons (usually in the form of facts) are provided.

This is a basic style of analysis and once you are familiar with this style, you can always modify the placement of the terms. In fact, you don't have to use the word *because*. You can use the words *since*, *as a result of*, or *by reason of*. There are many possibilities. But for now, use "because." Let's keep this simple.

You walked through the discussion like a champ! You hit all the points. You are saving the bulk of your limited time to deal with the major issues. Let's move on now to the major issue analysis section.

THE MAJOR ISSUE ANALYSIS

Introduction to the 13-Point Major Issue Analysis Formula:

Welcome to this section! 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.

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

Initial
Argument
of Premise

Counter-
Argmnt.

Rebutl
to
Counter-
Argmnt.

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

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.

Rebtl
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.

Let's now talk about the major issue analysis. In a simplified manner, here is the *13-Point Major Issue Analysis Formula*. The structure of the formula will be in bold below. Don't worry about the number 13 for now. At the end of the section, we'll cover the 13 points

as review.

For now, just get an idea of the big picture. Also, we will refer to this formula several times throughout these forthcoming lectures. So place this somewhere where you can easily refer to it. This formula will be placed two pages down if you wish to print it then.

I present two templates. The first one is called the *Basic 13-Point Major Issue Analysis* Formula. The other is the *Detailed 13-Point Major Issue Analysis*. Here is the basic template. Also, I recommend you use the Major Issue Analysis only twice for one essay. This can raise your score to at least a 70.

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: Here, 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.

On the next page is the detailed version. Also, save the template above. Write it out many times until you memorize it.

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.

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.

Moreover, you have noticed that the discussion of the third element is isolated. This isolation is made to emphasize the importance of that segment. However, if you wish, you do not have to isolate it during an actual written response.

Again, the aforementioned formula is just meant to demonstrate the structure of the content. Let's get more in detail now. But first, we'll provide the formula below if you wish to print it.

KEY COMPONENTS TO THE 13-POINT MAJOR ISSUE ANALYSIS

Issue: *Is “Issue ABC” present?*

Rule: *In order for a violation of Issue ABC, you need (1) Element 1, (2) Element 2, and (3) Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1. (Optional but suggested.)

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

Presence of Element 3?

Element 3 is present because of Fact 3.

The Counter-argument.

However, Element 3 is not present because of Fact 4.

Rebuttal (or Statement In Support of the Counterargument).

Ultimately a court will find that Element 3 is present because of Fact 5.

Conclusion To 3rd Element: *Thus, Element 3 is present.*
(Optional.)

Overall Conclusion to the Major Issue:

Therefore, Issue ABC is present because all elements are met.

MECHANISMS OF THE MAJOR ISSUE ANALYSIS

Platonic Dialogue and the Appearance of Hunter the Hater.

In this lecture, we'll give a quick overview concerning the makeup structure of analysis. Here is the summary: you will bolster your argument and weaken the opposition. We will discuss formulas that you can use to achieve this. But before we do, we'll get into the essence of a major issue analysis.

Here are three essential items needed to perform a major issue analysis:

- (1) First and foremost: know how to identify a major issue (already covered in a previous section);
- (2) Use of the Juicy Facts you highlighted during the issue spotting phase (this has also already been covered); and
- (3) You will need to invite two people to the discussion.

At this point, you may say, "Wait! What?! Invite two people to this Major Issue discussion?!"

You may further ask, "Who are these two people?" The first one is Plato. The second one is Hunter the Hater. Let's start with Plato.

Say Hello To Plato And Introduction To Dialogues.

Who is Plato and why him? Plato was a Greek philosopher and you guys already know this. As a means of exploring a question, Plato applied the use of a dialogue. This being the case, we'll identify this type of analysis as a *Platonic Dialogue*. Therefore, in the major issue analysis, there must be at least two people having a discussion. For instructional purposes, we'll just use two people with opposing perspectives.

In playing the role of Plato, you must be honest with yourself. By being honest I mean that you will have to confront an opposing position so you will have to believe in one position. You will also have to oppose a position even if you don't necessarily agree with the outcome. You must bring up the facts and confront them. More importantly, you must lead Plato to explore one view of the issue. In other words, have Plato present the facts that will lead to a conclusion.

Update Based on July 2017 Bar Exam and Exams After This Date.

Expect rules where uncertainty is present. In other words, a rule where a major issue is present may be a "gray area." Take for example the July 2016 exam and the Civil Procedure question (Question 1). The fact pattern specifically mentioned the California Superior Court of California. However, the examinees were not instructed to use California law. This caused much confusion and uncertainty amongst the test takers.

Instead, state the rule with authority and conviction! Analyze the discussion as presented

and don't be intimidated by something you have not seen before. Just in case you are wondering, the bar graders gave passing scores to examinees that used either California law, Federal Rules of Civil Procedure, or that didn't mention any governing law at all.

Also, the February 2017 contained the issue of whether a murder was to be disclosed. See Question 2 of that exam. This area of law has traditionally been received with a wide degree of variance within the common law. Again, don't waste valuable time. Instead, pick a side (and a rule) and write with confidence.

On Extent of Discussion.

How much does Plato write? It depends on the facts. Look at your Juicy Facts. Use them extensively. In general, "how much" to write depends on how many major issues are before you. The less major issues you are required to answer, the more Juicy Facts you have to write about. Alternatively, with the presence of more major issues, your arguments should be much more brief. Timing was discussed in the last section. Thus, timing will also determine the extent of the discussion.

So far so good. But who is the other person we'll use to implement a discussion?

Meet Hunter The Hater And Introduction To The Counterargument.

Let's meet the version of Hunter the Hater in your life. Yes, in *your* life. You are in law school or have already graduated. That by itself is an accomplishment. Congratulations! Anytime a person performs such an accomplished act, a hater is going to appear.

Hunter the Hater appears to be your friend. He may even be one of your "friends" on social media. He pretends to like you but he gets mad when you succeed. Thus, he does not want you to succeed. In the bar exam, he represents the "Counterargument." As such, in most cases, you must (1) identify; (2) confront; and (3) destroy Hunter's counterargument.

Did you notice the word "must"? Again, you must (1) identify; (2) confront; and (3) destroy Hunter's counterargument. As a side note, be glad if you have haters in your life. It means you are doing something great.

How to identify Hunter the Hater.

It is important to note that Hunter is usually not a party in the essay. If you are in a criminal setting, and you are making the argument for the Prosecutor, you may think of Hunter as Defense Counsel, and vice versa. Just think of the opposing party's view.

Also, you may just have to invent his role in your response. Remember, the hater is out there. If you can't find him, you better make him up or else you are *not* getting a passing score.

Also, if you cannot find him, there is a chance you are not dealing with a major issue. Although this is *not* always true. At times, a discussion of the issue is sufficient. Think of the "racehorse" essays. But again, *pure* racehorse questions are not the norm. As a

general rule, always be alert as to the presence of a counterargument when dealing with a major issue.

Note.

Sometimes, a good way of ascertaining whether you have found a major issue is when the call of the question explicitly deals with the issue. For example, they may ask you:

- 1. Can Person 3 be subpoenaed by Party 1?**
- 2. Can Party 1 compel Party 2 to Respond to interrogatories?**

You may have four or five questions that include sub-questions under one essay. When this occurs, not all questions will warrant the use of the 13 Point Major Issue Analysis Formula. As such, more practice is needed when you have broader issues. Here are some examples.

- 1. Is there a contract formed between Party 1 and Party 2?**
- 2. What interest in the will, if any, does Alpha, Bravo, Charley, Delta, and Echo have?**

This is why it is particularly important to practice using Hunter's counterargument in the various essays. When you think about it, the entire point of these law exams is to solve disputes. In disputes, there are two sides. Both sides have arguments. At the end of the day, you have to bolster your argument and weaken the other side's argument. These are concepts of tremendous proportion. In other words, Hunter signifies the entire essence of law school exams, the bar exam and the entire purpose of *Law & Order* episodes.

Hunter's Statement.

How much writing is required for the use of Hunter's counterargument? *Answer:* At least one line. And again, this depends on the given facts and the amount of questions you are required to answer. Also as stated earlier, more on the use of time is examined closely in a lecture titled *Timing*. Please refer to the table of contents for more information on that.

