How to Brief a Case

FIRAC: *An* ELEMENT*ary Approach to Legal Reasoning*

by David Guenther, Professor Emeritus, Central Michigan University

Table of Contents

2.3 How to brief a case (Part 2)

IRAC brief = FIRAC brief.

Do an Internet search of “briefing a case” (or similar terms) and you will notice that some of the webpage titles that turn up refer to an **IRAC** briefing format (such as How to Brief a Case Using the “IRAC” Method). The absence of the “F” may create the impression that an IRAC brief does not include the facts of the case. That is not so. In terms of briefing a case, IRAC and FIRAC are synonyms. Both formats begin with a statement of facts.

(Note: There is a difference between IRAC and FIRAC when solving a legal problem. If you are given the facts of the case, such as during an exam, you only have to perform the remaining steps, i.e., you do an IRAC analysis. A FIRAC analysis is required, however, on those occasions when it is necessary to determine the facts of a case, such as when a client seeks legal advice.)

Everyone agrees on what “facts” are. But what is meant by “issue,” “rule,” “application,” and “conclusion” varies.

Take a moment to click on a sampling of the webpages your Internet search turned up and skim the contents. What you will find is that all use the same (or substantially similar) labels to describe the content of a brief – facts, issue, rule, application (or analysis or reasoning), and conclusion (or holding or decision). But look closer and you will see that,

except for “facts,” the descriptions attached to those labels vary, sometimes considerably.

So, what is going on?

The terms “issue,” “rule,” “application,” and “conclusion” have more than one meaning. For example, I used “issue” in my bare bones briefing format to mean “law issue.” But someone else, describing his or her briefing format, may use “issue” to mean “element issue.” To complicate matters, some descriptions of “issue” do not distinguish between “law issue” and “element issues” and lump them together under the same heading. Likewise, different people may use “rule,” “application,” or “conclusion” to mean different things.

Once you are familiar with the FIRAC terminology, the different meanings attached to the labels will not be a problem. Picking up the intended meaning from context and usage will be as instinctive as realizing that “brief” in these materials does not refer to underwear and “case” does not mean a container.

On the other hand, failing to recognize the intended meaning can cause confusion and misunderstandings. It may also affect another’s evaluation of your brief. For example, if you stated the law issue but your teacher expected to see an element issue, your grade might suffer. Therefore, *if your teacher or employer instructs you to use a particular briefing format, make sure you understand what she or he means by “issue,” “rule,” and the other labels.*

The most common briefing format out there – what I call a “facts + application” format.

If your teacher or employer gives you a briefing format, or you find one on the Internet or in a book, whether it’s called an IRAC format or a FIRAC format, the odds are it will be what I call a “facts + application” format. By the way, you won’t see that name used by others. I coined the term because, from my perspective, this version of a brief only includes Steps 1, 3, and 6 (heading, facts, and application) of the generic format provided in the previous section.

A “facts + application” brief (Steps 1, 3, and 6) is a subset of a “bare bones” brief (Steps 1, 3, 4, 5, 6, and 7). Simply put, my “bare bones” format contains more information. It is a more comprehensive version of a brief that includes everything found in a “facts + application” brief plus some.

To state it another way, a “facts + application” brief is a briefer brief. Since it contains less information, it is shorter and takes less time to prepare. Yet it still embodies the “guts” of a judicial opinion – the court’s analysis of the element issue(s) – so is adequate for many purposes.

The problem is that, while the information contained in both formats is mostly the same and the FIRAC terms used to label the parts of the brief are the same, three of those terms – *“issue,” “rule,” and “conclusion – usually refer to very different things.*

GENERIC FORMAT STEP	BARE BONES BRIEF	FACTS + APPLICATION BRIEF

(3) Facts	Same meaning	Same meaning
(4) Issue	Law issue	Element issue (My meaning of Step 6(a).)
(5) Rule	The words of the law that was allegedly violated.	The words of the rule used to determine whether the element was satisfied, e.g., a rule of the case; a test, standard, or list of factors; a canon of statutory construction; or a statement of policy. (Part of what I call a legal reasoning method -- Step 6(b).)
(6) Application	(a) Element issue + (b) Use of legal reasoning method + (c) Conclusion to the element issue	The reasoning part of using a legal reasoning method. (The remaining part of my meaning of Step 6(b).)
(7) Conclusion	Conclusion to the law issue.	Conclusion to the element issue. (My meaning of Step 6(c).)

A “facts + application” brief of *People v Kay* follows. Comparing it to the “bare bones” brief of *People v Kay* in Section 2.2 may help you grasp the differences.

