

2020 Edition

**FOR THE CALIFORNIA BAR
EXAMINATION**

**1440:
MASTERING THE
PERFORMANCE
TEST**

**Tips on Finding Rules,
Speed Reading, Analysis.**

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Jurax Bar Prep

1440: Mastering The Performance Test

**On The
California Bar Exam**

2020 Edition

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Jurax Bar Preparation, Inc.

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JURAX BAR PREPARATION, INC., MARCH 2020

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CHAPTER 1
KEY POINTS RELATING TO
THE PERFORMANCE TEST

“The PT separates the men from the boys.” –Unknown Female Examinee.

KEY POINTS RELATING TO THE PERFORMANCE TEST

SECTION 1

CHAPTER 1

Introduction.

This is what makes this book different from others: You will identify the rules and the elements at the outset of starting the Performance Test (“PT”). For the most part, those that do not receive a passing PT score do so because they do not analyze key rules. The reason for this is because they cannot find the rules, they run out of time, or a combination of both.

However, in identifying the rules first, the content of this PT guide will also allow you to successfully achieve what the bar examiners intend for you to demonstrate. Here is what you are being tested on: (1) Reading comprehension; (2) Reading and writing speed; (3) Ability to compare and contrast different viewpoints; (4) Ability to write in a lawyer-like manner; (5) Ability to Organize different documents; (6) Ability to analyze; and (7) Ability to synthesize different sources.

If you are weak in any of the areas above, do not despair. There is great news! Everything has a method. By learning the proper techniques that are presented here, and by applying drills and repetition, you will *excel* on the PT!

To keep things simple, we will divide the steps in two halves. Since the total time allotted is 90 minutes, each half will take 45 minutes to accomplish. A summary of some of the key chapters is now provided.

The point of this text is for you to find and apply key rules. As such, the author emphasizes that you make it a priority to locate key rules first. However, there are preliminary steps that do not take up too much time before you jump into the Library section to dig for these rules. This book will serve as a guide. If you are absolutely pressed for time and need tips on locating the rules right now, skip to **Chapter 3**. This chapter deals with the rules in the Library. If you take this approach, it is highly suggested that you take the time to read the entire content of this text before taking the exam. Let’s continue.

Chapters 2 and 3.

This chapter pertains to the “First Half” of the PT. In other words, the first half will deal with the first forty-five (45) minutes of the ninety (90) minutes. Here, a substantial amount of time will be based on identifying the issue in the File and the rules in the Library.

Chapters 4 and 5.

Chapters 4 and 5 pertain to the “Second Half” of the PT. In other words, the second half will deal with the remaining forty-five (45) minutes of the 90 minutes. Here, an amount of time will be based on matching the File Facts with the Major Issues. Chapter 5 will deal with writing your essay and converting your work into the final product.

Chapter 6 and the Conclusion.

The PT is an odyssey. Nonetheless, it can be enjoyed. In fact, enjoy it! Appreciate the complexity and take joy that the PT can be conquered. You can find sample PTs to practice with under Chapter 6.

SECTION 2 AN OVERVIEW

CHAPTER 1

Introduction.

An important objective here is to find the issues in the File first. Another important objective is to then find the rules in the Library. These terms are later explained.

You have to finish in 90 minutes. This may seem like a long time, but with heavy loads of information thrown at you, these may be the fastest 90 minutes of your life.

This chapter first deals with a general oversight of what must be accomplished. As such, a big picture will first be described. Viewing the big picture first is essential. Let's pretend you're in a forest and you are trying to find your way out. View the forest from a map first. That is the analogy for the big picture. This will aid you as you find your way out of the forest.

In the same manner, an overview is provided first in this chapter. Then, in the following chapters, the individual components are broken down. In other words, we'll take this step at a time.

SECTION 3
THE BIG PICTURE IN MORE DETAIL

CHAPTER 1

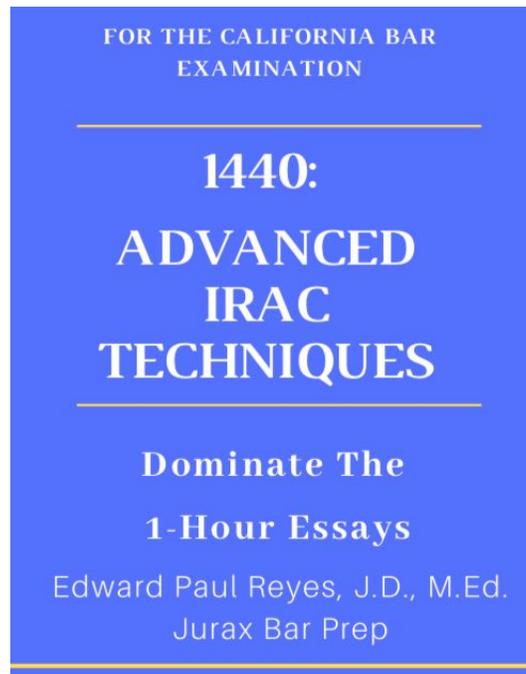
Introduction.

Here is an overview of the important steps in approaching the Performance Test (“PT”). You first read the memorandum and the task carefully. Then you skim through the rest of the file. Once this is done, you begin the process of identifying the rule in the Library. Also, do not think that the file is skimmed only once and then not read again. Rather, reading strategies are applied that will ensure comprehension and timeliness.

This e-book assumes that you already possess the skill to perform a proper analysis. What is a proper analysis for the bar exam? Excellent question. Here is the answer. You approach most issues using the IRAC method. Then, when you identify the major issue (or major issues), you also present a counter-argument and the other important components. We’ll offer resources if you are not yet familiar with the basic structures of a proper analysis later in this writing. See the next page.

[Pause for a Commercial Break]

Some NEVER Understand The Basic Components of an Analysis. Be A Person That Understands These Concepts!



Do you know how to properly present a counter-argument on the 1-hour essays? If so, you probably know how to perform the **counter-argument** on the Performance Test. This is because the same principles apply (for the most part).

Now, do you know *how* and *when* to apply the **rebuttal** to the counter argument? There is specific language and a structure to do this successfully.

Get the *1440: Advanced IRAC Techniques* delivered to your email now. Focus on the chapter titled **The Analysis**. You can transfer those skills to the PT section of the exam. See the link below. By the way, The *Platonic Dialogue* and *Hunter's Counter-argument* are described in detail in this e-book.

Link: <https://juraxbar.com/subscribe-bar-exam-ebook/>

[End of Commercial Break]

MATERIALS NEEDED

Grab Those Highlighters.

There are many important components with a PT that you must immediately distinguish from one another. It is my recommendation that you have four (4) highlighters available as you continue. I recommend yellow, blue, orange, and pink (but you might have your own preferences). We'll deal with the highlighters later.



**SECTION 4
DISCUSSION OF THE ELEMENTS OF THE RULE**

CHAPTER 1

It is reemphasized that a very important part of the PT is to identify and use the rules. With this said, here is an example that focuses on the rules and the elements. Let's take a step back to make sense of this. At this time, think of the basic IRAC format. However, look at the "R" again. Envision adding three (3) elements after the "R." It will look something like this. We'll start with an ordinary situation:

I = Issue.

R = Rule.

Element 1.

Element 2.

Element 3.

A = Analysis.

C = Conclusion.

End Example.

Note that the example above is only for one issue. As such, you will have many IRAC-set ups throughout your PT.

The Problem That Many Examinees Confront.

Here is the problem that hurts many examinees. They cannot identify and make use of key rules and elements. The PT is designed to make it complicated to identify the rules and to pair those rules with the proper elements. Moreover, the elements are also not easy to identify. But there are techniques that are found in this e-book. In fact, this book is designed to help you find those obscure elements in a timely manner. Be patient. However, if you are pressed for time, skip to **Chapter 3**. This chapter deals with the rules in the Library. Let's continue.

[Pause for a Commercial Break]

4-Hour PT One-On-One Session



PERFORMANCE TEST 1-ON-1

**1-On-1 Session For
Performance Test**

This is a four-hour session.
We will meet on Skype.
Live exercises using Google Drive.

California
Bar
Examination

**Performance Test
INSTRUCTIONS AND FILE**

“I STILL can’t find the rules.” This is a very common occurrence. The PT is heavily focused on the application of the rules and elements. However, many still can’t find them. Successful completion of this activity can result in a passing score. The contrary is true: not being able to find the rules can prove detrimental.

Even if you find the rules, are you applying a **proper counter-argument**? Or maybe, as is too common, **you’re not even focused** on applying a counter-argument?

Also, do you know what it means to perform a proper analysis on the Performance Test?

Eddie Reyes offers individual per-hour sessions or a full one-on-one 4-hour course.

Eddie will pin-point your deficiency. Also, he’ll show you how to cure your weak points. Excel on the PT today!

See this link: <https://juraxbar.com/performance-test-1-on-1/>

[End of Commercial Break]

SECTION 5 THE ANALYSIS

CHAPTER 1

Allow me to define what is meant by *Analysis* in the PT. This is done when Hunter provides you with his counterargument. As such, it is important for you to identify the counterargument(s). You *must* rebut the counterargument(s). You cannot earn a passing score without this analysis. We'll see an example soon. For now, just know the definition of an analysis as it applies here.