Summary.

Let's take a moment to review definitions.

Difference Between Major Issue and Non-Major Issue.

In sum, the major issue analysis is approached using the Platonic Dialogue as described above. In essence, for major issues, you need to discuss two opposing perspectives.

Furthermore, it is distinguished from a non-major issue analysis for the following reasons: (1) the major issue analysis will discuss a dispute; (2) the major issue analysis will take up more time because the writer needs to refer to various facts in the fact pattern; and (3) Most of the time, it will include the discussion of at least one counterargument.

On to the next lecture to see how this actually works.

WRITING YOUR MAJOR ISSUE ANALYSIS

Objective.

We'll tackle three objectives here. They are as follows:

Discussion of the *2 Of 3 Element Rule*.

Discussion of the *Isolation of the Element Formula*.

Discussion of the *Build Your Case Formula*.

Components of the Major Issue Analysis Formula.

We will refer to the 13-Point Major Issue Analysis Formula here. Notice that you are already very familiar or somewhat familiar with most of the concepts that the formulas represent. Isn't that awesome? You will soon be applying specific techniques to concepts you are already familiar with. We'll now explore the areas in more detail.

Here is what we will focus on: The 2 Of 3 Element Rule and the Isolation of the Element Formula. The two concepts can fit nicely into one paragraph. But for now, we'll split the two concepts. Let's begin.

The 2 Of 3 Element Rule.

Let's see that Major Issue Analysis Formula again. We'll pinpoint where the 2 Of 3 Element Rule is located by using a **red colored font**. After this, we'll then focus on the Isolation of the Element Formula.

13-Point Major Issue Analysis Formula

Issue – Is Issue ABC present?

Rule – The rule and its three elements go here.

Analysis – (This is the **2 of 3 Element Rule**.) This is your presumptive writing in *italics*:

1st Element is present because of Fact 1.

2nd Element is present because of Fact 2.

(Notice this smooth transition line. -->)

The Issue Is Whether the 3rd Element is Present.

Note: 3rd Element is now isolated.

Commentary:

Expect that in many cases the facts will stipulate that 2 of the 3 elements for a rule will be present. The 3rd element will be a dispute. Let go now to the Isolation of the Element

Formula now.

ISOLATION OF THE ELEMENT FORMULA SECTION

Introduction to the Isolation of the Element Formula.

Let's get more detailed on the Isolation of the Element Formula. Here is an abstract of the larger formula. The **Isolation** will be in **red font**.

13-Point Major Issue Analysis

Issue: *Did Mr. One Party Violate "Issue ABC"?*

Rule: *In order for a violation of Issue ABC, you need Element 1, Element 2, and Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1. Element 2 is present because of Fact 2.

(Then, **you isolate Element 3**. Also remember that the discussions of Element 1 and 2 are optional.)

End Display.

Commentary.

That ends the discussion of the Isolation. We'll not build on that. For now, it is just important to become familiar with the structure. Let's now discuss the Build Your Case section (which is part of the element that has just been isolated).

BUILD YOUR CASE SECTION

Introduction.

We'll also add the Build Your Case section since that is what will be discussed under the Isolation of the Element Formula. This is where a bulk of your points will come from. Ready to get some points? Let's pinpoint this. We'll refer to the 13-Point Major Issue Analysis Formula again. This time, we'll emphasize both the Isolation and the Build Your Case Formula by using **red font**. See below please.

13-Point Major Issue Analysis

Issue: *Did Mr. One Party Violate "Issue ABC"?*

Rule: *In order for a violation of Issue ABC, you need Element 1, Element 2, and Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1. Element 2 is present because of Fact 2.

(Then, **you isolate Element 3**. Immediately after, you will go into the **Build Your Case** section.)

The Presence of Element 3. (Here is the structure of the **Build Your Case Formula**. This is your presumptive writing in *italics*.)

Fact 1 is stated. Element 3 is present because of Fact 3.

End of the Formula.

Again, notice how many facts surround Element 3. This now marks the end to the Build Your Case section. Let's do a practical application sample. It is here where you will fully appreciate the formulas we just covered. We'll skip the remainder of the 13-Point Major Issue Analysis Formula for now. But do note, that we are almost at the conclusion.

Recall the Carving Out The Rule Technique.

Notice how the discussion of the elements is crucial in this area. If you are having difficulty with the organization of the elements, recall the technique known as "Carving Out the Rule." This is where you underline the key elements. For more on this, review the previous Rule Chapter.

Review and Set Up of Building Your Case.

We will do an actual example of the Build Your Case Formula. You will perform an analysis and we will take this one step at a time.

Before doing so, we'll review what we have covered in this lecture. Thereafter, the exercises will take us to the Build Your Case section. See the next page please.

PRACTICAL APPLICATION SECTION
BUILD YOUR CASE FORMULA EXERCISES

Objective.

- (1) Review the setup in preparation for the creation of the Build Your Case Formula.
- (2) Identify the Juicy Facts in a sample abstract.
- (3) View the Isolation of the Element in action.

Task:

Before performing the Build Your Case Formula, we'll use the same issue and rules from the Criminal Law topics we discussed before. You will notice that the discussion will begin by referencing the 4th Amendment's Exclusionary Rule that is applied to evidence that is attained in violation of unreasonable searches and seizures. The area of focus will eventually be narrowed to the **Terry Stop rule** (which will be placed in **red font** below). Finally, of course, an element from that rule will be placed under a microscope. Well, not literally but you get the picture. As you can see, we will go from a broad view to a specific discussion.

Read the abridged template for the Exclusionary Rule. Ideally, you would begin your discussion with a similar format. Please stop reading when you see the phrase *AREA OF FOCUS* (**Please pause here**) which will be in red font.

Exclusionary Rule Template (abridged version):

Issue: Does the Exclusionary Rule Apply Under the 4th Amendment?

Heading: **4th Amendment Against Unreasonable Search and Seizures.**

Rule: 4th Amendment prohibits unreasonable searches and seizures. A defendant must meet three requirements to bring forth the claim: (1) Show that there was government action; (2) There was a search and seizure; and (3) That the person has standing.

Search Warrant Requirement.

The 4th Amendment requires a search warrant for a valid search and seizure to take place. However, exceptions to the search warrant requirement exist.

Exceptions and Terry Stop (Stop & Frisk).

It must be determined whether an exception to the search warrant is present. One of the exceptions is a **Terry Stop** (or the Stop and Frisk exception).

AREA OF FOCUS. (Please pause here.)

Commentary.

Before continuing with the template for search and seizure, we'll remind you that we are going to focus on one element of the Terry Stop rule (since that is what the formula usually requires). For now, we'll enumerate the layout of the rule. Notice that you would *not* number the rule like it is shown below. But it's done this way here for the purpose of highlighting one of the elements. In actuality, you would include this as part of a larger paragraph.

Terry Stop Rule.

(1) Law enforcement agents may stop a person without probable cause

(2) if there is reasonable articulable suspicion that criminal activity is afoot.

(3) The officer may also frisk the person if the officer believes that the individual is armed.

Commentary.

As part of your discussion of the Search Warrant exceptions, you would then discuss the Exclusionary Rule to see if it applies. We'll get to that later since that is what the question is asking you to discuss. Let's focus on the Terry Stop elements for now. But first, let's get into the area of stipulations.

Establish Stipulations.

Aside from the rules, let's also establish the following stipulations. This will help us to understand the steps we are now taking.

1. You have already performed the issue spotting phase.
2. You wish to know if the evidence, or a car radio in this case, can be suppressed.
3. Now, you have correctly determined that a major issue is whether the search falls under the Terry Stop exception (although more exceptions may apply).

A Practical Application Approach.

Again, let's walk through this step-by-step. Below is the call of the question and then the fact pattern. Here are some details. Calvin is Dan's lawyer. Once again, generally accepted rules apply. *See* Question 4, California Bar Exam, July 2014. Also, we'll just deal with the question pertaining to the motion to exclude the radio as evidence.

Call of the Question:

Calvin filed motions for the following orders: (1) suppressing the radio as evidence;

1. How should the court rule on each of Calvin’s motions? Discuss.

Abstract of Essay.