A facts + application brief of *People v Kay*

PEOPLE v KAY
Court of Appeals of Michigan (1982)
121 Mich. App. 438; 328 N.W.2d 424

FACTS

After Kay left a grocery store, two store employees (Berhow and Denessen) followed him to his van in the parking lot and accused him of taking steaks without paying for them. Kay opened the van door. His German shepherd dog was inside. Kay either called his dog by name or said “get ‘em.” The dog lunged at Berhow’s face, striking his glasses.

ISSUE

Is a German shepherd dog that lunged at a person’s face after its owner said “get ‘em” a “dangerous weapon?”

RULE

"Dangerous weapon" is broadly defined to include any object which, when used, may be considered dangerous.

APPLICATION

The court followed New Jersey and New York precedents. In *State in the Interest of J.R.*, the New Jersey court held that a German shepherd that growled at and stalked the victim after being commanded to "sic 'er" was an "offensive weapon." In *People v Torrez*, the New York court found that the a German shepherd dog trained to attack could be a "dangerous instrument."

As in those cases, Kay urged a German shepherd dog to attack another person. The New Jersey and New York statutes, like the Michigan statute, refer only to inanimate objects.

Both the NJ and NY courts held the German shepherds were "dangerous weapons" even though their state statutes only referred to inanimate objects. The fact that a dog is an animate object did not matter. It is the manner in which an object is used and the nature of the act that determines whether an object is a "dangerous weapon." If a dog could be an "offensive weapon"/"dangerous instrument" under the NJ and NY statutes, it could also be a "dangerous weapon" under the Michigan statute.

CONCLUSION

Yes

****

The primary shortcoming of a "facts + application" brief is that it sacrifices context. Even though it presents a large part of the picture, it does not display the whole picture. Information about the law that was allegedly violated (Steps 4, 5, and 7 of the generic format) is omitted.

Why does that matter?

When a court writes a judicial opinion, it begins with both a statement of facts and a statement of the law that was allegedly violated. These statements provide context necessary to fully understand the court's reasoning (the application step).

When applying the law to the facts, a court will normally (1) discuss selected words of the law and then (2) relate those words to bits and pieces of the facts. The statement of facts provides context that helps the reader put those bits and pieces of facts into perspective. The statement of the law provides context that helps a reader make sense of the court's discussion of the law's words.

For example, in *People v Kay*, the court noted that "the Michigan statute . . . . referred only to inanimate objects." This is a generalization reflecting the court's characterization of the objects listed in the statute. Would you like more details so you have a better idea of what the court meant by "inanimate objects?" Would you like to evaluate the court's characterization and decide if you agree with it? No problem – as long as you have a statement of the law available.

A quick glance at the statute (which is helpfully quoted in the opinion) reveals the specific objects it refers to: "gun, revolver, pistol, knife, iron bar, club, brass knuckles or other

dangerous weapon." This additional information clarifies the meaning of "inanimate objects." It allows you to form your own opinion about the accuracy of the court's generalization. And it provides insight into Kay's argument, making it easier to see why Kay and the prosecutor disagreed about whether a German shepherd was a "dangerous weapon." On the surface, a dog seems qualitatively different than a gun, knife, or club.

"But I did all that when I read the opinion," you point out. "So why is it necessary to repeat the statement of law in my brief?"

Will someone else (who has not read the opinion) be reading the brief? If so, he or she will need the context provided by the statement of law (and the statement of facts) to make sense of your synopsis of the application.

Do you anticipate using the brief at a later date to refresh your memory of the case? Recollections, especially of details, tend to fade with time. The more important the details of the law are to understanding the court's analysis, the more important it is to include a statement of the law in the brief.

On the other hand, if you know the text of the law so well that you can mentally put references to individual words and phrases in context, the statement of law can probably be left out. But even then, including at least the name of the law in the brief will help trigger the proper association.

The same words may have different meanings in different laws. For example, "dangerous weapon" in MCL 750.82 (the Michigan statute in *People v Kay*) means one thing. "Dangerous weapon" in MCL 380.1313(1) (another Michigan statute which begins "If a dangerous weapon is found in the possession of a pupil while the pupil is in attendance at school . . . ."), means something else. Since the correct meaning of "dangerous weapon" depends upon the law it is a part of, those words cannot be viewed in isolation. Rather, they must be associated with a particular law. The connection is explicit in a "bare bones" brief. It is less apparent in a "facts + application" brief.

There is also a practical benefit to consider. When doing a FIRAC analysis, identifying and quoting the relevant words of the law at issue is an essential step. Including a statement of the law in every brief you prepare gets you in the habit of performing this step and increases your understanding of it.

It doesn't take many words or much time to include Steps 4 (law issue), 5 (relevant words of the law), and 7 (conclusion to the law issue) in a brief. If a court thought it was important to include that information in its opinion, perhaps it is equally important to include it in a brief of the case.
