

An ELEMENTary Approach to Legal Reasoning

FIRAC: An ELEMENTary Approach to Legal Reasoning

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Table of Contents

[Section 1.1 -- An overview of the FIRAC approach](#). (An outline, the terminology, and an example)
[Section 1.2 -- Don't believe everything you think](#). (The advantages of using the FIRAC approach.)
[Section 1.3 -- Words count](#). (Includes a FIRAC example.)
[Section 2.1 -- An introduction to reading and understanding judicial opinions](#). (Includes a color-coded FIRAC example.)
[Section 2.2 -- Briefing a case](#) Part 1
[Section 2.3 -- Briefing a case](#) Part 2
More sections will be added as I complete them.

2.1 An introduction to reading and understanding judicial opinions.

After making a decision, a court may write a **judicial opinion** explaining why it reached the conclusion it did. Reading these judicial opinions (commonly called “cases”) is an integral part of learning and practicing law. Law textbooks include cases which students are assigned to read and expected to discuss in class. Lawyers, judges, and scholars research cases to improve their understanding of a law and formulate a position. Within the field of law, the standard practice is to support legal arguments with citations to relevant cases.

Acquiring the perspective, background knowledge, and skills necessary to comprehend judicial opinions takes time and effort. Unless you are an exception, you will struggle and get frustrated in the beginning. That’s the bad news. The good news is that understanding judicial opinions becomes easier with practice and experience. The better news is that the materials in this section will accelerate your progress up the learning curve by introducing fundamental terminology, concepts, and techniques and offering opportunities to practice.

The starting point – [View a judicial opinion as a FIRAC analysis](#).

Judicial opinions contain many different types of information which can be organized and expressed in many different ways. Yet every case is, at its core, a FIRAC analysis. If you are fortunate, the court will clearly perform each step in order. It will begin by stating the facts of the case. Then it will declare the law issue and quote the rule. The application will follow. An element of the rule will be highlighted, relevant facts will be referred to, and one

or more legal reasoning techniques will be used to determine whether the element is satisfied. (If more than one element is in dispute, each will be addressed sequentially.) Finally, the court will announce its conclusion.

But don't be surprised if the format and phrasing of an opinion does not match the model. The steps may be presented in a different order. Or more than once. Or split up, with part of one step performed in one place and part in another. (For example, the issue may be given before the facts. The conclusion may be stated at the beginning and the end. Facts may appear early in the opinion and then be repeated or supplemented in the application.) A court may use labels or terminology different from mine – or none at all. (For example, if a court writes “The issue before us is”, is the court referring to the *law* issue or an *element* issue? “Requirement” is a common synonym for “element;” “question” is a common synonym for “issue.” An issue may be expressed as a statement or a contention instead of a question. A court may not announce what FIRAC step it is performing – it will just do it and assume the reader can recognize what it is doing.)

To add to the difficulty and potential confusion, a judicial opinion will almost certainly contain some non-FIRAC information. This information can be helpful and is sometimes essential to understanding the court's FIRAC analysis. But it is not part of the analysis. For example, an appellate court opinion will typically include some procedural history, such as the identity of the court that previously heard the case and its decision. This procedural history is not part of the facts (although beginners frequently treat it so), nor is it part of any other FIRAC step. However, it can help the reader understand the conclusion (among other things). If the appellate court's conclusion is “AFFIRMED,” you know it agreed with the lower court's decision. But what was that decision? The procedural history provides the answer.

Because judicial opinions are FIRAC analyses, the better you understand FIRAC, the easier it will be to follow what a court has written and grasp its significance. You will be better able to recognize each step being performed regardless of the order in which it appears, its location in the opinion, or the phrasing that is used. The vocabulary (especially the legal terminology) and reasoning will make more sense. Your capacity to aggregate, reorganize, and rephrase the content in a way that increases clarity and boosts recall will improve. You are less likely to be sidetracked or confused by extraneous information that can be safely discounted or ignored.