(Note: Please read the following abstract twice. Not more than twice.)

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.

End Abstract.

We’ll now discuss the term Juicy Facts again. This is because the Juicy Facts will be used in the Build Your Case formula. Remember that we are doing a setup for that section.

Please read the abstract again but this time highlight, underline, or write the Juicy Facts on a separate sheet of paper (this may require you to print the page). Just relax and don’t think too much of it. Here is the definition again for Juicy Facts:

In particular, you will be looking for adjectives, verbs, or adverbs. Also, you will be looking for words that seem out of place. Furthermore, be on the lookout for phrases that are descriptive.

With that recollection out of the way, let’s proceed! Ready? Go!

Task:

Identify the Juicy Facts in the following fact pattern abstract. To identify, please underline or highlight the words. We’ll underline here to keep this activity simple to follow along.

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.

End Task.

After completing this task, you should have something like this:

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.

Take notice that this task required us to use a highlighter (or to underline). There are usually three different tasks where the use of a highlighter is utilized. However, at this moment, we are just highlighting the Juicy Facts. This is because the other steps are used to ascertain the major issues. In this example, we have already located the major issues. At this point, we're just doing the last part that involves the act of highlighting the Juicy Facts (which is the third and last step to reading the fact pattern).

Next Step.

The next step is for you to save the key words you located here. We'll then plugin those words to the Build Your Case Formula. Before doing that, let's reinforce the structure where the isolation of the key element appears.

Isolation of the Element Rule Overall Structure.

To ensure we're all on the same page, let's pinpoint our location on the 13-Point Major Issue Analysis Formula. Again, let's look at an abridged version of this formula.

Read through this formula. Stop where it says *AREA OF FOCUS* (**Pause here**) which will be in **red font** again. This will be the section of the formula where a major issue analysis is required.

Pay special attention to the **Isolation of the Element** structure. It will also be written in **red font**. When you first begin writing, try to get in the habit of isolating the element as demonstrated here. When you become more proficient, isolating the element will be left to your discretion. Let's now go to the next page.

13 Point Major Issue Analysis Formula

Issue: *Did Mr. One Party Violate "Issue ABC"?*

Rule: *In order for a violation of Issue ABC, you need (1) Element 1; (2) Element 2, and (3) Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1. Element 2 is present because of Fact 2.

(Then, you apply the **Isolation of the Element** rule. Simply isolate the element that is up for debate. Here is an example.)

AREA OF FOCUS. (**Pause here.**)

Overview of the Next Task.

As stated directly above, this is the beginning of the Build Your Case section. You will need this setup in order to thrive in the next section. Instead of displaying the skeleton version, we'll plug in the content. **The content you will plugin are the Juicy Facts you just finished identifying during the previous page.** Do you see how all these steps are

related? They build up to the next step. Moreover, it is this area where the exam grader will focus on to determine your grade. Here is the overview now.

The issue is whether the 3rd Element is present. (This is where the discussion of the Build Your Case Formula begins.)

(We apply a fill-in the blank example here.)

Element 3 is present because of Fact 3.

Let's go to that section now.

BUILD YOUR CASE LECTURE

Introduction to the Build Your Case Section.

What now follows is the Build Your Case section. To simplify this formula, we'll again assume that you are arguing that Element 3 is present in your analysis (versus the element not being met by the facts). Here is where you are making an argument that will earn you points. This is also referred to as the premise but this sounds to plain. Let's call it the *money-making premise* as it will launch an entire sequence where points can be earned.

Remember that we are still applying the 13-Point Major Issue Analysis Formula. Here is an abstract that focuses on the element that has been isolated. What now follows is your presumptive writing.

Presumptive Writing.

Whether Element 3 is Present.

Element 3 is present because of Fact 3. (This is the initial argument of the premise)

End Presumptive Writing.

For this part, we are going to need an actual *Element 3*. Here is the element from the Terry Stop example:

Whether the officer had reasonable suspicion that crime was afoot.

Let's grab the entire Terry Stop rule now.

Terry Stop.

Law enforcement agents may stop a person without probable cause if there is reasonable articulable suspicion that criminal activity is afoot. The officer may also frisk the person if the officer believes that the individual is armed.

Further Stipulations.

Now that the Terry Stop rule is stated, let's do another stipulation. Do you remember the 2 Of 3 Element Rule? See the diagram immediately below.

13-Point Major Issue Analysis Formula

Issue – Is Issue ABC present?

Rule – The rule and its three elements go here.

Element 1

Element 2

Element 3

We need to stipulate that two out of three elements from a major issue are met. Therefore, we need to isolate an element (it will be Element 3 in this example). We will stipulate that Element 3 is whether the officer had “reasonable articulable suspicion that criminal activity was afoot.” Of course, we said this earlier and the next step will be to apply the Isolation of the Element to this rule.

Element 3 = *There is reasonable articulable suspicion that criminal activity is afoot.*

Just in case you are wondering, there are elements in the fact pattern that are *not* up for dispute. For example, here are the facts that are not up for debate: (1) Officer stopped Dan. (2) The officer frisked Dan. Therefore, we will classify these as stipulations. You demonstrate this by applying the Non-Major Issue Analysis Formula. Notice that you still perform an analysis even though it may be apparent that no controversy exists. This is part of the set up.

Now, let's go to the Build Your Case section. This part is critical. We are pinpointing an area that is really considered “the Analysis.”

THE BUILD YOUR CASE FORMULA

The Build Your Case Section And The Applicable Formula.

Here is the formula once more. And then we will fill-in the blanks.

Your Presumptive Writing.

Is Element 3 present?

Element 3 is present because of Fact 3. Notice that E+B+F is used.

End of Presumptive Writing.

Now let's use the formula to add content. Remember that we have stipulated that Element 3 will be replaced by this statement: *Whether it was reasonable to conclude that crime was afoot.* This element now gets isolated as shown here.

Presumptive Writing In Italics Below:

Reasonable Suspicion That Crime Was Afoot.

Let's now take a single thread from the Build Your Case section. We'll refer to this as *Fact 1 Thread.*

Fill-In Strategy Using the Build Your Case Formula.

If we were to apply the fill-in steps, the formula would look like this:

Reasonable Suspicion That Crime Was Afoot.

*Crime was taking place (the element was just stated) because it is reasonable to conclude that there is hot weather during the summer and the coat was not used to keep Dan warm (Did you catch the facts? It appeared after the word *because*. If you have to, review this last formula again. You will now fill-in the information for Fact 2 Thread.*

FACT 2 THREAD.

Let's move now to Fact 2 and apply the same fill-in the gap strategy. This time, we'll only provide the fact. You will provide the reasoning.

This also leads to suspicion because . . . (Can you think of reason as to why having a fully buttoned coat may mean that a crime was afoot?)

Quickly, write a response. At the very least, think of a response. Hold that thought.

Write your response:

Here is a possible answer. Compare your answer.

This also leads to suspicion that crime was afoot because it is reasonable to determine that there was a weapon hidden underneath the coat because it may mean that the person was attempting to conceal a weapon.

Can you start seeing a pattern here? Let's now go to Fact 3 Thread.

FACT 3 THREAD.

Now, let's do the third and last thread under the Build Your Case formula. This time, you will fill in the fact and the analysis.

Here are the facts again. Notice that the Juicy Facts are underlined. We did this together earlier. As you read this, consider how many of these Juicy Facts were already used in this example. Do you now see how important these Juicy Facts are?

Go ahead and read it again now. Find a Juicy Fact that has not been used. It should be underlined. So focus on the underlined words.

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.

Did you pick a fact yet? One that is underlined? One we have not used? Write it down here. Or just write it down anywhere. _____.

Here is the formula again. Let's plug in that fact.

Element 3 is present because of Fact 3.

And let's continue. This time we'll share the fact we used.

Part 1 of 2. *Moreover, Dan was running.* (Did you get *running* as well? Let's keep going with the formula. It is okay if you didn't get that word. Just as long as you can provide a reason you should be okay.)

This time we will focus on the reasoning. To be even more specific, this is where the bulk of your points are earned.

