

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 6

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Analogizing and Distinguishing Legal Cases

CHRISTOPHER MARK MACNEILL¹

ABSTRACT

This short article examines how to do analogical reasoning to analogize and distinguish legal cases. It is presumed that readers have already received instruction on relevant basic concepts, including the common law system, the structure of the U.S. courts, mandatory/persuasive authority, and legal reasoning generally.

I. INTRODUCTION - STEPPING AROUND STARE DECISIS²

In a common-law legal system, such as the system used in most of the United States, prior court decisions compose a significant part of the law. The overarching principle in a common law system is "stare decisis et non quieta movere," which is Latin for "to adhere to precedent and not to unsettle things which are settled."

In accordance with the principle of stare decisis, courts should follow the decisions of previous cases that address the same topic of law. In other words, courts should treat cases involving similar facts similarly, and court decisions should be based on legal principles and not the biases of judges and juries. While courts should generally adhere to case precedents, courts may distinguish earlier cases by finding factual differences between the previously decided case and the case at hand and choose to apply some other authority. In addition, some courts may alter the common law by changing existing precedents or overruling previously decided cases altogether.

II. WHAT COURTS MIGHT DO WITH AUTHORITY PRESENTED TO IT

Although courts may distinguish cases based on the facts or overrule previously decided cases, stare decisis is often useful for predicting how a court will rule on a given case either for the purposes of negotiating a settlement or designing a trial strategy. However, whether a past decision is applicable to a current case depends on several factors, such as the jurisdiction where the case was decided, the facts of the case, and whether the case remains good law.

¹ Author is an Alumni of U. Edinburgh, School of Law, U.K.

² Stare decisis: Latin for "let the decision stand," a doctrine requiring that judges apply the same reasoning to lawsuits as has been used in prior similar cases.

Throughout the research process, you may encounter case precedent that favors or goes against the position that supports the client. To properly use case precedent to advance your position, you must know how to analogize, distinguish, and synthesize each relevant case that you find in your research to determine which to use in building legal arguments. How to use relevant case precedents depends on both the degree of similarity and application of the relevant law, and more importantly whether the precedent is favorable or unfavorable for your legal argument. See figure 1 below:

Figure 1

What to Do?

Favorable = Analogize

Unfavorable = Distinguish

III. THE PROCESS OF ANALOGIZING CASES

Consistent with the principle of stare decisis, the cornerstone of most court briefs and legal memos are arguments based on case law. You might assist a lawyer in analogizing case precedent with key facts of a client's case with the goal of persuading the court to favor the client's position. Analogizing is the process of showing that the key facts of the case at hand are similar to the key facts of a previously decided (favorable to your client) case in order to argue that the legal rule should be applied in a similar way, and thus the case should result in the same decision as the precedent.

Steps to Analogizing

The process of analogizing involves (1) identifying the cases to analogize, (2) recognizing the factual similarities and explaining why these similarities should be legally sufficient to support a similar court decision, and (3) explaining why the differences in key facts should not be legally sufficient to prevent the desired application of the law. During this process, it is imperative to discuss the significance of similarities between key facts with respect to the case being cited.

How to Succeed in Analogizing

Effective arguments in case briefs and legal memos are usually structured in a format that argues that a particular ruling is justified because of precedent. To succeed in this argument, the court must be convinced of the following:

- The current case resembles the precedent in all important respects.

- In the precedent case, the court reached the correct result.
- In the current case, the court should reach the same conclusion as in the precedent case.

IV. DISTINGUISHING CASES

The opposite of analogizing cases is making counter-analogies, commonly referred to as distinguishing cases. Distinguishing is the process of pointing out the factual differences between a precedent case and the current case.

Purpose of Distinguishing Cases

The purpose of distinguishing cases is to explain why the rule applied in the precedent case is inapplicable to the current case or, if the rule in the precedent case does apply, to explain why the current case should not necessarily result in the same outcome. In other words, if a case does not support the outcome you want, you need to distinguish precedent, so look carefully at the key facts and policy underlying each detrimental case to identify how the precedent can be distinguished.

How do You Distinguish Cases?

To properly distinguish cases, a researcher must (1) identify the factual differences between the cases, (2) explain why the factual differences should be legally significant so as to require a different outcome, (3) identify policy arguments that require a different outcome in the current case, and (4) attempt to make analogies to other legal rules in which a similar distinction was drawn.