Objective Memo Versus Persuasive Memo.

Let's clear a topic that often makes bar candidates nervous. We'll discuss it now at the outset as we don't want this topic to cause tension down the line. For both the *objective* memo and the *persuasive* memo, the goal is the same: you have to provide the *analysis* and you have to provide a *counter-argument*. We'll talk more about these two terms later.

Here is the key difference: for a persuasive memo, you have to discuss the merits of a counter-argument. Then you usually have to provide a reason as to why the counter-argument is not a strong one. For example, the counter-argument is from a different jurisdiction. Or the facts in the case from which the counter-argument originates from are materially different from the facts in the File.

On the other hand, an objective memo may have a counter-argument that will be difficult to overcome. As such, you have to identify the hurdle and be upfront with the "boss." The "boss" may be the senior partner that is issuing your task.

Either way, for both the objective and the persuasive memo, you have to identify the counter-argument and present the analysis in a clear manner. Being able to do this is a key aspect of receiving a passing score on the PT. Let's focus now on the first half of the PT.

CHAPTER 2

THE TASK AND THE MAJOR ISSUES IN THE FILE (DISTINGUISH THIS FROM THE MAJOR RULES)

“The more you sweat in peacetime, the less you bleed in war time.” –U.S. Marine Corps common saying.

**SECTION 1
TIMING TO SET UP
THE FIRST HALF OF THE PT**

CHAPTER 2

Objectives.

Below are the areas we will approach. There is also a suggested time frame for each area. Use this as a checklist when practicing PT activities. These terms may seem unfamiliar now. But they will make complete sense in a bit. You will be amazed! Also, take note of the suggested time in which to perform the objectives.

Brief Summary of Activities With Suggested Times.

First Half (45 Minutes)

Step 1. Identify the Task (“Task”) in the Memorandum (“Memo”). (5 minutes)

Step 2. Identify the Major Issues in the File (6 Minutes)

Step 3. Identify the Major Rules in the Library (6 minutes).

Step 4. Skim File (total of 2 minutes).

Step 5. Identify Elements of the Rules. Also, look for Other Major Rules in the Library (16 minutes).

Step 6. Skim File (total of 2 minutes).

Step 7. Identify the Library Facts (total of 8 minutes).

In the next page, there will be a more detailed breakdown of these activities. Keep in mind that this will only apply to the first half of the PT (the first 45 minutes).

HALFTIME.

Second Half (45 Minutes)

Step 8. Match File Facts with Major Issues and Major Rules. Time: 15 Minutes.

Step 9. Write File Facts and Conclusion on your laptop. Time: 30 Minutes.

Breakdown of Activities.

This is a more specific breakdown of the activities in the first half. The second half is simple to explain because you will be writing. There is also a section below titled *Summary of Timeline* where these time frames are located (see the Table of Contents). Do your best to memorize the suggested times for all sections. Remember that the time allotted will be subject to modification as determined by the particular situation. In other words, it's a case-by-case situation here. These are just suggested time frames.

1. Identify the Task in the Memo. (5 minutes)

2. Identify the Major Issues in the File (6 minutes total for this section).

Time suggested: Spend no more than two (2) minutes to identify the Major Issues.

Subpart A: Annotate the Major Issues onto your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the Major Issues on your document to be submitted (e.g., laptop).

Time suggested: Not more than two (2) minutes.

3. Identify the Major Rules in the Library (6 minutes total for this section). Also, don't confuse the Major Rules in the Library with the Major Issues in the File.

Time suggested: Not more than two (2) minutes to identify the Major Rules.

This is not an error. You should be able to identify the Major Rules rather quickly.

Subpart A: Annotate the Major Rules onto your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the Major Rules on your document to be submitted (e.g. your laptop).

Time suggested: Not more than two (2) minutes.

4. Return to the File and Skim It.

Time suggested: Not more than two (2) minutes.

5. Come Back to the Library and identify the Elements of the Rules. This may also mean that may have to identify other Major Rules (10 minutes total for this section). **Note:** It is important that the reader understand the difference between the *Rule* and the *Elements of the Rule*. In basic terms, one rule may have three elements. For example, *what is necessary for a valid contract to exist?* That question states the rule. The answer has three elements: (1) *Offer*, (2) *Acceptance*, and (3) *Consideration*.

Time suggested: Not more than six (6) minutes to identify the Elements and other rules.

Subpart A: Annotate the Elements and other rules onto your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the rest of the Elements and other rules onto your document to be submitted.

Time suggested: Not more than three (2) minutes.

6. Return to the File and Skim It Again.

Time suggested: Not more than two (2) minutes.

7. Come back to the Library and identify the Library Facts (8 minutes total for this section).

Time suggested: Not more than six (4) minutes

Subpart A: Annotate the Library Facts onto your outline in 2 minutes

Time suggested: Not more than two (2) minutes.

Subpart B: Type the rest of the Library Facts onto your document to be submitted.

Time suggested: Not more than two (2) minutes.

Commentary.

There will be a brief video at the beginning of each important section. Watch the videos first and then read the details. For the PT, understanding can be maximized by actual practice. You will watch the videos first and then you will read the steps. Thereafter, you will use this information as a reference to strengthen your weak points and to sharpen your strong points.

Time allotted: The time allotted on the PT per section depends on many factors. Also, the bar examiners do not have a standardized timing system to assign to any given part of the exam. For example, one PT may have a short File and a lengthy Library. And vice versa. These are just suggested time frames that will be presented. Be prepared to be flexible with your time schedule. Let's now begin with the Task.

Should You Do the PT Before the 1-Hour Essays?

In the afternoon session of Day 1 of testing, you are required to submit three (3) essays. It is my suggestion that you do the PT first because more points per the allotted time is given to the PT. The PT is equal to about two 1-hour essays. As such, you can go over by 10 minutes on the PT for a total of 100 minutes (if you do the PT first). Then you would have 55 minutes for each 1-hour essay. Watch this YouTube video for more details:

<https://www.youtube.com/watch?v=zykhzo71ob4>

SECTION 2
STEP 1: IDENTIFYING THE TASK IN THE MEMO

CHAPTER 2

Time Suggested: Not more than five (5) minutes as stated above.

Are We Getting to the Rules Soon?

By now you are probably asking if we are getting to the rules first. The answer is ‘yes.’ But first, as mentioned earlier, you have to understand basic information from the initial memorandum (such as the task). You also have to understand the major issues in the file. These actions are done *briefly*. That is the key. *Then* you can set up the rules. With this said, let’s talk about the task in the memo.

The details now follow. Briefly read the Table of Contents and read the Memorandum (“Memo”) carefully. Second, identify the *Task* in the Memo. The task states the specific instructions and it also gives purpose to all of the work you are doing here. If you don’t understand what you are required to do, read the task again until you comprehend it. *Do not worry about time running out here*. That is how important this is. Third, label the task by writing *Task* next to it. The content here is so important that you can’t get a passing score if you don’t respond to it. Let’s then identify the major issues.

Writing the Task.

After you identify the Task, annotate it on your outline before you state the Major Issues. Also, write the task in your word processor or onto your test booklet that you are going to submit. See the video directly below on how to accomplish this. We’ll be more specific later in this section. We talked a bit about Major Issues here. Let’s jump to that section now.

Video:

Watch this video before proceeding. **Note:** If the link does not take you to the YouTube video, please copy and paste the link to your browser.

<https://youtu.be/CtNZmzwe7oA>

SECTION 3
STEP 2: IDENTIFY THE MAJOR ISSUES

CHAPTER 2

Objective.

Identify the Major Issues in the File (again, distinguish these from the *Major Rules* in the Library).

Time Suggested: Not more than six (6) minutes. However, the objectives contain a total of three tasks. Here are the three objectives:

- i. **Identify the Major Issues (2 minutes)** 
- ii. **Write your outline on your scratch paper (2 minutes).**
- iii. **Transfer your outline onto your laptop (2 minutes).**

Look for Apparent Issues.

You have already identified the Task. Now you need to identify the Major Issues (“Major Issues”) that will resolve the scenario that is stated in the task. These issues are mostly always found in the File. This is important: *look for issues that may be apparent*. Once you find them, you will save a lot of time. Let’s define *apparent*. Apparent means *obvious* in lay terms. For the bar exam, what is traditionally apparent may not be as obvious. Nonetheless, there will still be clues to identify something that is apparent. Let’s look at some examples.

In best case scenario, the Major Issues will be enumerated within the memo. Other times, they will not be enumerated but may still be within the memo. Other times, the issues may be buried in a regular looking paragraph in a document that is not the memo. In fact, don’t expect the issues to be enumerated for you. But if they are, that is a bonus.

Video Sample.

This is the same [Video Sample](#) as the one on the previous page. In this sample, the Major Issues were not difficult to identify since they were located in the memo. In the next video example, the Major Issues will not appear in the memo. As such, it will be more challenging to locate the main issues.

Example in February 2019 Performance Test.

For the February 2019 Performance Test, the Major Issues were *not* as apparent. Nonetheless, with proper practice, you can identify them. The following is a review of the PT for February 2019. Identifying the major issues is a focus here. See this link.