Part 2 of 2. *This shows that crime was reasonably afoot because _____.*

Why would *running* show that a crime was taking place? Think of an answer. Even better, write your answer somewhere. It is perfectly fine if you use more than one sentence to show your reasoning. We'll then compare. Write your answer now please:

Here is our answer.

This is also suspicious because it can mean that he was escaping from a crime scene. Running by itself is not a crime. However, considering all of the circumstances we have already mentioned, it was reasonable for Officer to conclude that a crime was afoot.

Notice that 3 sentences were used after *because*. Feel free to use more than one sentence to explain your reason. The formula is just a guide.

Conclusion.

That is it for the Building Your Case section. The point of this is to create space where you can methodically throw your best arguments out there.

LAST NOTES OF SECTION

Last Notes on the Build Your Case Section.

Notice the language of the phrases used above. The words are in *italics* here for emphasis: (1) “*It is reasonable to conclude that* there is hot weather during summer afternoons.” And (2): “*It is reasonable to determine that* there was a weapon hidden underneath the coat.” For the most part, your reasoning will be based using a reasonable standard of review.

One more final point to emphasize: Do not think of answering the question in right or wrong terms. You are being graded on your analysis. So you could have argued that there was no reasonable suspicion present. Just as long as you present your arguments as discussed earlier.

You have done a fine job up to this point. But we’re not done yet. To do a thorough analysis, you have to throw in a counterargument. For now, I suggest that you definitely review this lecture again before moving on. That is how important the information in this lecture is.

Let’s go on to presenting a counter-argument. See you at the next lecture.

COUNTER-ARGUMENT

Introduction to the Counter-argument.

Before discussing the counterargument, let's review what we have covered. The content pertaining to this section will have a font color of red. We'll again use the 13-Point Major Issue Analysis Formula.

13-Point Major Issue Analysis Formula

Issue – *Is Issue ABC present?*

Rule – *Here is the Rule and it's Three Elements.*

Analysis – (2 of 3 Element Rule.)

1st Element is Present because of Fact 1. 2nd Element is present because of Fact 2.

The issue is whether the 3rd Element is present. (The Build Your Case Formula.)

3rd Element is present because of Fact 3.

Counter-argument 1 (oppose your position above here):

However, Element 3 is not present because of Fact 4. (Note that $E+B+F$ is used.)

Rebuttal to Counter-argument:

Counter-argument 1 is not reasonable because of this fact/reason. (Alternatively: A Statement in Support of the Counterargument.)

Conclusion to 3rd Element:

3rd Element is present.

Overall Conclusion – *Issue ABC is present.*

End Formula.

Commentary on the Counter-argument.

Now, let's talk about this Counter-argument business. Do you remember Hunter the Hater? This is where he comes into the picture.

In sum, a counter-argument is usually presented. Are you arguing against yourself? That is what it sounds like. You can think of it this way if you'd like. In the end, however, you have to contemplate a counter-argument. This will be an indication that you are thoroughly discussing the issue. This is what is meant as performing a *thorough* analysis. We will refer to the counter-argument as *Counter-argument 1*.

Here is the formula:

However, Element 3 is not present because of Fact 4.

Note that the formula E+B+F is present. It is just superseded by the word “however.” The next step will be to rebut the Counter-argument 1. I know you are itching to do the rebuttal because it seems natural that you immediately respond to a counter-argument aimed at you. We’ll do that section in a bit.

Note:

At times, you may *not* need to present a counter-argument for *every* major issue. The examiners may be testing you on identifying issues. You may know this type of exam as a horserace exam (as mentioned earlier).

Example of the Counter-argument.

Notice how Hunter will use at least two sentences for his counter-argument. The element that crime was afoot will also be underlined for emphasis:

Again, this is the counter-argument formula:

However, counterargument 1 occurred and thus, Element 3 is not present.

Here is how it would look if you were writing the counter-argument.

Your Presumptive Writing.

However, Dan will say that he was wearing the coat because he was exercising and wanted to sweat more. The desire to sweat more by using a coat does not indicate that crime was afoot.

End Presumptive Writing.

Notice that the words “crime was afoot” or something along those lines is present in the counterargument. It will also be present in the rebuttal to the counterargument and in the conclusion for the element.

This concludes the lecture on the counterargument. Now we’ll rebut the counterargument and do the conclusion. Let’s get to the rebuttal now.

THE REBUTTAL & CONCLUSION TO THAT ELEMENT

Introduction to the Counter-argument Rebuttal.

The next step is to do a rebuttal to the counterargument. There is also an alternative to this component. This is explained further on this page (it is the *Statement in Support of the Counterargument*). One line is fine for this activity. The sample structure from the 13 Point Major Issue Analysis Formula reads as follows:

Rebuttal to Counter-argument:

Ultimately, a court will find that Element 3 was present because of Fact 4.

Notice that you still use *E+B+F*. It is just superseded by a phrase that sums up the argument. Here is a Counter-argument in action:

Begin Presumptive Writing.

Ultimately, a court will find that it was reasonable to believe that crime was afoot because heavy winter coats are usually not used for exercising, and taking into consideration all of the circumstances discussed earlier.

End Presumptive Writing.

That was a very brief statement. Then on to your conclusion for *that element* (not the overall conclusion). Also, you DON'T have to say "Ultimately, a court will find that" You can also use other phrases like "This is a close call, however, a court will likely find"

Alternative to the Rebuttal of a Counter-argument.

It is possible that you can omit a rebuttal to the counterargument. Instead, you can write a sentence that supports the counterargument. This statement is called the *Statement In Support of the Counterargument*. Here is an example:

This is a close call but a court will probably agree that it is reasonable to believe that crime was NOT afoot because heavy winter coats are usually used for exercising and people who exercise have an expectation to want to perspire heavily.

Notice that the counter-argument was further supported.

More on the Statement In Support of the Counter-argument.

For simplicity, just think of this section as an alternative to the rebuttal. As such, you do *not* want to write *both* a rebuttal and a Statement In Support of the Counterargument.

CONCLUSION TO THE ELEMENT

Introduction to the Conclusion to the Element.

Let's now finish off the discussion of the element that is in dispute. We'll do this by writing a conclusion to it. Again, **do not mistake the conclusion to the element with the Overall Conclusion** to the major issue. Just remember that you will have two conclusions when you apply the 13 Point Major Issue Analysis Formula. We'll talk more about the other conclusion later (the *Overall Conclusion*). For now, just observe the highlighted areas in this diagram to get an overall picture of what we are discussing here. In particular, notice the location of the 3rd Element conclusion and the placement of the overall conclusion.

13-Point Major Issue Analysis Formula

Issue: *Did Mr. One Party Violate "Issue ABC"?*

Rule: *In order for a violation of Issue ABC, you need Element 1, Element 2, and Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1.

Element 2 is present because of Fact 2.

The Presence of Element 3.

Fact 1 is stated. Element 3 is present because of Reason 1.

Fact 2 is stated. Element 3 is present because of Reason 2.

Fact 3 is stated. Element 3 is present because of Reason 3.

Introduction of the Counterargument.

However, Counterargument 1 occurred and thus, Element 3 is not present.

(You then rebut Counterargument 1.)

Nonetheless, Counterargument 1 is not reasonable because of this reason.

Conclusion To 3rd Element: *Thus, Element 3 is present.*

Overall Conclusion to the Major Issue: *Therefore, Mr. One Party violated Issue ABC because all elements are met.*

After you write the rebuttal to the counterargument, write a quick conclusion to the element (as shown in the diagram). Let's do an example of the 3rd Element conclusion.

Begin Presumptive Writing.

*Thus, it was reasonable for Officer to stop Dan because Officer reasonably believed that crime was afoot. (**Commentary:** Underline added to emphasize the presence of the element.)*

End Presumptive Writing.

Also note that the element was mentioned as we discussed earlier (the element stating whether crime was afoot). That is it! The most difficult parts are over!

Now we'll talk more about the overall conclusion. This will be the "C" in IRAC. The rest is downhill from here.

CHAPTER 4
THE “C” FOR “CONCLUSION” IN IRAC

CHAPTER 4

THE “C” FOR “CONCLUSION” IN IRAC

SECTION 1: THE MECHANICS OF THE CONCLUSION

Objective.