What Courts Might Do With Authority Presented To It.

Although courts may distinguish cases based on the facts or overrule previously decided cases, stare decisis is often useful for predicting how a court will rule on a given case either for the purposes of negotiating a settlement or designing a trial strategy. However, whether a past decision is applicable to a current case depends on several factors, such as the jurisdiction where the case was decided, the facts of the case, and whether the case remains good law.

V. WHAT IS A LEGAL ARGUMENT?

A legal argument is: A logical statement supported by legal authority and admissible evidence. Two distinct yet similar structures of legal argumentation are examined below. They are: CREAC and IRAC.

What is CREAC?

Figure 2

CREAC

C	R	E	A	C
Conclusion	Rule	Explanation	Application	Conclusion

CREAC is an acronym for Conclusion, Rule, Explanation, Application and Conclusion. It is “a formula for organizing analysis”³ supporting a legal position. It essentially utilizes deductive reasoning as an analytical process by starting with “the general and moving to the specific and it is a crucial part of legal analysis.”⁴ It commences with a declarative statement (Conclusion) about what the legal issue is and how it should be decided.⁵ Essentially, what is the bottom line of the legal issue at hand.⁶ The (R) within the acronym CREAC stands for ‘Rule’ and refers to “the standard you used in reaching your conclusion.”⁷ To accurately identify the relevant rule of law the facts of the case must be examined and explained, showing the holding of a relevant statutes and case/s that have applied the relevant rule of the law applicable to the legal issue being addressed. The (E) of CREAC: Explanation – “outlines how the standard has been applied to the legal issue(s).”⁸ Choose facts that can be analyzed and explained in analogizing and distinguishes cases and the application of statutes. Brevity oft also lends to clarity so preference should be given to a short concise explanation. The (A) of CREAC represents: Application – which “applies the rule and explanation to the facts of the case at hand”⁹ and tasks the legal mind strategically to provide; “With the rule and explanation in mind, how might the court address the issues in my case?”¹⁰ Finally, CREAC’s (C): Conclusion is re-visited and a brief clear restatement of how the legal issue should be decided consistent with the explanation is provided by “simply reiterating your ‘Bottom Line’”¹¹ and drawing from the

³ RICHARD K. NEUMANN, JR. & SHEILA SIMON, LEGAL WRITING 118 (2d ed. 2011). Accessed at https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1519&context=law_facpub, p.571 note 24.

⁴ Kraft, Diane B., *CREAC in the Real World*, Notes/Citation Information The Cleveland State Law Review, Vol. 63, No. 3 (2015), p. 568.

⁵ Thomas, Beatrice C., *Don't Crack Up Because of "CREAC"!*, University of Baltimore, School of Law, Legal Writing Centre. Accessed 27 January 2021 at http://law.ubalt.edu/academics/academic-support/legal_writing_center/duediligenceguides/Due%20Diligence%20Guide%20Do%20Not%20Crack%20Up%20Because%20of%20CREAC%202018%20.pdf

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

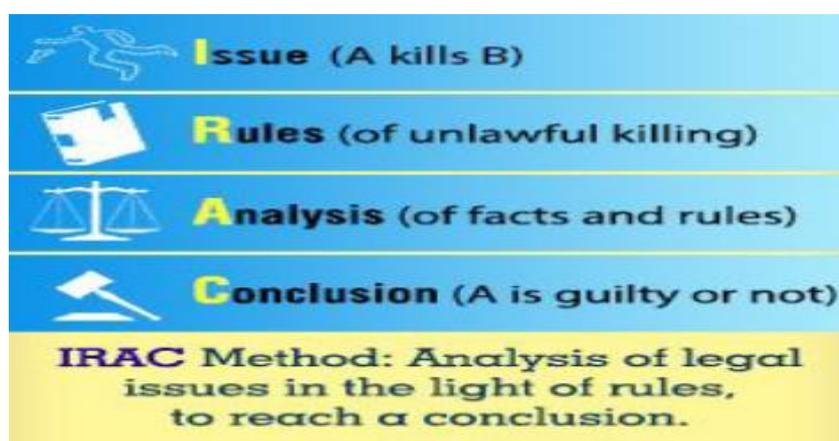
facts and supporting the key aspects of the rule of law.

What is IRAC?