<https://www.youtube.com/watch?v=iZU7owmxG3E>

Also keep in mind, that there may be just *one* apparent issue. *See* Performance Test, July 2017, California Bar Exam. If this is the case, write that issue in your outline. You can be sure that more issues will appear later. You will then be able to number the issues.

Skim the File.

Time Suggested: Same as above. No additional time added.

Once you locate the Major Issues, skim the rest of the File. Spend no more than a total of two minutes here. Yes, two (2) minutes including the identifying of the Major Issues. Look at the type of documents. Pay special attention to certain things such as dates, names, and the type of documents that are included (e.g., letters, invoices, contracts). Look for letterheads to see if it is a government agency or a private company. Who signed the documents and what is their title?

By skimming, this means that you briefly read parts of it. Remember that you have about two minutes to both identify issues and to skim. Do not be tempted into performing heavy reading just yet. You will get an opportunity to strategically read the File later. To ease some of the tension, remember this: by the time you read the File with due care, you will understand the rules that will correspond to the File Facts. This way you won't get bogged down focusing on unnecessary facts. We'll get there later.

Furthermore, scan for potential counterarguments. That is, the opposition will throw counterarguments at you. You must recognize these arguments. Do you remember Hunter the Hater (a fictitious character that represents a counterargument to your position)? Hunter may explicitly state his counterargument. If you can spot him during this two-minute skim, great! If not, don't worry. You will spot him later.

The Reticular Activating System

This is a part of the brain that allows you to filter what is important. In essence, when you skim content, your brain will search for what is important. In the Performance Test, matching the issues, the rules, and all facts is important. By following the steps here, your Reticular Activating System will filter out what is not important. Thus, your attention will be focused on the important components of this exam.

Caution:

Do not be misled by headings that read "Issues." Many times these are traps. Instead, read the content with an open mind and ensure that you have found the proper major issues.

Exam Tip:

When practicing PT exercises, consider this tip when the Major Issues are numerous. Tear the page with the numerous major issues out of the booklet if this helps. Have it next to you and use it as a reference. You may want to do this when you begin to practice

writing the PT essays. Then as you progress with time and competence, you may begin to phase out this practice.

Prelude to a Forthcoming Similar Step.

Notice that the step to identify the Major Issues was a brief step. In essence, you skim the profile to locate apparent issues. You will see a similar step later under the Major Rules heading. There, you will identify the *main rules* within two minutes. These will be referred to as the *Major Rules*. This topic will be discussed under Chapter 3 (the next chapter).

SECTION 4
WRITE YOUR OUTLINE ON YOUR SCRATCH PAPER

CHAPTER 2

Objective:

Write the Major Issues on your outline.

Time Suggested: The same six (6) minutes as above. Remember that the objectives contain a total of three tasks (including this one). Here are the three objectives again and focus on the arrow below:

- i. **Identify the Major Issues (2 minutes).**
- ii. **Write your outline on your scratch paper (2 minutes).** 
- iii. **Transfer your outline to your laptop (2 minutes).**

At this point, you have already identified the Major Issues. Next, you will write the major issues on your outline. You will then have a general view of the issues to solve.

Scratch Paper Expanded.

Here is a trick. Grab the booklet of scratch paper they give you. Open the booklet to the first page. Then, turn the page once so that you are facing page 2 and page 3.

Then, do one more step. Turn it 90 degrees clockwise. Presto! Look at all the space you now have.

If you didn't catch these steps, just turn page 2 and page 3 of your scratch paper into "landscape" form.

Acquire The Expanded Scratch Paper.

Use all of that space to write your outline. It is recommended that you visit a *Target* or a *Staples* and locate this expanded paper so that you can practice outlining the PT.

Commentary.

Number the left side with the number of issues. It should look like this:

Main Issue in Task

Issue 1:

Issue 2:

Issue 3:

Issue 4:

If you have 2 issues, allot 50% of the space to each issue.

If you have 3 issues, allot 33.3% of the space to each issue.

If you have 4 issues, allot 25% of the space to each issue.

Note.

Having three (3) Major Issues is preferred but this may not always be the situation. If you have three issues, it is easier to organize everything. Sometimes the issues are explicitly given to you in the PT. Other times you have to find the issues. For now, we'll assume we have three issues.

Special Note When No Issues Are Explicitly Given:

When you are required to find the major issues, reconsider your outline structure if you have just one (1) Major Issue or five (5) Major Issues. If all you see is one Major Issue, split that into two issues. This is because you will almost never be given just one issue to solve. For example, that one issue may have an element that needs to be heavily discussed. In turn, that one element may have sub-issues. So be prepared to present a well- structured essay.

Writing Your Outline.

In your outline, make quick annotations. Remember that time is ticking. How much do you annotate? Utilize this principle: use the *minimum number* of keywords to help you understand and reference the issues.

SECTION 5
TRANSFER YOUR OUTLINE TO YOUR DOCUMENT TO BE SUBMITTED

CHAPTER 2

Objective.

Transfer the task and major issues from your outline to your document to be submitted (which may be your laptop).

Time Suggested: The same six (6) minutes as above. Remember that the objectives contain a total of three tasks (including this one). We will focus where the arrow is placed below:

- i. **Identify the major issues (2 minutes).**
- ii. **Write your outline onto your scratch paper (2 minutes).**
- iii. **Transfer your outline to your laptop (2 minutes).**

Are You Typing Or Handwriting The Performance Test?

As you begin to comprehend the task and Major Issues, you do not know how your essay will develop. This is why it is a good idea to type the exam. If you are handwriting, you may have to skip several lines or pages for each Major Issue. You may have to develop a format that you feel comfortable with if you are handwriting your PT. Furthermore, for instructional purposes, I will refer to the act of writing your PT as “typing” (even though some will *handwrite* it). Along these lines, I will make statements that ask you to *transfer* your work to your laptop. Again, some of you may *handwrite* your PT so consider the statement as transferring your work to the booklet.

An Incidental Reading Comprehension Tool.

When you type the task and major issues, this will also serve as a powerful reading comprehension tool. Not to mention that you are going to have to type the major issues regardless. Might as well do it now.

Transfer Other Items To Your Laptop.

Once you've found the Major Issues, you can begin to develop your PT outline onto your laptop. **Commentary:** You have already transferred the task and Major Issues to your outline and to your word processor. At this point, there are other items that you want to transfer as well.

Here is a list of components you can begin to transfer. Try to visualize the big picture. If necessary, go back to Section 1 of Chapter 1 to view the nomenclature of a passing PT. Also, it helps to memorize the list below so that you will not waste any time on exam day.

1. **The caption.**
2. **The people being addressed (To/From, etc.).**
3. **The "Introduction" heading**
4. **Your Task in the memo (which is probably the most important component of all).**
5. **Of course, the Major Issues.**
6. **The "Argument" heading.**
7. **The "Overall Conclusion" heading.**

Being Organized.

Also, you can begin to establish a nice outline on your laptop. Since being organized helps, you will find this exercise very beneficial.

Converting the Major Issues To Headlines.

Again, remember from Section 1, Chapter 1, that the issues are used first. Along these lines, this is an advanced tip regarding the Major Issues and headlines. It will save you time. For this activity, *copy* and *paste* your major issues that are placed in the Introduction. Once you have done this, convert them into headlines. Here is an example.

I. The First Issue is Whether

II. The Second Issue is Whether ...

You should tailor the wording so that they'll look like headlines. You may also want to underline them. Maybe use the **bold** format. You can also capitalize the first letter of the word. Do all of this briefly.

As you can see, you are already organizing your thoughts. The bar grader will appreciate this and so will your overall score on the PT.

Also note that the instruction may ask you to use "carefully crafted headlines" or something to that effect. Tips on approaching this activity are found in the last chapter titled *Other Key Points Regarding the PT*. It is necessary to have a proper understanding

of the PT content to perform these activities. That is why the details on this are part of the second half.

Sample of the Structure That You Can Now Write on Your Word Processor.

Here are the important components of the Performance Test that we have been discussing. Later you can expand on the content.

- 1. The caption.**
- 2. The people being addressed (To/From, etc.).**
- 3. The “Introduction” heading**
- 4. Your Task in the memo (which is probably the most important component of all).**
- 5. Of course, the Major Issues.**
- 6. The “Argument” heading.**
- 7. The “Overall Conclusion” heading.**

For purposes of repetition and comprehension, we'll state the components again. See the next page.

Components:

CAPTION

- TO:** Usually a partner in the law firm. This will come from the Memo.
- FROM:** *Applicant* (Almost always the “From” should include just the word “Applicant.”)
- SUBJECT:** Write the name of the case. This comes directly from the Memo itself.

INTRODUCTION

Write the *Task* here.

Make sure to paraphrase the key words from the Memo. This should be a very brief statement. Sometimes the Memo will instruct you to “not write facts in the introduction.” In such an event, just write a brief introduction where you present the gist of the Task and the Major Issues. This will also help you stay organized and focused. Write the *Major Issues* here. The *Task* and the *Major Issues* may be in the same paragraph.

ARGUMENTS

- 1. Major Issue 1 Will Here.**
- 2. Major Issue 2 Will Go Here.**
- 3. Major Issue 3 Will Go Here (if it is applicable).**

CONCLUSION

End Sample.