Write an overall conclusion to apply to a major issue analysis.

Introduction to the Conclusion in IRAC.

Let’s get an overview of what we will be looking at. The **overall conclusion** will be in **red at the bottom of the formula.**

13-Point Major Issue Analysis Formula

Issue: *Did Mr. One Party Violate “Issue ABC”?*

Rule: *In order for a violation of Issue ABC, you need Element 1, Element 2, and Element 3 to be present.*

Analysis:

Element 1 is present because of Fact 1. Element 2 is present because of Fact 2.

The Presence of Element 3.

Element 3 is present because of Fact 3.

Introduction of the Counterargument.

However, Element 3 is not present because of Fact 4.

Rebuttal (or Statement In Support of the Counterargument).

Ultimately, a court will agree that Element 3 is present because of Fact 5.

Conclusion To 3rd Element: *Thus, Element 3 is present.*

Overall Conclusion to the Major Issue:

Therefore, Mr. One Party violated Issue ABC because all elements are met.

Commentary.

Now we’ll talk about the conclusion. Use the words *Thus* or *Therefore* to begin your conclusion.

One of the big takeaways here is for you to not forget to insert a conclusion. This sounds simple to do. But do not take this seemingly simple step for granted.

Also, notice that you may have many IRAC discussions within one question. Along these same lines, you may have many conclusions. To ensure that you are responsive and provide a conclusion to the main issue, write this down: *OVERALL CONCLUSION*.

Writing this down will ensure the following. First, it will ensure that you answer the major issue question. Second, it will prevent you from confusing the conclusions between the many mini-IRAC discussions and the one belonging to the overall conclusion to the major issue. Let's take this a step further now by introducing an exam tip.

Conclusion to the C in IRAC.

That is it! That was it for the conclusion in IRAC. You have completed the fundamentals!

Examples From Past Exams and a Summary of the Analysis Chapter.

Watch this video to see how the key content we have discussed fits together. This video is about 13 minutes in duration. However, it is worth the time because the important parts of the analysis are referred to. Moreover, it compares scores that received a 65 and 70. It is extremely useful to become very familiar with the different components of the analysis. Click on this link:

<https://www.youtube.com/watch?v=3U4C6ES4wkk&t=22s>

Advanced Techniques.

For now, let's talk about the Signal Words and about advanced topics! These techniques will be closely aligned with everything we have already covered. However, let's keep things basic. For this reason, we'll insert a separation here. See the next section please.

“The bar graders don’t even read your essay. They just glance through it in 3 to 5 minutes.” -Many California Bar Exam Bar Tutors

SECTION 2

THE USE OF SIGNAL WORDS AND PHRASES

Putting it All Together.

Have you ever heard former bar graders and tutors say the following phrase? “Bar graders don’t actually read your essay.” There is some truth to this. Bar graders are required to issue scores on a limited amount of time. Make their job easier. Give them signals to make it easier for them to give you a passing score.

Transition Words and Phrases (Signal Words).

In this section, we’ll cover a list of transition words and phrases. These words provide signals to the reader. They facilitate reading comprehension and are thus referred to here as “signal words.” To put it in another way, signal words make the bar grader’s job easier. This is because they also provide organization. Recall that a passing essay is usually well organized.

To the contrary, if your written work lacks organization, then most likely it will not be a passing essay. As such, these words are very important. Below is a list of categories and examples. We’ll also run through some actual written samples.

List of Signal Words.

We’ll focus here on the *analysis* and *conclusion* sections since that is where you want to focus on signal words. For the *issue* and the *rule*, you usually don’t need signal words. But don’t worry, we’ll also run through an IRAC structure further below. Moreover, it must be said that this is not an exhaustive list. Feel free to use other words that you feel comfortable with.

Analysis.

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.

Initial arguments 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.

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 run through an actual example.

Example.

We will write a proper essay using just key words. This is a literal statement. Focus on the signal words we just discussed above.

Issue: Offer.

Rule: Offer requires three elements: communication, intent to be bound, and certain & definite terms.

Analysis:

(Initial Argument) Here, Moreover, As such,

(Counter-argument) However,

(Rebuttal to Counter-argument) Ultimately, the court will agree ...

(Or Statement In Support of the Counter-argument) Ultimately, the court will agree ...

(Element Conclusion) Thus,

Overall Conclusion: Therefore,

End Example.

Let's view an actual model response. See the next page.

SECTION 3

ADVANCED TECHNIQUES AND HEADINGS

Exam Tip re: The Use of Headings.

Here is a key tip relating to the conclusion and to the use of headings. When you begin to write your response, use headings. Try to paraphrase the call of the question in the main heading. This will keep you “on track.” This means that you will be responsive when answering the call of the question. Also, this will help with the aim of submitting an elegant response. Let’s now do an advanced exam tip.

Advanced Exam Tip.

For many exams, timing is an issue. As such, expect timing to be an issue and know how to deal with this. This means that you will be faced with hypotheticals with lengthy fact patterns. Moreover, you may need to be particularly keen in applying timing techniques. Otherwise, you will run out of time and not complete your response. If this happens, you will lose valuable points. Avoid this.

Since we are on the topic of headlines, being responsive, and applying a conclusion, it is appropriate that this advanced tip be stated here. To simplify the explanation, we’ll assume we are dealing with an Evidence question. This is because Evidence questions have a reputation for also being racehorse exams (although *not* pure racehorse exams). These are time-pressure exams and the focus is usually to spot issues. Therefore, you need to be strategic with these types of questions. Also keep in mind that you can also apply this strategy to other subjects.

Summary of Advanced Exam Tip.

In sum, we’ll assume we have one major question in one hypothetical. It will be called Question 1. Yes, very unique. You may have more than one question but we’ll just focus on one here. We’ll further assume that you will spend 20 minutes on this question.

Moreover, we’ll take the position that we are typing the response (versus handwriting the exam). If you are handwriting, you may have to estimate the placement of your headings.

When the time comes for you to begin writing (after you write the outline and do the “Fourth Read”), write the major issue as a heading for Question 1. And then write all of the *sub-headings* under the main question heading. The key here is to do *all* of the headlines within the 20 minutes you allot (or however many minutes you allot to complete the question). Moreover, do *not* do the headings for any other major question, such as Question 2 (assuming there is a Question 2). Do not even write “Question 2” on your response as a major heading. If you set aside 20 minutes to Question 1, do not share that time with Question 2.

Example.

Let's do a practical example and return to Evidence. Let's say we have 3 questions. We'll also say that we will give equal time to each question. Three questions divided into 35 minutes (35 divided by 3) equals 11.6. So each question gets 11.6 minutes.

Here is Question 1. *Did the court properly admit the admission form? Discuss.*

You would then convert that question into a heading. You may need to paraphrase the question if it's too long. The heading should look something like this:

Did the Court Properly Admit the Intake Form?

Feel free to use the bold and underline features (if it does not take too much time). You may even choose to capitalize the words in the heading.

Thereafter, you apply the sub-headings. Here is an example. Remember that you would transfer these headings from the outline to the word processor (or test booklet).

Q. 1. DID THE COURT PROPERLY ADMIT THE ADMISSION FORM?

Relevance.

Logical.

Legal.

Presentation.

Best Evidence Rule (BER).

Authentication.

Personal Knowledge.

Hearsay.

Non-Hearsay Exceptions.

Excited Utterance.

Present Sense Impression.

Statement Made For Medical Diagnoses or Treatment.

OVERALL CONCLUSION.

End Example.

Commentary.

Notice how extensive that outline was for just one question (with two questions remaining in that example). This is typical for Evidence questions. Again, keep in mind that not all one-hour essays are designed to take exactly one hour. You may be designated a three-hour block to perform three essays. Some may take a lesser amount of time. Others, such as this question, may take longer.

However, by doing the sub-headings, you are now fully aware of the limited time that you have to complete the given task. Moreover, you have finished placing the headings on the response. If you find yourself running out of time and have to switch to emergency mode, the grader will at least know that you are being responsive to the question. Worst comes to worst, write your rule *within* the analysis and a brief conclusion. See more of this on the topic below. Remember that the analysis is where the majority of the points come from. But having a conclusion in place cannot hurt.

