



Domestic Relations

Lecture 03

Prof. Marvin L. Longabaugh

© 2016 National Paralegal College

Writing Successful Answers - IRAC

• Issue

- Begin your answer by stating the issue presented by the essay question.
- Sometimes the question will provide the issue for you.
- If not, then ask:
 - What is the legal question that, when answered, determines the result of the case?
- The issue should be stated in the form of a question in a specific, rather than general form:
 - “Is there an agency relationship if there was no compensation paid?” would be an acceptable issue.
 - “Will the plaintiff win?” would not be acceptable.
- Note that the issue may be problem-specific, mentioning the parties’ names and specific facts of the problem.
 - Example: “Did Jones have an agency relationship with XYZ Corp. due to his acting on behalf of XYZ and following its instructions?”



Writing Successful Answers - IRAC

- **Issue**

- The issue can encompass all instances which present a similar question.
 - Example: “Is an agency created whenever there is an employment relationship?”
- Most problems present one issue.
- If there is more than one issue to address, then you must write a separate IRAC analysis for each issue.



Writing Successful Answers - IRAC

• Rule

- The rule describes which law or test applies to the issue.
- The rule should be stated as a general principle, and not a conclusion to the particular problem being briefed.
 - Example: “An agency relationship is created when there is an agreement that the agent will act for the benefit of the principal at the principal’s direction or control regardless of whether compensation is paid” would be an acceptable rule.
 - “The plaintiff was the defendant’s agent” would not be an acceptable rule. Do not use parties’ names or specific facts from the problem.
- Hint: Frequently, the rule will be the definition of the principle of law applicable in the problem.
 - Example: An agent may not use or disclose confidential information acquired through the agency absent an agreement to the contrary.



Writing Successful Answers - IRAC

- **Analysis**

- The analysis is the most important, and the longest part of your answer.
- It involves applying the Rule to the facts of the problem or question.
- You should use the facts to explain how the rule leads to the conclusion.
- Discuss both sides of the problem when possible.
- **Important:** Do not merely state a conclusion without also stating reasons for it.
 - A conclusion without reasons or explanation means that you have not used the rule and the facts to analyze the issue.



Writing Successful Answers - IRAC

- **Analysis**

- Hint: The rule can be used as a guide in your discussion.
 - Example: Suppose the issue is whether A is an independent contractor. Using the facts of the case, explain whether or not they fit into the definition of what is an independent contractor:
 - “In this case, A was told by the foreman what to wear, how to operate the machine, and when to report to work each day, giving her little control over the job.”
- If the rule is a test with multiple factors, then you must analyze each factor by pointing out how the facts do (or do not) fulfill each factor.



Writing Successful Answers - IRAC

- **Conclusion**

- The conclusion is your answer to the Issue.
- State the result of your analysis.
 - Examples: “Smith is liable for negligence” or
 - “Therefore, no valid contract was formed between X and Y.”
- If there are multiple issues, there must be multiple conclusions as well.



Writing Successful Answers

- **Problem:**

- Amy wanted to give some jewelry to her friend, Kate, who was on a trip through Asia.
- She telephoned Kate's best friend, Gina, and asked her to come to Amy's house.
- When she arrived, Amy told her that she had some jewelry that she wanted to leave to Kate, but that she had never made a will.
- Amy asked Gina to take the jewelry and see that it was delivered to Kate upon Amy's death.
- Gina took the jewelry to her own home and kept it for Kate.
- When Amy died six months later, Gina delivered the jewelry to Kate.
- Amy was survived by her mother, who is her only heir.



Writing Successful Answers

- **Issue:**
 - After Amy's death, who is the true and rightful owner of the jewelry?



Writing Successful Answers

- **Rule:**

- In order for an inter vivos gift to be valid, there must be intent on the part of the donor to make a gift, delivery by the donor to the donee and acceptance of the gift by the donee. An inter vivos gift requires that the donor intend to make an irrevocable present transfer of ownership. Delivery of the gift can be by physical delivery or constructive delivery, sufficient to divest the donor of dominion of the property. Acceptance by the donee will be presumed when the gift is of value to the donee., *Gruen v. Gruen*, 68 N.Y.2d 48 (1986).
- Gifts causa mortis require the same 3 elements as do inter vivos gifts, but require a fear by the donor of their impending death. They are effective upon delivery and acceptance. Thus, delivery must be made while the donor is alive. The only type of gift that can be effective after the donor's death is by a will., *Gonzales v. Zerda*, 802 S.W.2d 794 (1990).



Writing Successful Answers

- **Analysis:**

- The first step is determining whether an inter vivos gift was made from Amy to Kate. Amy stated that she wanted to “leave” the jewelry to Kate, but hadn’t made a will. This language suggests that the gift was to be effective upon her death. An inter vivos gift requires an irrevocable present transfer; Amy’s delivery to Gina would not likely be considered a present transfer under these circumstances.
- The next step in this analysis is to consider whether this was a gift causa mortis. Gifts causa mortis require the same elements as do inter vivos gifts, but require a fear by the donor of her impending death. Nothing in these facts suggest that Amy feared her impending death; thus, this was not a gift causa mortis.



Writing Successful Answers

- **Conclusion:**
 - Based on these facts, Amy neither made an inter vivos gift nor a gift causa mortis. The normal laws of intestate succession would apply if Amy did not have a Will.



Don't Be Conclusory!

- **The breaking and entering into the house of another in the night time, with intent to commit a felony therein, whether the felony be actually committed or not.**
- *Breaking* can be either actual, such as by forcing open a door, or constructive, such as by fraud or threats. Breaking does not require that anything be "broken" in terms of physical damage occurring. A person who has permission to enter part of a house, but not another part, commits a breaking and entering when they use any means to enter a room where they are not permitted, so long as the room was not open to enter.
 - Fred picked the lock.
- *Entering* can involve either physical entry by a person, or the insertion of an instrument to remove property. Insertion of a tool to gain entry may not constitute entering by itself. Note that there must be a breaking and an entering for common law burglary. Breaking without entry or entry without breaking is not sufficient for common law burglary.
 - Fred entered the dwelling.



Don't Be Conclusory!

- **The breaking and entering into the house of another in the night time, with intent to commit a felony therein, whether the felony be actually committed or not.**
- *House* includes a temporarily unoccupied dwelling, but not a building used only occasionally as a habitation.
 - Wilma lived there and resided there permanently.
- *Of Another* means that the alleged burglar does not reside there as well.
 - Fred does not live in the same building as the one he entered.
- *Night time* is defined as hours between half an hour after sunset and half an hour before sunrise.
 - The event occurred at 11:00 p.m., more than five hours after sunset.
- *Intent to commit a felony therein* requires that the alleged burglar must intend to break the law once inside.
 - Fred was apprehended with a bag containing jewelry belonging to Wilma, demonstrating that he intended to steal Wilma's belongings.



The End