As you can see, your work product is already taking form. We have not discussed the Major Rules or the Elements to the rules. The Major Rules will go under the Major Issues. We’ll discuss that later. This is part of the strong foundation that you are strategically creating.

Emphasis on Timing.

Also, remember, all this should happen within six (6) minutes. However, be comforted by the fact that your timing improves with practice.

End of Major Issue Section.

TIME CHECK:

TOTAL TIME SPENT ON THIS SECTION: 11 minutes of 45 minutes (5 minutes on the Task and 6 minutes on the Major Issues.)

TIME REMAINING: 34 minutes of 45 minutes (the first half).

CHAPTER 3

**THE MAJOR RULES
IN THE LIBRARY
(DISTINGUISH THIS FROM
MAJOR *ISSUES*)**

STEP 3

SECTION 1
STEP 3: IDENTIFY THE MAJOR RULES IN THE LIBRARY

CHAPTER 3

Time Suggested: Not more than six (6) minutes. However, the objectives contain a total of three tasks (including this one). Here are the three objectives:

Notice that these steps and the minutes allotted are the same steps as when you identify the Major Issues. Again, don't confuse the Major Issues with the Major Rules.

1. **Identify the Major Rules (2 minutes).** 
2. **Write your outline on your scratch paper (2 minutes).**
3. **Transfer your outline to your document to be submitted (2 minutes).**

Video:

Watch the video before proceeding. **Note:** If the link does not take you to the YouTube video, please copy and paste the link to your browser.

https://www.youtube.com/watch?v=ADkU3WGv_vo

Preview of the next Steps: Take two minutes to identify the Major Rules. They should be obvious to identify. At first, the process of identifying the Major Rules may take practice. Then, you will be able to accomplish this task in a timely manner. After you spend 2 minutes identifying the Major Rules, you will perform the two following sections:

Subpart A: Annotate the Major Rules onto your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the Major Rules on your document to be submitted.

Time suggested: Not more than two (2) minutes.

Identify Major Rules.

The first step in this section is to proceed to the Library. For instructional purposes, we'll assume that there will be three cases and a set of statutes. Also, we'll use the word statutes although these may be codes or other types of laws.

First Step is a Two Minute Scan for Major Rules.

We'll call this activity the Two Minute Rule Scan ("Two Minute Rule Scan") rule. It should literally take you *less than two minutes to scan* and identify the Major Rules. This is now explained. You have heard of "issue spotting" but there is also "rule spotting." Up

to this point, we have focused on Major *Issues* so do not confuse the two. However, in the PT, the rules play an important role.

A quick scan for major rules should *not* be a complicated task. You should be able to identify the major rules because for most of the time, they will stick out like sore thumbs. Grab your pink highlighter (or any other highlighter that you have not used up to this point).



Skim the statutes briefly. Then go to the cases. Usually, the major rules will be in the cases. **Note:** Keep in mind that at times, you may not have any cases at all. This has happened once in recent years. For now, we'll assume that you will have cases in the Library.

Another way to remember this step is by referencing this term: go for the *low-hanging fruit*. Again, you are searching for rules that are *apparent*. Most examinees will discuss these rules because they are usually obviously placed within the cases.

Update from the February 2018 Performance Test.

The February 2018 PT was very strange in format. There, you have many rules coming at you all at once. If this happens (as it did in February 2018), do *not* disregard the Two Minute Rule Scan. Remember that the Two Minute scan helps with timing and organization.

Do not spend longer on identifying the Major Rules *if* they are apparent. Capture what you can in two minutes. There will be time to return to other rules. This is a strategy because it prevents you from being overwhelmed. Remember, take it easy. There will be time to look closely at other parts in a different step.

What to Look For When Approaching the Cases.

When you perform your Two Minute Rule Scan, look for these descriptions as you approach the cases: (1) Year of the case; (2) Jurisdiction; (3) Procedural history of court (e.g., a supreme court case, appellate court, trial, etc.). This is somewhat similar to the “Procedural History” in the activity known as writing a “case brief” in law school. Think of it in the same way because the law can develop within the scope of the Library. You’ll probably be in the State of Columbus for purposes of the PT. Anything can happen in that one state of Columbus.

Applying this procedure will help you be at ease because you are being methodical. After you approach the cases, look for any major rules in the section containing the statutes. If none are found, go to the next step.

Distinguish the Elements From the Rules.

When you perform your two minute scan, you may run across the elements (“Elements”) of the Major Rule. Know how to immediately distinguish between the Elements and the Major Rules. At this point, do not be concerned with Elements. There will be time for you to focus on those but that will be later.

Outlining The Major Rules (no more than 2 minutes).

Once you identify the Major Rules, briefly **write** them onto your **outline** underneath the Major Issues. Remember the basic nomenclature from Chapter 1, Section 1? The issues come first, and then the rules (a very standard IRAC format). To do this, you will have to *match* the Major Issue with the Major Rule. This may be complex because you have not read all of the File nor the Library. But look closer as a relation between the terms in the issue may correlate with the terms in the rules. Usually you will be able to match the issues with the rules. In the event that you are unable to match all of the issues with the rules, just highlight the rule with a question mark. You will come back to that section.

How to Annotate Your Outline.

Once you spot the Major Rules, briefly write them down on your scratch paper. Try not to spend more than two (2) minutes here. Just write down the basic information for the rule. Also, briefly write the case name and code section. For example you can abbreviate as such: *CCP 1050.5(b)*. Furthermore, underneath that, write “Lopez, page 7.” Or, simply write the sources and the page number. See the next paragraph for the symbols of the source.

Symbols of the Source.

If you are in the Library, the symbol for the source can be an “L.” If you are in the File, the symbol can be an “F.” Thereby, “Lopez, page 7” would be “L7.” It is also suggested that you underline the case names for easy reference.

Reasonable Prd. Person, Kaplan, L6.
See factors, Lopez, L7.



Notice that a page number was written in the example. Again, this is for your reference. Also remember that the page numbers here are under the “Issue/Rule” column. Page numbers under the Issue/Rule heading should refer to page numbers in the Library (as opposed to the page numbers in the File). Be careful not to confuse the page numbers with those in the File. We’ll talk about numbering pages in the File later.

Transfer Your Outline Onto Your Laptop (no more than 2 minutes).

Once you complete your outline, you can transfer the Major Rules onto your laptop. Try not to spend more than two (2) minutes here. This can be a strenuous step for the following reasons: (1) There are many rules and you have limited time; (2) You are not sure if you are typing the Major Rule under the proper corresponding Major Issue; (3) You may not completely comprehend the content of the Major Rule.

These are legitimate concerns. These are my suggestions:

(1) Just type the key words found in the Major Rules. Transfer just enough of the rule for you to understand it. You will be graded on discussion of the issue. So as long as you can understand it, that will be sufficient because you will be able to perform an analysis.

(2) **ADVANCED EXAM TIP:** If you are running short on time, use your prior knowledge if you know the elements to the Major Rule. Be careful with this strategy because the statute may be slightly different from the rule that you remember.

(3) Last, if you feel you do not understand the rule, you will see that by merely typing the rule, it will cause you to comprehend the wording of the rule. In other words, typing the rule also works for reading comprehension purposes. Do not be intimidated by the rules.

Once you complete this step, you will notice that your PT is further coming to life. Everything is starting to make sense. But we still have a way to go so just relax.

Side Note Re: Identification of Major Rules.

It is perfectly fine if you feel you didn't get to all of the Major Rules. You probably did *not* because all you are doing at this point is just a quick scan. Later, we'll return to search for more rules. The great thing is that you at least found some Major Rules and you were able to match them to the Major Issues.

Also, of more importance is this: *don't worry if you did not comprehend the Major Rules, or the Major Issues*. At this early state, comprehension is *not* that important. At this early stage, the setup is more important. Remember the objective: *get the rules first!* You will learn to trust this system.

Of more importance is that you started to build a solid foundation. You will definitely notice how all the issues, rules, and facts are starting to come together.

SECTION 2
STEP 4: RETURN TO THE FILE AND SKIM IT

CHAPTER 3

Time Suggested: Not more than two (2) minutes.

Once you type the Major Rules, return to the File. Look at the memo again. Then quickly do another scan of the File.

Take another 2 minutes here. At this point, you will see how the facts are starting to make sense. This is because you somewhat know what you are looking for. You are looking for File Facts that correspond to the Major Issues. You are also scanning for File Facts that are compatible with elements of the rules. Remember that your outline will be your foundation. The relevant facts will fit somewhere in your outline. Also, do not read the same specific area of the documents in the File. Try to balance the areas you read in the File.

Story Time.

You Find What You Are Looking For.

There is this story of a Native American going to the big city with a friend from the big city. Then he tells the city slicker, “There is a cricket there. Do you hear it?”

The city slicker says “No”. Then the Native American points to it and both can now hear the cricket. The city slicker says, “You must have unique hearing abilities to have heard that.”

Then the Native American grabs a coin, throws it to the ground, and many people look in the direction where the coin hits the pavement.

The Native American then says, “The coin made the same amount of noise as the cricket. I don’t have unique hearing. But people listen to what they pay attention to.”

End of the story.

It is the same here: we are more likely to find what we are looking for if we know what that is. You hear and see what you pay attention to.