Also notice the use of capital letters that are used at certain points (for example, at the outset where Question 1 was stated). It read as such:

Q. 1. DID THE COURT PROPERLY ADMIT THE ADMISSION FORM?

This is done for the purpose of being organized. You want the grader to see that your work is organized.

Forgetting a Rule and Running Out of Time.

What happens if you initially wrote an incomplete rule and are running out of time? Do you go back and write it? No! You don't. Just write the rule in your analysis.

Consider the paragraph below. We will go back to the concept of Search and Seizure. Let's just discuss Search. We'll assume that you forgot to mention *expectation of privacy*. Here is an example of how you would deal with this.

Here, the writer briefly stated the reason why Dan had an *expectation of privacy* in his analysis. The element will be underlined below.

Sample Writing.

Also, the search occurred upon Dan's outer clothing. Nonetheless, even though it was his outer clothing, Dan still had an expectation of privacy since a search upon Dan's outer clothing can also reveal an object within Dan's clothing that he wishes to preserve as private.

End Sample Writing.

An emphasis was added as an underline to show the element that was initially omitted. Of

course you would not write that on the exam. It's just to highlight the example.

As long as you analyze the elements and only miss a few of the rules you will be okay. Also, notice that the analysis is made in two long sentences. Again, the formula for the non-major issue analysis is just a guide. You can deviate from it and develop it to fit your style.

Side Note: Complete Rule for Search.

By the way, the rule for *Expectation of Privacy* is as follows:

A person has an expectation of privacy where a person seeks to preserve the object as private.

The emphasis is added above as an underline. Also, this fits into the longer rule above under *search*.

Complete Rule for Search (Reference Only).

A search occurs where the government agent infringes upon a person's reasonable expectation of privacy. An expectation of privacy is what a person seeks to preserve as private.

You then state the conclusion and move on to your next area.

Examples: Model Responses.

We will post again the samples from model answers (from July 2016, Questions 3 and 6). Study them again. They should make much more sense at this point.

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.

Rebtl
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**.

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

Initial
Argument
of Premise

Counter-
Argmnt.

Rebutl
to
Countr-
Argmnt.

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

Another Example: A Model Response.

Here is an example from a former student. Focus on the signal words and notice how the overall content flows. The signal words are underlined. IRAC designations are in red and in **bold** format. Also, comments in red are ones actually made to the student.

Frank's Interest

(Issue) Conveyance of BA [(Blackacre)] in Joint Tenancy [(JT)] *Excellent issue to discuss.*

(Rule) A JT may sell, encumber, or rent their portion to anyone during their lifetime. But they may not sell, encumber or rent the other JT portion. When a conveyance of JT occurs the party takes as a tenant in common (TIC). *Great rule. (Analysis) Here*, B conveyed her ½ JT interest in BA to Frank and because this was done during her lifetime it was a valid conveyance Frank takes as a TIC of her ½ interest.

However, C will **counter-argue** *Excellent placement of a counterargument.* that B's interest to Frank was void because she had no right to convey BA to Frank without first discussing it with him and getting his approval and because he has the right of survivorship upon her death he owns all of BA .

M will **rebut** that Frank owned ½ of BA as a tenant in common at his death because B as a JT does not need to inform or seek C's approval to convey her interest during her lifetime and once conveyed Franks obtains BS as a TIC [Tenant in Common]. **Therefore**, F's interest in BA is a tenant in common.

Therefore, M will acquire BA as a TIC from Frank at his death. *Excellent discussion here.*

End Example.

You do not need to provide separate paragraphs. However, to achieve a very clear passing score, it helps to have various paragraphs (as opposed to the writing being piled into one single paragraph). This now concludes the section on signal words.

Conclusion.

This concludes the section dealing with the one-hour essays. Use this information as a foundation. You may then alter the structure to fit your own style of writing. Now go, practice, apply, and triumph.

What now follows is other information to help you succeed. You may wish to skip that for now and go straight to the essay questions found under Appendix 1. You are on your way to becoming a master at writing in a lawyer-like manner! You will pass the bar exam!

OTHER KEY INFORMATION

Chapter 5 Pertains to Study Schedule.

Chapter 6 Pertains to Study Materials.

Chapter 7 Pertains to State of Mind.

“I cannot teach anybody anything. I can only teach them how to think.”
–Socrates.

CHAPTER 5

STUDY SCHEDULE

ONE-HOUR ESSAYS SCHEDULE

Preparation.

This schedule should be applied after you complete this course. Once that is done, this is how you will excel on the bar exam: you must apply the techniques to the point where you automatically understand what must be applied. In other words, you must perform many of the techniques through muscle memory. To be clear, it is *not* merely knowing what must be done. But you must quickly understand what and how it is to be performed. There are elements of timing and accuracy here. This will only come through practice. For this reason, it helps to be organized so that your preparation includes practice.

What now follows are suggested schedules. There are two parts to this section. The first section is the weekly schedule. The second part is a list of simulated exams that will help you succeed on the exam. It is a rigorous schedule. However, keep in mind that you are properly studying and that is the price you must pay for success. Let's now look at the weekly study schedule.

Weekly Study Schedule.

Here is a schedule that covers all the topics on the exam. Note that this format allows flexibility in personalizing your weekly schedule.

One-Hour Essays.

- Bar candidates should write at least one (1) one-hour essay per day under timed conditions. This activity should cover five days of the week.

It is preferable that these be conducted Monday through Friday. This adds a sense of structure and organization to your schedule.

Also, it is helpful that this activity be conducted when you are fully rested. If you are drained from energy, you will not perform at maximum capacity. Truth be told, writing essays is not the most enjoyable activity you can think of. For this reason, you must psyche yourself to believe that it is a fun activity. If it helps, make this the first thing you do in the morning. Get it out of the way.

Moreover, keep in mind that you must still review your work. Review also takes time. Use BarEssays.com (the discount code is **JURIS**) and/or send us a message as we offer grading services ([Jurax Grading Services](#)). There will be more on grading later in this section.

Performance Test.

- At least one full day of the week should be dedicated to writing one Performance Test. It is preferable that a Saturday be used for this task.

If you need more than one day to prepare, which you may need when you first begin writing PT's, choose Sunday as that day. We'll get to Sunday in a bit (that will be a "free" day).

MBE Allotted Time.

- MBE questions should be done at least six days a week.

Reading Outlines and Other Activities.

- Do these activities every day.

However, perform these activities strategically. For example, read outlines briefly before doing a practice essay. Take more time to read an outline for the relevant part you performed on the essay. This should be part of the review for the work you did under simulated conditions.

Focus on relevant sections of the outline. For example, if you are writing an essay on real property, focus on study material for that subject only. **CAUTION:** Do not spend most of your time reading outlines or watching lectures. That is not the best way to learn.

The Seventh Day.

- The seventh day of the week will usually be left without assignments. Should this be a "free" day?

It is up to you. However, you may want to use this day to review outlines, do more MBE's, look over the PT's again. Also, if you have a family, this can be a great day to include family time.

Try to avoid writing one-hour essays on this day. You already have enough of those during the week. Taking a day off will be beneficial as it will give you time to reenergize.

Going to the Next Level: Taking Simulated Exams.

Before reading this next section, ask yourself this question: "How bad do I want to pass the bar exam?" If your determination is high, you will find the energy to complete the next suggested task.

Whether you have one year, six months, or two months until the exam, it is highly suggested you take three simulated exams. You should also perform these activities regardless of which bar review course you are taking, or if you are doing a self-study course. Performance of these activities will reveal your strengths and weaknesses.

First Simulated Exam of One-Hour Essays.

At the outset of your study, take six essays (a full exam). These are also assessment sessions so that you can track your progress. Remember to structure these sessions with two different sets.