IRAC stands for the “Issue, Rule, Application, Conclusion” and is structure of legal analysis¹² similar to CREAC. Essentially, an effective legal analysis follows some form of structural paradigm, and under IRAC “it is organized around an “issue”, a “rule”, an “application”, and a “conclusion” for each and every issue and sub-issue identified as a legal problem.”¹³ See Figure 3 below:

Figure 3

IRAC



Under the IRAC approach to legal writing and argument construction, the issue is the most important element in the analysis.¹⁴ “The legal question is a blend of rule and the facts particular to the problem” and it is essential to properly identify the legal issue in question. If the issue is not properly identified, then in all likelihood the legal analysis subsequently used will also be off target and ineffective. To stay on track, one needs to focus on the facts and articulate “what is in controversy in these facts”¹⁵ and what is the applicable legal question present? As such it is recommended under IRAC to begin with an issue identification by stating “the legal conclusion you want the court to reach,”¹⁶ and then connect to the “relevant” facts which will support the desired outcome. Once the issue has been clearly identified the next step is examining the application rule/s and facts in your analysis.

¹² Touro Law Centre, *Learning to Work With IRAC*, 2006. Accessed 27 January 2021 at <https://www.tourolaw.edu/ADP/StudySkills/IRAC.aspx>

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

“Your analysis of the facts will not make sense unless you have first identified the rule which determines the legal meaning to be attributed to those facts. Use building blocks for writing the rule of law by considering: (a) elements, (b) definitions, (c) exceptions to the general rule, (d) limitations to the rule, and (e) defenses.”¹⁷

The analysis or application is the operational nucleus of IRAC and follows exploration and explanation of the relevant rule/s.

“It is where you examine the inferences/implications raised by the facts in light of the rule... Here your statement of the rule provides a blueprint to follow for your discussion of the facts. You simply match up each element/factor you’ve identified in the rule with a fact, using the word “because” to make the connection between rule and fact.”¹⁸

The IRAC conclusion will use the same methodology as the CREAC ending conclusion and should be a brief clear statement of how the legal issue should be decided consistent with the explanations provided drawing from the facts and supporting the key aspects of the rule of law.

VI. TOOL OF ANALYSIS – CREAC & IRAC

Figure 4 provides an example of applied legal analysis using structural reasoning paradigms such as CREAC and IRAC. These three hypothetical cases are somewhat similar in that they involve ‘takings.’ However, the facts differentiate allowing the cases analogies when summarized comparative in a tabulated parallel manner demonstrate through explanation, analysis and conclusion differing outcomes of the application of the rule of law.

Figure 4

Table of Analogies

Rules	Client - Facts	Case 1: State v. Jones	Case 2: State v. Smith
Taking and carrying away	Albert unplugged the charger and took it out of the store.	Sue carried stereo out of store in cart without paying.	Joe picked up new rope and took it out of the store
Of the personal property of another	Cell phone store’s white charger.	Stereo	Hardware Store’s tow rope.
Intent to	“I’ll bring it back!” On	Indicated only that	I have an emergency

¹⁷ Ibid.

¹⁸ Ibid.

permanently deprive	his way to the store. Albert asked if he could borrow the charger. Albert was a frequent customer.	she would return in a week. Sue was a new customer to the store.	and will be back with payment, he said on leaving the store. He had an inactive account with the store.
Holding	Should be no theft	Theft	Should be no theft
Analysis	Should be no intent to permanently deprive.	Intent to permanently deprive.	Should be no intent to permanently deprive.

VII. CONCLUSION

Draw analogies and distinguishing legal cases requires comparative relative analysis. The process is used to identify and clarify rules of law in identify legal questions, issues and directing examination of the facts leading to a conclusion/s. Many different methods of analysis maybe used, both formal structured and informal less organized approaches. In this study we have examined the use of two of the more commonly used structural and effective organized methods, CREAC and IRAC.

In reviewing CREAC and IRAC, it is readily seen that the two methods share many core similarities involving the same initiation of the analytical process commencing with problem identification; by either formulating a hypothetical conclusion at the outset under CREAC to be tested and proven, or under IRAC to succinct identify the legal issue/conflict in question. The levels of analysis utilized by both these processes are much the same with both relying inherently on the facts of matter, the application of those facts to relevant rule/s of law, analogizing and distinguishing applicability of statutes and cases, and a broader basis placing the analysis within the context of the operative legal environments policies and emotions.