Therefore, when you are returning to skim the File, you will better hone in on the relevant File Facts. This is because you are filter out what is not important. This in fact is a scientific observation. It is called the Reticular Activating System. This will help you save time and this will also allow you to match the File Facts with the Major Rules in the Library.

TIME CHECK:

TOTAL TIME SPENT ON THIS SECTION: 8 minutes of 45 minutes (6 minutes on Major Rules activities plus 2 minutes skimming the File).

TOTAL TIME SPENT UP TO THIS POINT: 19 minutes (11 minutes on the last section and 8 Minutes on this section).

TIME REMAINING: 26 minutes of 45 minutes (the first half).

SECTION 3

STEP 5: RETURN TO THE LIBRARY AND IDENTIFY THE ELEMENTS OF THE MAJOR RULES.

CHAPTER 3

Time Allotted.

Return to the Library and identify the Elements. Also, identify *other* Major Rules and Minor Rules you might have missed. The total time suggested here is sixteen (16) minutes for this section.

Time suggested: Identifying the Elements, and other Rules should take no more than twelve (12) minutes.

Subpart A: Annotate the data on your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the rest of the data to your laptop.

Time suggested: Not more than two (2) minutes.

Video:

It may be difficult to distinguish between the Elements and the Major Rules. Here is an **Exam Tip:** Treat the Element as if it is a Rule. When you get to outlining, you will be able to sort between an Element and the Rule. In this practical application video, the search for the Elements is made as if it is a search for Major Rules. In fact, the word "Element" is not even mentioned. Watch the video before proceeding. **Note:** If the link does not take you to the YouTube video, please copy and paste the link onto your browser.

<https://youtu.be/OF058z5HO54>

Importance of Step 5 is Immense.

Step 5 is a *very important* step. If you are not having success with the PT, in most situations, it is because you are not finding the *key* rules and elements within the allotted time. The information presented here will help you achieve this task.

Moreover, the objectives here require a certain amount of skills. The attainment of these tasks may take time. This is normal for most activities that require skill development (e.g., playing a musical instrument). Eddie has spent years developing techniques and strategies. Contact Eddie for a free consultation to inquire about the **1-on-1 session**. While key information is set out in this ebook, advanced techniques are not mentioned here. Here is the link: <https://juraxbar.com/performance-test-1-on-1/>

Other Major Rules and Minor Rules.

At this point, you are returning from the File after two minutes of scanning. Now, our attention is back on the Library. You're about to go to the circus here because this is the bar exam's version of the circus. In the Library, many issues, rules, elements of the rule, facts, and conclusions will be juggled your way.



But do not worry. Everything here has a clear structure and a method. Also, remember that the last time we were in the Library, it was to perform the Two Minute Rule Scan in search of Major Rules. We'll now locate other major rules and minor rules.

Reading the Cases - The Rules in the Cases and Outlining.

You are now going to look at the cases carefully. Do not confuse the word *carefully* with the word *slowly*. You will capture all of the important information from the case by using the methods described here.

In sum, we are looking closely at each case. In particular, we are looking for *more* rules and elements for each case. Focus will be on the following components: (1) The Issue; (2) The Rules; (3) The Elements; and the (4) The Holding.

Exam Tips.

You remember *briefing* a case in law school. This is almost the same. Except that this must be done quickly. Also, the components in the briefing activity may change character. This was explained in the video pertaining to this section. Here are some other tips to approaching the Library:

1. Read the Beginning and End of the Case.

Look at the beginning of the case and the conclusion to help you comprehend the facts and the holding. Take notice that the cases may sound confusing. Be on the alert that these cases are meant to confuse the reader.

A Very Confusing Name.

Be on the lookout for names in the PT that sound confusing. An easy way to remember this is that the names will not sound "American." Take that any way you want just remember that these types of names are designed with the intent to confuse you. Don't

panic. If it helps, refer to the person by occupation. For example, you can say, “the government agent at the airport.”

Another method is to write the names somewhere conspicuously on your outline. If you do this, designate one area on your outline where you can easily refer to that content without mixing the names with other material on your outline.

2. Distinguish Facts From Rules.

The cases include many facts and many rules. Know the difference and distinguish the two. For the facts, you can highlight these in yellow. For the rules, you can highlight them in pink. You definitely want to highlight the rules because you are almost certain to use them. You will use these as either Major Rules or Elements.

The Rules Are Hidden. Where Are They?

Again, many examinees do not receive a passing grade here because they do not analyze many of the rules. They do not analyze the rules because they do not identify the rules. They spend a lot of time writing out facts as if the PT required a summary. Avoid this!

Exam Tip: The rules may not be obvious. If you see something that looks like a rule, it will probably be a rule (or an element of that rule). To comprehend the entire rule, it may be necessary for you to look in different parts of a case. For example, search the prior paragraph from where the rule appears. Also, look in the next paragraph that follows the rule. You may have to “assemble” the rule so that it looks like a complete rule (to include its elements).

3. Paraphrase The Complex Language Into Easily Understood Language.

Legal jargon may be written in a way that is not easily understood. Do not fight this. Go with the flow. Transform that language into a phrase that is easily understood. Here is an actual rule from the California Constitution.

A person is ineligible to be a judge of a court of appeals unless for 10 years immediately preceding selection, the person has served as a judge of a court of record in this State.

Notice that reading the statute requires critical thinking. This means that you would spend additional time reading this. By the way, that is an actual statute from the California Constitution. *See* Article VI, Section 15. There’s no time for hurdles. Make it simple to understand. Here is how it would be converted on your outline (or when you transfer this to your laptop):

“If the person has served as a judge of a court in this state for 10 years before the selection, the person is eligible to be a judge of a court of appeals.”

Notice how the word “if” is added. However, the integrity of the statute is preserved. You are paraphrasing the language in order to analyze it. You may be having LSAT flashbacks at this point. This is the same logic so think of this as a step that you have already mastered. Let’s now discuss other components found in the cases. Let’s talk briefly about the facts.

OTHER COMPONENTS IN THE CASES

The Facts In the Cases (Library).

To keep things simple, we’ll continue to refer to the facts in the cases as Library Facts. Again, Library Facts are to be **distinguished** from File Facts. We will discuss Library Facts in detail later. They are mentioned here for the sole reason that you must distinguish the File Facts from other components in the Library. Also, as will be stated later in the video, the File Facts may be converted to rules and/or elements (or factors).

Along these lines, it is a good idea to highlight the Library Facts with a different color. Use the yellow highlighter.



You will get a sense of the Library Facts and will understand their relation to the issues and rules that apply to the case.

The Holding In the Case.

Also, pay attention to the holding in the case. The holding may be at the beginning or the end of the case, or at both spectrums. Use a blue highlighter for easy reference. Again, these may also convert to rules.



Outlining.

You will also be working on your outline. This means that you will add content to your outline. Notice that throughout your engagement of the Performance Test, you have already formed a working outline. Your outline will be further developed here with more issues and rules.

Think of your outline as a map. If at any point you are confused, just refer to your outline. It will serve as a foundation to the rest of your work. Do not underestimate its importance. Also keep spacing in mind. You have to make room under the Major Rules in order to write other rules or Elements.

Exam Tip: Obstacles.

Do you remember the word “Obstacle” from the one-hour essays (See the [1440: Advanced IRAC Techniques](#))? An obstacle is a section of the exam that interrupts the smooth flow of reading. One reason for this is because the content may be confusing.

During the PT session, at least one obstacle may appear here. Therefore, be ready for at least one complicated set of facts, a set of complicated rules, or both.

Dealing With Obstacles.

Label this part of your exam as *Obstacle*. Furthermore, when you spot this, find a place to the top and upper right of your scratch paper. Thereafter, write *Obstacle* as a heading.

The reason you take the time to write it is for two reasons. First, it is to remind you to discuss it (if necessary). Second, by writing it, you pay particular attention to it. This may help you comprehend the content. Remember that it will be written in a fashion that is especially confusing.

Many examinees will not use the content that appears too complex (the specific area of the obstacle). Since they probably did not understand it, they may think that it would be unconscionable for the graders to withhold issuing points for not using it.

Let’s do an example of an Obstacle now. This is from the California Bar Exam that was administered in February of 2019. Notice how the issues are particularly confusing.

Requirement for Conversion of the Rules and Elements.

Notice that there is a lot of content and it seems overwhelming. You have to quickly ascertain what is relevant. Here is the sample paragraph with relevant information already highlighted.

There is no requirement to exonerate the bond if a **violation of the bond terms** took place prior to the dismissal. Moreover, a violation of the bond terms is found **where the State is prejudiced** by the non-appearance of a party at one pre-trial conference. *People v. Weinberger*.

The content above is not clear in regards to relevance as it may apply to the facts that pertain to your situation. Again, this is an important, common, and complex part of the Performance Test. With sufficient practice, you will learn to extract the key data.

An important step is to **convert** that language into language that you can use as a rule or for elements of a rule (if the content is relevant). This activity is like a distillation process. It could also be that the rule you extract is ready to be used as a rule. Either way, you will extract elements that you can use to perform your analysis.

Summary of the Obstacle.

There are several rules thrown at you in a small amount of space. This is done very skillfully on the part of the bar examiners. Relax. Appreciate it. And deal with it in a cool manner.