- 1. First set will include three hours and you should perform three different 1-hour essays.**
- 2. The second set should include two one-hour essays and a 90 minute Performance Test session.**

For more information on simulating exams, watch this video. The video also discusses preparation for the 90 minute Performance Tests. There are a limited number of PT's as published by the State Bar of California. However, there are existing MPT's as released by the National Conference of Bar Examiners. The video link is below:

<https://www.youtube.com/watch?v=8GSpdTHGxLI>

As stated in the video, it is important that you simulate actual testing conditions. You should also get your essays graded (more on this in a bit). As for the testing material on the one-hour essays, go to the Jurax website at the link listed below. You will find past exams that go back to 2001. Here is the link: <http://juraxbar.com/past-bar-exams/>

Another benefit of taking simulated exams is that anxiety subsides. It is natural to be nervous during this time. Acknowledge it and take steps towards eliminating or reducing the negative emotions. You will see that your confidence will increase with the more practice tests you take. You will appreciate being in control during the actual exam.

Grading Your Essays.

Make the decision to have your written essays graded. This includes both the one-hour essays and the Performance Test. There are many reasons for this but two are of importance: (1) expertise and (2) the time factor. Grading exams, even if they are written by you, takes time. Again, contact us at juraxbar@gmail.com or visit our website.

Also, graded bar exam essays can be searched in a database known as BarEssays.com. This means that you can evaluate your own exams by comparing them to graded responses from actual past exams. Send us an email at juraxpromo@gmail.com and we'll send you the discount code. If you want to skip the emailing part, here is the code: **JURIS**. Also, I disclose that Jurax would receive a small commission from BarEssays.com. However, it is an honor to work with them because their database is extremely helpful.

Second Simulated Exam of One-Hour Essays.

Midway through your studies, do another set of six essays. Also, simulate the actual testing conditions. Get these exams graded. The feedback you receive will be worth it. As for the testing material, try to do the state bar exam that was administered one year before your exam is scheduled (versus six months ago). So if you are studying for the July exam this year, take the July exam from one year ago.

Even if you are familiar with the facts of any essay, or if you have done a practice exam, do it again. This is because the focus of your grade will be based more on the analysis (not just on the facts alone).

You should see improvement from the initial essays you completed at the beginning of your bar preparation. The point here is to measure your level of preparedness. See if you can detect your strong areas. Also, take note of your weak areas. When you sit for the actual bar, you want to rely on confidence and not on luck. This confidence is developed by writing practice essays.

Third Set of 6 One-Hour Essays.

Do this set two or three weeks before the actual bar exam. Use the last actual exam that was administered. For example, if you are scheduled to take the exam in February, use the July exam that was recently administered. You should see considerable improvement. More importantly, you should receive passing scores from your graded essays. If you are not getting passing scores, you need to seriously reexamine your weak areas.

Variance In Scheduling.

As stated previously, from Monday through Friday, you should do at least one timed essay. Again, your test materials should come from the state bar's website. If you are not achieving scores of 65 or close to that range, and you are midway through your studies, it is strongly suggested you do at least *two* simulated written essays per day.

The Activity Known as "Outlining" The Essays.

What is it? Should you do it? *Outlining* is the act of just outlining the essay questions without actually *writing* the exam. The idea is to see if you spotted all of the issues. Many people do not recommend outlining because you are selling yourself short. This is true if you are not ever writing out practice exams in one hour.

However, I highly recommend you outline under certain circumstances. Here are some of the reasons:

1. There are just too many prior essays available. It is not reasonable to suggest that you write all of these under simulated testing conditions. There will not be enough time.
2. When you outline, you will familiarize yourself with the format of the questions. Get very familiar with how certain questions are asked.
3. Performing an outlining activity serves as a memorization technique. This is done when you attempt to recall the elements of an issue.

As stated above, the State Bar will make prior exams available. However, these usually go back only five years in the past. Instead, go to the Jurax site. Here is the link again: <http://juraxbar.com/past-bar-exams/>

Reading Without Writing Past Exams.

You may not even have time to outline all of the essays. This is understandable. In such a case, just *read* the past exams. Look for fact patterns and questions you are not familiar with. Perform issue spotting activities without writing anything. This is assuming you do not have time to even outline the essays. Which honestly speaking, you probably won't have time to outline all of the past essays. Also, look for issues you are not familiar with and record these in your notes.

At the very least, write down the rules and elements. Also, write the rules in the templates that you create for the subject.

How Many Past Exams Should You Study?

Find as many past exams as you can. Explore *all* of them.

How Many Essay Questions Should You Write?

Do as many as you need in order to consistently score at least a 70 by the time you are close to the actual exam. For this reason, I encourage you to conduct periodic assessments. As mentioned previously, I suggest three assessment periods. You may need

more than that. The point here is that you have to be honest with your evaluations and consider your weak areas.

CHAPTER 6

STUDY MATERIALS

Material for the One-Hour Essays.

Here is a list of the essential items you need:

1. This book you are now reading.
2. [Jurax Cheat Sheet Template](#).
3. BarEssays.com.
4. Grading services such as JuraxBar.com or other sites that grade essays.
5. Commercial Outlines.
6. State Bar Essays.

Commercial Outlines Discussed.

There are companies that push outlines on you even before your first day of instruction at law school. Here is my suggestion. Purchase one set of outlines. Go to Barbri, Kaplan or another site and find the *contact* option for ordering information. Keep that one set of outlines from your 1L year until you pass the bar. Also, be careful with purchasing “packages” from the big bar prep companies. Buy only what you need. Think about going shopping. You buy what you like. And you don’t buy what you don’t like. That very same principle applies here.

Furthermore, as stated earlier in this text, use the outlines as a *reference*. In fact, think of your outlines as a reference center. You already know that you do not read a reference, like a dictionary, or an index, from the first page to the last page. Instead, you refer to these sources as you need them.

With this said, outlines have a major benefit if used properly. Throughout your preparation, go through your outlines to make sure you have covered (and understood) all of the items in those references. On this same point, check your outlines to ensure you have the correct law. Sometimes, even model answers that are published by the State Bar misstate the law. But, as emphasized in this book, don’t make reading your outlines your priority for approaching the bar exam.

Commercial Lectures.

Ask yourself these simple questions: (1) How did you learn to walk, talk, drive? Do you speak a second language? Are you a martial artist? Think about how you learned these skills. You did practical application until you mastered the skills. Furthermore, there was also plenty of repetition. The same goes for the skill of writing in a lawyer-like manner. In fact, one of the worst ways to learn something is by having someone lecture to you. Keep this in mind when making your decision on whether to take commercial lectures.

Although lectures may help you understand certain points of the law, they are not the best way to learn. They are very time-consuming. Avoid these in favor of opportunities to expand your learning in a more efficient manner.

Furthermore, the bar exam does not grade you on how well you remember the lecture format. It grades you on your writing and on your knowledge of the law.

One last point to consider in this section. Your assets are time and energy. Your time and energy will be drained when commuting, arriving, and listening to lectures. Use your time and energy to maximize learning by using more effective methods.

Real Life Story.

In the Marines, we were required to jump in a pool with helmets, backpack, boots and a rifle. The jump was from 10 feet above water. I would literally see grown men cry right before their first dive. It is understandable to be scared if you have never done such a task. I was scared too. But you have to face that fear. Once you jump in the water it actually feels refreshing. You'll notice that you resurface on your own and it is actually a really awesome experience. Once you're afloat, you can do many maneuvers.

The point here is that starting to do anything for the first time may be difficult. In this case, writing essays may seem like an arduous task. It is easier to read outlines or listen to a lecture. But at the end of the day just remember, you only become great by actual practice. That is to say, you only become great by actually diving in and starting the writing process.

CHAPTER 7

STATE OF MIND

It is important that you be relaxed at all times before, during, and even after the exam. This will take a lot of practice for the reasons stated here: you have been told that you need to stress out when taking exams. This probably goes back to when you were in grade school. And you have heard your friends say on Facebook: “OMG. Exams. I’m so stressed out. More coffee. {insert emoji}” It has somehow become popular to say this. However, being stressed out will be counter-productive to achieve a passing score.

Exercise.

Taking time to relax is important. Relaxing is almost as important as studying for the exam. I know this from personal experience. When I was preparing for the February 2015 exam, I increased the amount of miles and the number of days I ran on a weekly basis. If you meditate, keep up that practice. Running is also meditation so that is something to consider. By the way, during the preparation for the February 2015 exam, I lost 21 lbs. Here is a before-and-after picture. The reason for including the picture is to emphasize that properly managing one’s schedule can have healthy benefits.