The trick here is to label this issue as an *Obstacle* as explained above. The labeling can be done in both the Library and the File (but this is much more common in the Library). As you practice these PTs you will deal with them in a more fluent manner.

Take another deep breath. You are done with this section. After this, you will transfer the content onto your laptop.

SECTION 4
ANNOTATE THE ELEMENTS
YOU IDENTIFIED ONTO YOUR OUTLINE

CHAPTER 3

Time check: The same as the last section. Take two (2) minutes out sixteen (16) minutes. This is the breakdown again for this section. See the arrow below.

Time suggested: From the last section – Identifying other major and minor rules should take no more than twelve (12) minutes.

Subpart A: Annotate the other major and all minor rules onto your outline.

Time suggested: Not more than two (2) minutes.



Subpart B: Transfer the rest of the major and minor rules onto your document to be submitted.

Time suggested: Not more than two (2) minutes.

Annotate Onto Your Outline.

You will now transfer the Elements and other rules to your outline. As you can see, a lot of attention is being placed on data from the Library.

Some of you may say, “But I’m not exactly sure what is going on with the facts in the File yet.” This is okay. You have a preliminary understanding of the facts in the File. That is all you need. As you type the rules, your understanding of the legal issues will begin to solidify. This is critical. By the time you delve into the File Facts, you will be able to match the File Facts with the issues and the rules. Let’s move on to timing now.



Timing (No More Than Two Minutes).

Since timing is particularly critical in this section, be expedient in transferring the rest of the rules onto your outline. Remember that you are continuing to match the rules under the proper Major Issues. Take no more than two minutes to perform this transfer.

SECTION 5
TRANSFER OTHER ELEMENTS
YOU IDENTIFIED TO YOUR LAPTOP

CHAPTER 3

Time check: The same as the last section. Take two (2) minutes out sixteen (16) minutes. This is the breakdown again for this section. See the arrow below.

Time suggested: Same as the last section.

Subpart A: Annotate the Elements onto your outline.

Subpart B: Transfer the rest of the major and minor rules onto your document to be submitted.

Time suggested: Not more than two (2) minutes.



Transfer to Your Laptop.

Once you have annotated the rules to your outline, transfer them to your laptop (or handwrite). You will notice that you will better understand your task and the rules you are to apply.

Remember that these techniques also have reading comprehension as a goal (and that is what is taking place here). Reading comprehension may not be apparent because many readers are accustomed to reading one source to understand a topic. Here, you are required to consider various sources. Again, once you begin to perform these activities, your understanding will be clear.

It may be necessary for the reader to revisit any section of these steps. Remember that you should refer to this source as a reference. Once you transfer these Elements and rules to your laptop, the next step is to focus on the facts of the cases (the Library Facts). This now ends this section.

SECTION 6
STEP 6: RETURN TO THE FILE AND SKIM IT AGAIN

CHAPTER 3

Time Suggested: No more than two (2) minutes.

Return to the File and do another scan. Take two minutes to do so. Notice that by this time, you will get an understanding for the big picture in the File Facts. This is perfect because after this skim, you will then compare and contrast the File Facts with the Library Facts in the cases.

TIME CHECK:

TOTAL TIME SPENT ON THIS SECTION: 18 minutes of 45 minutes (16 minutes on Elements and Rules activities and 2 minutes skimming the File).

TOTAL TIME SPENT UP TO THIS POINT: 37 minutes or 45 minutes (18 minutes of this section and 19 minutes from last section).

TIME REMAINING: 8 minutes of 45 minutes (the first half).

SECTION 7
STEP 7: LIBRARY FACTS

CHAPTER 3

Time Suggested: No more than 8 minutes.

Time Allotted.

Return to the Library and identify the relevant facts from the cases. The total time suggested here is eight (8) minutes for this section.

Time to Identify Library Facts: Identifying the Library Facts should take no more than four (4) minutes.

Subpart A: Annotate the case facts onto your outline.

Time suggested: Not more than two (2) minutes.

Subpart B: Type the rest of the Library Facts onto your document to be submitted.

Time suggested: Not more than two (2) minutes.

Video:

Watch the video before proceeding. The video demonstrates how the facts in a case can be used as Elements of a rule. **Note:** If the link does not take you to the YouTube video, please copy and paste the link onto your browser.

<https://youtu.be/kDcqycyIIUE>

Introduction and The Current Situation.

Here is a summary of what we have accomplished. You already have your Major Issues and the Major Rules typed and outlined! You are making progress here! Also, you have a basic understanding of the File Facts because you have been skimming the relevant facts in the File.

In this section (we're still in the Library), we'll solidify the understanding of the cases. During this time, you will identify facts from the Library that *correspond* to File Facts. Don't be confused with the word "facts" thrown out here (there are File Facts and Library Facts). Take extra time if you need to appreciate this. Dealing with Library Facts is an advanced move.

A Raging Bull Preparing To Unleash.

After you complete this section, you will then go after the facts in the file. You will do some in a determined and focused manner. What you are doing now is building the solid foundation. This foundation is reflected on your outline and on the material you have already typed. Nothing will destroy your fortress. Not even confusing File Facts.

Your Outline and Making Connections (2 Minute Max).

By this time, you will see that you can start making connections. When you see a fact in one of the cases, quickly write the relevant Library Facts onto your outline. Here is the key to this activity: summarize the *entire* case if necessary (see the video that is featured at the outset of this section. This activity may take practice. It may be difficult at first, but with practice, you will become fluent.

One Case in the Library.

If your File has just one case, pay attention to cases that are cited *within* that once case. Pay close attention to any and all cited cases. You may have to extract the facts from there as well.

You may take some extra time to capture the gist of this activity. However, during the actual exam, you will not have extra time. It is important to keep timing in the back of your mind. If you do not capture the facts, move along. Remember that this is an advanced strategy. Also keep in mind that not all of the facts in the cases will be relevant to your Task. In other words, you may *not* need to extract the facts from the case.

Transferring Library Facts To Your Laptop.

As stated earlier, summarize the Library Facts into one sentence. Type this summary line *after* the corresponding rule. Also, most of your rules should already be typed as discussed in the previous sections.

Moreover, you may want to cite the cases. For most of the time, you may just underline the case. For example, it is suitable to just write Old Factory. The graders do not expect proper citation. If you wish, you can also write the entire case name in the following manner: Old Factory v. Hicks. Using the option where you underline may interrupt your rhythm. So consider this when scheduling your time.

Moreover, it is strongly suggested that you mention to the grader that it is a Supreme Court case you are citing. Usually if it is a Supreme Court case, you may want to state this at least once. More so if it is a United States Supreme Court case or if the case is in Columbia (the fictional state for most PTs). Also, do this for any other type of case if you think that would be relevant to your argument.

Conclusion.

You now have an incredible outline and you have captured the rules and they are written on the document you will submit. You are now ready to move to the second part of the PT. We are half way there! The second half will be much more simple!

TIME CHECK:

TOTAL TIME SPENT ON THIS SECTION: 8 minutes of 45 minutes (8 minutes performing activities relating to the Library Facts).

TOTAL TIME SPENT UP TO THIS POINT: 45 minutes (8 minutes of this section and 37 minutes from last section).

TIME REMAINING: 0 minutes of 45 minutes (the first half).

Half Time

Take one moment for a deep breath. Remember to relax. All is great.

THE SECOND HALF

Chapter 4: Identifying relevant File Facts in the exam booklet.

Time suggested: 15 minutes.

Chapter 5: The use of File Facts to write a cohesive Performance Test.

Time suggested: 30 minutes.

TOTAL TIME: 45 MINUTES.

CHAPTER 4

APPROACHING THE FILE FACTS (DISTINGUISH FROM LIBRARY FACTS)

**SECTION 1
STEP 8: MATCHING (AND CATEGORIZING)**

CHAPTER 4

Introduction to Categorizing The Test Booklet.

Time suggested for identifying and outlining: Not more than 15 minutes.

In this section, you will identify key facts in the File part of the test booklet. You will also annotate these key facts onto your outline. As for time, you have a total of 45 minutes left (we already used up 45 minutes of the 90 minutes that are allotted). Spend no more than 15 minutes performing the steps in this section.

Recap.

Here is what you have already written on your outline:

Issue / Rule

Issue 1:

Rules

Issue 2:

Rules

Issue 3:

Rules

First Step Re: Categorization.

In this chapter, you will now **match** the File Facts with the Major Issues and the Major Rules that are already written on your outline and on your laptop. Once you are done with the outline, it should look something like the diagram that follows. Notice that these words are now added: *Corresponding File Fact #*. Also, the File Facts are under the heading labeled *Facts / Analysis Section*.

Issue / Rule Section

Facts / Analysis Section

Issue 1:

Rules

Corresponding File Fact 1

Issue 2:

Rules

Corresponding File Fact 2

Issue 3:

Rules

Corresponding File Fact 3

Commentary.

That is the big picture above. For now, let's perform some matching activities.

The Documents in the File.

The File will have various sections and they will be separated by different documents. This area will usually have a table of contents, instructions and the Memo. It may also include a complaint, followed by a transcript, followed by a report from a third party. We'll call these documents ("Documents").

Categorizing File Facts.

We will go through each document in the File. Skim the Instructions on exam day and throughout your preparation. Take time to read the instructions when you are not timing yourself. You should read the File Facts quickly! Remember, you already skimmed them! Therefore, you have an idea of what you are looking for.

How to Make Annotations On Your Test Booklet.

As you read the File Facts, write the "Major Issue Number" onto your File document. In other words, you are going to write a Major Issue number onto your File booklet. As for the Major Issue Number, these will come from your outline. Also, recall that by this time, the Major Issues and the Major Rules are already written on your laptop. Just write something like this in huge letters in the File booklet: *Issue #2*.

Example of Approaching a Document.

For example, let's pretend we are in the second document of the File. It is a transcript of an agent for the government. The transcript has an introduction. In that introduction there are File Facts and they may be relevant facts. The facts may say something like this: "*I am in charge of doing inspections on the plane.*" At the side of these facts, write *Issue #3*. Or you may just write *I #3*.

Transcript of Witness

1. My name is Officer Willy Wonkers.
 2. I am in charge of doing inspections on the plane. **I #3**
 3. My first task is to call the control center every day.
- 

Also, you can write *Issue #2 / Issue #4*. This is because the same File Fact can be used

with more than one Issue. In this example, the File Facts can be used for Issue #2 and Issue #4.

Issue Numbers Are Not Clear

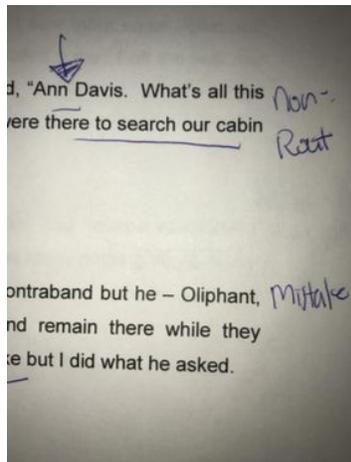
If the issue numbers are not clear, write a *term* from the Rules. Keep in mind that anything can happen in the PT. This is to say, that a structure that you are not familiar with may appear. You may find yourself saying: “I can’t readily number the issues.” If this happens, just relax. Go for key terms in the elements. Lets’ do an example.

Example.

Let’s assume some of your Major Issues are as follows:

- 1. Routine Search.**
- 2. Non-Routine Search.**
- 3. Non-reasonable Suspicion.**
- 4. Mistake.**

You would write something like what is shown below. Instead of Annotating “I#2” for “Issue #2”, you can write: “Non-Rout” (for non-routine).



Feel free to abbreviate as long as you can understand what you write. Repeat this step until you get to the end of that particular document. Once you reach the end, and before moving to the next document in the File, you will outline this information very briefly on your scratch paper. The following section titled “Outlining” explains this further.

Adding Page Numbers to the Test Booklet.

You may want to add page numbers to your booklet for easy reference (as stated earlier). This is simple. You would just write F1, F2, F3, etc. The “F” of course stands for *File*.

Add To Your Outline.

Then when you outline, you would also include the page number (e.g., F1). This does not take too long so squeeze this activity in there.

Again, to number pages in the Library text booklet, you would do the same except you would label the pages as L1, L2, L3, etc. The "L" stands for *Library*. Let's talk more about outlining now.

**SECTION 2
OUTLINING THE FILE FACTS**

CHAPTER 4

Introduction to Outlining the File Facts.

Time suggested for identifying and outlining: The same 15 minutes as above.

After you place the Major Issue numbers in your File booklet, *briefly* write down the key words onto your outline. A sample is listed here as: *Corresponding File Fact 1. F2*. Instead of writing the key term(s), we just added the words *corresponding*. See the example below where *F2* stands for page 2 of the File.

Facts / Analysis Section

Corresponding File Fact 1. F2.

Corresponding File Fact 2

Corresponding File Fact 3



You can also place the words *See Facts*. Then just add the page number by placing the corresponding page (e.g., F2). Do this if the File Facts contains numerous details.

Again, notice that the *F2* 🖐️ is a symbol for the page number. The F2 symbol corresponds to the page number in the File. As stated earlier, do not confuse the Library page numbers with the page numbers in the File. Keep the Library page 🖐️ numbers under the heading labeled “Issue/Rule.” 🖐️ Conversely, keep the File page numbers under the “Facts / Analysis” section 🖐️. Here is an example below. Look for the "F2" and "L3" annotations:

Issue / Rule 🖐️

Issue 1:

Rules L3. 🖐️

Issue 2:

Rules

Issue 3:

Rules

Facts / Analysis Section 🖐️

Corresponding File Fact 1. F2. 🖐️

Corresponding File Fact 2

Corresponding File Fact 3

End Sample.

Definition of Analysis in the Performing Test.

Let's now discuss the definition of "analysis" in the PTs. In sum, look for an opposing view or law. In other words, keep an eye out for any counter-arguments in the File. They can appear in the Library as well. But most of the time, these oppositional views will be found in the File.

We will refer to these counter-arguments as *Hunter The Hater's Counter-arguments*. As the name suggests, you will be hunting for these opposing views. Important: As stated earlier, to perform an analysis in the PT, you need to attack Hunter's counterargument. This is the rebuttal. And then you reach a conclusion. That will be your analysis.

When you evaluate your PT, do not give yourself a passing score if you did not discuss Hunter's counter-argument. Also, do not give yourself a passing score if you did not rebut the counterargument.

Advance to the Next Document and Repeat the Last Step.

After you categorize the Major Issues with the File Facts, then move on to the next document in the File. Do this until you go through all of the documents in the File.

**SECTION 3
THE CONCLUSION ON YOUR OUTLINE**

CHAPTER 4

The Conclusion (You Are Almost Done!).

Once you go through each of the documents, then you can state your conclusions. So of course, you will add a heading that reads “*Conclusion*” on top of your scratch paper. It is *optional* whether to write a conclusion. Usually, one works through the facts first. Since time is a factor here and it is very limited, you can practice writing a conclusion at first. Once you get a firm grasp of the activities, you can **skip** this step.

<u><i>Issue / Rule</i></u>	<u><i>Facts / Analysis</i></u>	<u><i>Conclusion</i></u>
<i>Issue 1:</i> <i>Rules</i>	<i>File Fact 1</i>	<i>Conclude.</i>
<i>Issue 2:</i> <i>Rules</i>	<i>File Fact 2</i>	<i>Conclude.</i>
<i>Issue 3:</i> <i>Rules</i>	<i>File Fact 3</i>	<i>Conclude.</i>

Upon stating all of your conclusions, that is it! At this point, you have read both the File and the Library. Also, your outline is complete. Notice too that the IRAC format is present above. The last step is to transfer the File Facts to your laptop.

CHAPTER 5
WRITING A COHESIVE PERFORMANCE TEST
STEP 9

STEP 9: WRITING A COHESIVE PERFORMANCE TEST

CHAPTER 5

Time Suggested: No more than 30 minutes. There will be three major writing stages here. No specific time for these activities will be suggested because the time of engagement for each activity may vary. In other words, a bar candidate may prefer one writing method over another.

Writing a Cohesive Performance Test.

At this point, you have all the information you need! Let's go into overdrive!

You should have 30 solid minutes to complete the activities in this chapter. Also, take note that you have already typed the issues and rules on your laptop! You have literally already begun to write your Performance Test. All you need now is to transfer the File Facts and state your conclusions. Sounds simple right? It is! This is because all of the facts and the rules are fresh in your mind. Let's take advantage of all this stored data.

Three Major Writing Steps In This Stage.

Let's now focus on the writing approaches. Below are the names of the approaches.

- 1. *Key File Facts and Transfer Approach.***
- 2. *Outline and Transfer Approach.***
- 3. *Quasi-Freestyle Approach.***

See the next page please.

THE THREE WRITING APPROACHES

Details of the Writing Approaches.

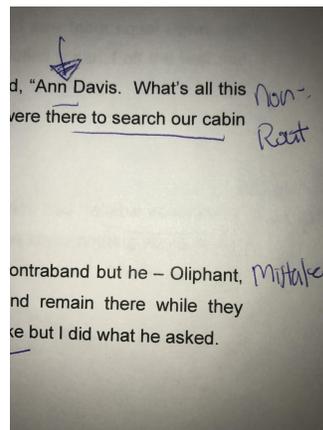
Details of the three approaches follow. As you write the facts, you will be doing so with the purpose of performing your analysis. Also, you will write your conclusions. This will complete the application of the IRAC method.

1. Key File Facts and Transfer Approach.

The Major Issue Annotations On The File.

Start at the beginning of the File. Re-read the Task. The Task will dictate the mood and style of your writing. Feel the mood and that should help with your style of writing.

The key here is to find the Major Issues you annotated in your booklet in the File (again, do not confuse the Major Issues with the Major Rules). We'll use the example of "Non-Routine" as demonstrated in the diagram. Remember that "Non-Routine" was a Major Issue. Pay close attention to the facts that correspond to this issue (we are referring to the File Facts here). You then transfer the facts to your word processor.



Next Step: Analyze.

You then analyze the facts with the Major Issues and the rules (the rules are already matched with the issues). Address counter-arguments as you deem appropriate. You perform this act until you complete going through the end of the File. Write a conclusion if you feel confident about your work. If you do not feel you are ready to write a conclusion, do not write the conclusion yet. There will be another opportunity for this. Let's now go to the Transfer and Outline Approach.