State of Mind.

Also, it is important for you not to put the bar exam on a pedal stool. You have been trained from day one of law school to glorify and fear the bar exam. And of course, the passing statistics don't ease the tension.

Don't get me wrong. It is okay to have respect for the bar exam. As stated earlier, I have an enormous amount of respect for the State Bar of California for developing such a difficult exam.

However, do not put yourself in a lower social status as that of the exam. It is better to see yourself as having *higher* value than the bar exam. For this, you have to train your mind.

In short, you have to develop confidence that comes from proper preparation. The confidence will come through the application and repetition as proposed in this book.

Last, do not wait until bar preparation to learn to relax. Learn to be at ease at all times. This goes for all undergraduates and law students.

Time Versus Energy.

You have been told that you need time to study. And many people place a focus on time. I disagree with this concept. What you need is *also* energy.

Let's assume you have all day and night to study. You start strong. Then, you start feeling the mental fatigue starting to kick in. You will then find yourself all over social media making comments (or shopping, or whatever you do when you get online).

Here is what I recommend. Find the time of the day when you are the most focused. For me, that is the morning. My mind is clear and I'm ready for the day.

Jump on this wave of energy and maximize on learning. When you start feeling tired, take a break. Get something to eat. Exercise. Do what you need to do to calm your mind and body. Then go for another round of study in the afternoon or evening. You will be more productive like this.

Test Week.

Get a hotel that is near the testing center. Many examinees will get rooms at the actual test center. I do not suggest you get a room there. In short, you want to focus on being relaxed. If you surround yourself around nervous people, you will be impacted by that energy.

On the other hand, think of each exam day as just another day. And that is exactly what it is. Keep that in your mind. This will help you relax.

When I took the test in February of 2015, I would wake up listening to music that inspired me. Then I watched YouTube to hear the voices of people that inspired me. Their energy would transfer to me and I would feel empowered. Find out what contributes to

your strength. It could be music, YouTube videos, or something only you know. In the morning and during lunch, immerse yourself with that. In sum, get headphones and stay positive.

The Day Before the Exam.

On the day before the exam, do some *very* light studying. Just glance over items you are not sure about. Try to limit this study session to one hour. In the evening, do something fun. I remember I went to play video games the night before. You are trying to be as calm as you can be. Remember, every day is just another day.

Restroom Break.

Be strategic when using the restroom. This is because you do not want to take a restroom break during exam time. This will defeat the purpose of using 60 minutes to prepare. If you have a bladder problem, prepare for the essays using a 55-minute session (versus 60 minutes). Also take some comfort that your preparation here encourages you to perform your writing in 55 minutes. Take this fact into consideration if you find yourself with a need to visit the restroom frequently.

A typical day of bar testing begins at around 8am. It ends close to 5pm. As such, it is wise to wait until the instructions take place. There will be a moderator that will get on the microphone and start reading off instructions. Wait until he starts talking. And then go to the restroom. Check with a proctor upon your return to make sure you didn't miss anything. This way, you will go through your exam without being interrupted. Also, drink a minimum amount of liquids. Just drink enough water to prevent dehydration. Let me cover my butt by saying that you should check with your doctor before implementing anything read here.

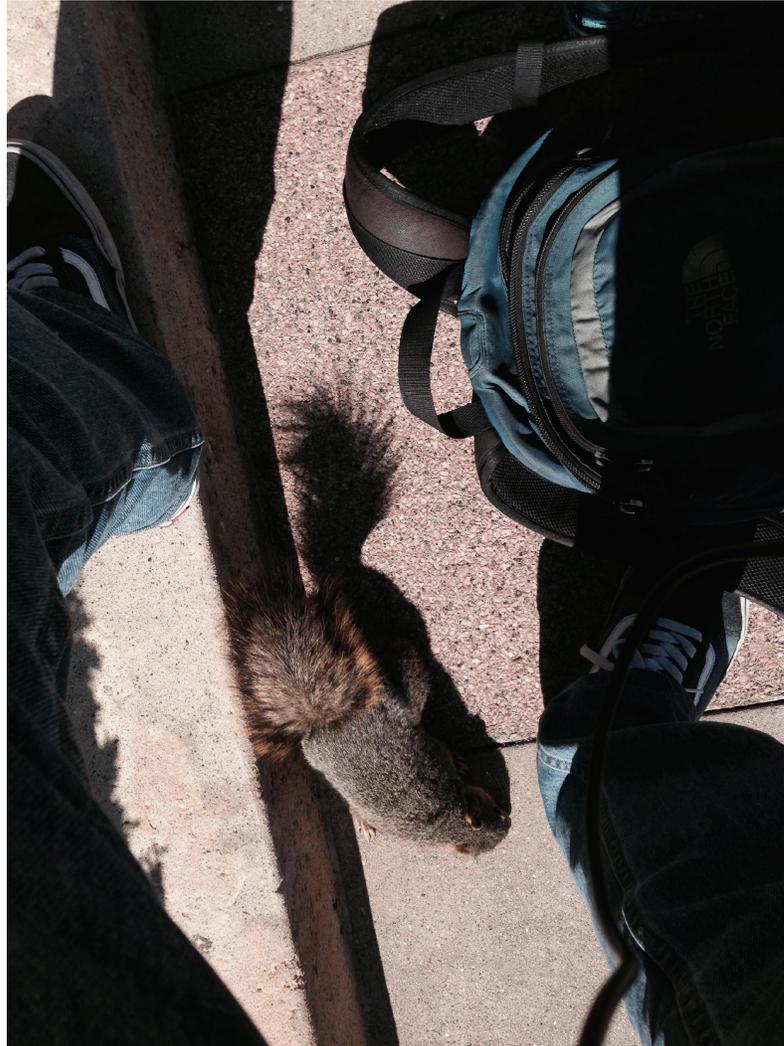
Lunch Break.

Okay, I'll just be honest here and this may freak you out. I'm laughing right now. During bar preparation, I picked up running to stay calm. As stated above, I lost 21 lbs. So as a side note, bar preparation can be helpful to your health. I still run to this day. Anyway, I state this because during the actual testing days, I ate McDonald's food for breakfast and for lunch. So this was a dramatic departure from the healthy habits I had developed.

I left my lunch in the car and taking a walk there was good exercise. I then grabbed my food (it was cold by then) and I ate it. The reason I did this was because I wanted to stay calm. I didn't have to think of where I was going to eat. I didn't have to be around nervous people, and I got to listen to my iPhone to stay calm. The point is that you should begin considering meals that are easily accessible and that you feel comfortable eating. As for me, I obviously need to work on better nutrition plans when I'm on the road.

At one point when I took the February 2015 exam, I was relaxing during the lunch break. Suddenly a squirrel approached me. It lingered around my feet. I'm not familiar with squirrel behavior. But a groundskeeper there stated the following. He said, "In all my years I have never seen a squirrel get that close to a person." The picture that follows was

the actual moment. They say that dogs can sense when a person is tense around them. Maybe this is the same for squirrels in that they can sense a person's level of calmness.



Either way, I was calm and I believe the squirrel sensed that. We were both relaxed and just enjoying the moment. The point here is that you have to learn how to relax now and apply that strategy during your preparation and during the actual testing week.

With the calm squirrel in mind, I now end the preparation section.

CONTACT INFORMATION

Please contact us for any questions or comments. We'd love to hear from you. Also, follow us on the links provided below.

Resources:

For BarEssays.com coupon code, use: JURAXBAR.

For AdaptiBar coupon code, use: JuraxBar30.

For the Jurax Cheat Sheet Templates: <https://juraxbar.com/cheat-sheets/>

For past California Bar Exam essays: <https://juraxbar.com/past-bar-exams/>

Join the Facebook discussion for Cal. Bar Exam Essays:

<https://www.facebook.com/groups/1849250355112296/>

Join the Facebook discussion for MBEs:

<https://www.facebook.com/groups/1946244922352855/>

Join our Mailing List. Subscribe here: <http://eepurl.com/dcWf0X>

Find us on the web at: <http://juraxbar.com>

Email us at juraxbar@gmail.com for all other questions or comments.