Also, if you were told to use "carefully crafted headlines," you will perform this task at this point. Again, the exam tips on this topic are placed at the last chapter titled *Other Key Points Regarding the PT*. Let's now move to the second writing approach.

THE OUTLINE AND TRANSFER APPROACH.

2. The Outline and Transfer Approach.

The focus here will be on your outline. Transfer the information from the outline to your word processor. This will *not* be the first time you do this. Ensure that you have included all relevant information. Pay particular attention to where you wrote: *See factors*. If you have not transferred those factors on to your word processor, do so now. Let's now go to the third and last writing approach.

QUASI-FREESTYLE APPROACH

3. Quasi-Freestyle Approach.

Let's turn our attention to the Quasi-Freestyle approach. The details are a bit more extensive. However, the process is much easier to complete. Here, you must ensure that you have used all relevant facts and that you write a conclusion. **Do not forget to write conclusions.** We'll begin by explaining the writing maneuver that we'll use.

The Writing Maneuver.

For this last step, you are going to rely mostly on your short-term memory. Here is the writing method: *just start writing what you remember.*

First, start by looking at the top of your document that you are going to submit. Look at the caption, the subject line, etc. You will then work your way down until you reach the end. Briefly proofread as you go along. When you work your way to the end, make any adjustments in the headings and anywhere else you deem fit.

Approaching the Major Issues.

When you arrive at *Major Issue 1*, type or write the corresponding File Facts and conclusion (if you have not done so already). And then go to *Major Issue 2* and follow the same steps until you complete all of the Major Issues and Minor Issues. Try to only glance at your outline. Except for the times when you wrote *See Facts*. Then, refer to the *Page Number* that you previously wrote on your outline. Do you see why numbering the booklet is important? It has to do with speed and accuracy. Then you may quickly turn to that section in the File and write the detailed information.

The reason this is called the Quasi-Freestyle approach is because you are hitting all the issues in a smooth manner. Your argument will flow because you are in rhythm. At this rate, you will even address the counterarguments (if you have not done so already). You will also remember what those counterarguments are. You are on fire!

The reason why the use of short-term memory is effective is because everything that you read has been in the span of *just over one hour* up to this point. This means that the information is fresh in your mind. At this point, you should have analyzed all relevant issues. You are practically done with the PT! However, there is one more step before submitting your Performance Test.

Proofreading Stage.

Once you complete the Quasi-Freestyle approach, read your outline again to make sure you captured all of the key information.

Scan the File, go back to the Library to make sure you discussed all key issues. Once you are done with the scanning process, then polish your essay by reviewing it. Try to

complete all of your writing activities before the 30 minutes expire. This will allow time to review everything. After this, you are done! Let your brain get some rest.

CHAPTER 6
OTHER KEY POINTS REGARDING THE PT

**SECTION 1
BE PROFESSIONAL**

CHAPTER 6

Be Professional.

Use a prefix to address the people in the Profile. For example, use “Mr. Fullname” or “Ms. Fullname.” Keep in mind that the examiners want to trick you. So many times, the names will be difficult to spell, much less remember. Do a “Roll Call” list on the top right of your outline to keep track of them. Just do the main characters. Like this:

Roll Call:

Client – Mr. Client

Other Party – Mr. Potential Defendant

Other Party You Reasonably Think Has a Major Role

Exam Tip.

If you can't remember the name, address the person in the hypothetical by their profession. For example, refer to the person as the owner of the department store. It may be lengthier to spell but it may save you time. Otherwise, you will lose time trying to search for the name.

SECTION 2
SUMMARY OF TIMELINE (SUGGESTED TIME FRAMES)

CHAPTER 6

Suggested Timeline.

Below are major steps to take. This is the same suggested schedule that was listed earlier. You may spend more or less time per activity depending on various circumstances. For example, you may have one case or you may have three cases in the Library. That would have an impact on the amount of time you spend in other areas.

Brief Summary of Activities With Suggested Times.

First Half (45 Minutes)

Step 1. Identify the Task (“Task”) in the Memorandum (“Memo”). (5 minutes)

Step 2. Identify the Major Issues in the File (6 Minutes)

Step 3. Identify the Major Rules in the Library (6 minutes).

Step 4. Skim File (total of 2 minutes).

Step 5. Identify *other* Major Rules and Elements in the Library (16 minutes).

Step 6. Skim File (total of 2 minutes).

Step 7. Identify the Library Facts (total of 8 minutes).

In the next page, there will be a more detailed breakdown of these activities. Keep in mind that this will only apply to the first half of the PT (the first 45 minutes).

HALFTIME.

Second Half (45 Minutes)

Step 8. Match File Facts with Issues (and Rules). Time: 15 Minutes.

Step 9. Write File Facts and Conclusion on your laptop. Time: 30 Minutes.

Keep this schedule handy and memorize the content.

SECTION 3 CAREFULLY CRAFTED HEADINGS

CHAPTER 6

Carefully Crafted Heading Instructions In The Memo.

If you get instructions to insert particular headings, do not panic. Here is what you do, you prepare the specific headings during the second half. By that time you will have reached a conclusion. This is important as you must have a good understanding of the overall facts and applicable laws found in the PT.

Here is the formula you will use. It is called the *Carefully Crafted Formula*. Take a few minutes to study it and to memorize this formula. After this we will go over the instructions.

The Carefully Crafted Formula.

The Carefully Crafted Formula is one sentence with two (2) parts in it. These parts are composed of the following components:

- (1) **First Part:** Conclusion composed of **facts**.
- (2) **Second Part:** Includes “Because” and followed by facts relating to the element of a Major Rule.

End Formula.

Here is another way of thinking of these components. This is the *CER* abbreviation.

Short Version of the Formula: **Conclusion. Element. Rule (CER).**

You **would** have to sprinkle this with facts. But as long as you remember (C)onclusion with Facts, (E)lement, (R)ule, or (CER), you should be fine.

Number of Tailored Headings.

Do *not* make every heading in your Performance Test to reflect a carefully prepared heading. Keep this in mind: *do them for at least all Major Issues*. Look at your outline and see what those Major Issues are and note how many you have.

Instructions Found In The File.

The following instructions come from an actual Performance Test. These instructions are usually included as part of the Memo. See PT A, February 2014, California Bar Exam. Paying special attention to the words *carefully crafted headings*.

Abstract:

The Argument section of the brief should contain separate segments, each labeled with *carefully crafted headings* that summarize the argument in the ensuing segment. Do not write a brief that contains only a single broad heading. Each heading should succinctly state the reasons why the tribunal should adopt the position you are advocating and not merely a bare legal or factual proposition. (*Italics added for emphasis.*)

End Abstract.

As you can see, you are required to summarize the argument. This usually means that you should state the conclusion. It also implies that you should state reasons. If you follow the formula CER above, you will touch on all of these elements. Let's do an example.

Example 1.

1. Even though the period of contract has ended, Ms. Adams is still entitled to a commission because she was the procuring cause of the sale as the agent who had done substantially everything to effect the sale. *-Model Response A, PT A, February 2014, CBX.*

End Example.

Let's deconstruct that response. Remember that the first part includes the conclusion and the facts. This time, first part will be **highlighted in yellow** so that you can focus on the **conclusion**. This content will also be placed before the word *because*. Also remember that the first part is made up of the conclusion and facts.

Example 1.

1. **Even though the period of contract has ended, Ms. Adams is still entitled to a commission** because she was the procuring cause of the sale as the agent who had done substantially everything to effect the sale. *-Model Response A, PT A, February 2014, CBX.*

End Example.

Now let's focus on the second part. This will include facts that relate to the **element** of a rule. This will almost always be a Major Rule. And of course, you probably remember that this will come after the word *because*. This content will be **highlighted in yellow** below.

Example 1.

1. Even though the period of contract has ended, Ms. Adams is still entitled to a commission because she was the procuring cause of the sale as the agent who had done substantially everything to effect the sale.

It is highly suggested that you take the time to study how these headings are applied on an exam. Please refer to the following link. It is part of PT A of the February 2014, CBX. Here is the link (property of State Bar of California):

<http://juraxbar.com/wp-content/uploads/2017/11/Feb-2014-CBX-PT-A.pdf>

The summary of the Carefully Crafted Formula is placed here again. Take time to memorize it.

- (1) **First Part:** Conclusion composed of **facts**.
- (2) **Second Part:** Includes “Because” and followed by facts relating to the element of a Major Rule.

Or, remember the short version of the Formula: **Conclusion. Element. Rule (CER)**.

**SECTION 4
SAMPLE PERFORMANCE TESTS**

CHAPTER 6

Sources.

Here are 90-minute PTs published by the State Bar of California and the MPTs published by the NCBE: <http://juraxbar.com/past-bar-exams/>

Join the discussion on the Facebook Group titled *California Bar Exam Essays and PT* Group: [Facebook](#).

For 1-on-1 Performance Test tutoring, visit us at this link:
<http://juraxbar.com/performance-test-1-on-1/>

Conclusion.

And that is a rap for the PT section! Now, go and practice! Remember to use sections of this book as a reference when approaching the PT. It is a beast. But as you can see, it can be tamed like a kitten.