Furthermore, since every judicial opinion is an example of a FIRAC analysis, each one you read provides an opportunity to enhance your understanding of FIRAC and become more proficient at doing a FIRAC analysis (which further improves your ability to understand the next case you read). Like aging, the incremental change may not be obvious from one day to next. But with the passage of enough time, the transformation will be apparent.

An Example of a Judicial Opinion

Don't immediately start reading the opinion. First, take a moment to note its general appearance and format, remembering to view it as a FIRAC analysis. To help you see what is there, I have added labels in the left hand margin to identify the parts of the opinion. In addition, I have used different colors to highlight the text of the various FIRAC steps.

As you read the opinion, make a conscious effort to associate the different types of content with their labels. For example, when reading the facts, think to yourself “This is what a statement of facts looks like.” and relate the actual wording used to state the facts in this

case to the abstract definition of “facts.” (The definition of facts from the previous section: “The facts of the case describe what happened to cause the dispute. The facts may describe behavior, who or what engaged in that behavior, the reasons for the behavior, when and where the behavior occurred, circumstances at the time the behavior occurred, who or what was affected, how they were affected, and so on.”) Do you see how the facts in the following case describe “when the behavior occurred” (October 30, 1981), “where the behavior occurred” (the parking lot of Elmer’s Super Value grocery store in Escanaba, Michigan), and other aspects of what happened?

Besides understanding what facts look like, it is also helpful to know what they *don’t* look like. Facts are *not* procedural history. They are *not* issues or laws or applications (although facts may be stated within applications) or conclusions. Appreciating and paying attention to the differences means you will be less likely to mistake one thing for another. Your goal is to understand “facts” (and “issue” and “rule” and “application” and “conclusion” and more) well enough that you will know them when you see them in an opinion, regardless of the organization, phrasing, location, or context.

Heading	<p>PEOPLE v. KAY</p> <p>Court of Appeals of Michigan (1982) 121 Mich. App. 438; 328 N.W.2d 424</p>
Facts	<p>On October 30, 1981, defendant stopped at Elmer's Super Value grocery store in Escanaba. Store employees suspected defendant of placing one or two steaks under his jacket. Defendant left the store without going through the cash register and upon reaching the front entrance began to run toward the parking lot where his van was parked. Inside the van was defendant's German shepherd dog. Two store employees followed defendant to the parking lot where they accused defendant of committing larceny. When defendant denied taking any merchandise, the two employees grabbed defendant. Defendant then opened the van door and either called his dog by name or said "get 'em". The dog lunged at the face of store employee Randy Berhow, striking his glasses. Berhow and the second employee, Terry Denessen, released their grip on defendant who grabbed the dog putting him back in the van. Defendant then got in the van and drove off.</p>
Procedural history	<p>Defendant was charged with . . . two counts of assault with a dangerous weapon. On February 22, 1982, the jury found defendant . . . guilty of assault with a dangerous weapon as to store employee Randy Berhow.</p>
Law Issue	<p>The statute in question [MCL 750.82; MSA 28.277] reads:</p>
Rule	<p>Any person who shall assault another with a gun, revolver, pistol, knife, iron bar, club, brass knuckles <i>or other dangerous weapon</i>, but without intending to commit the</p>

	crime of murder, and without intending to inflict great bodily harm less than the crime of murder, shall be guilty of a felony. (Emphasis added.)
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Application) Element issue	Defendant argues that because only inanimate objects have been found to be dangerous weapons in Michigan, a dog cannot be held to be a dangerous weapon under the Michigan statute. Although no Michigan case has spoken to the issue, a few other jurisdictions have addressed the question of whether a criminal defendant's use of a dog may be regarded as use of a dangerous weapon, as that term is defined in the various state statutes involved.
b) Reasoning technique: using precedents	
c) Element satisfied	<p>In <i>State in the Interest of J R</i>, 165 NJ Super 346; 398 A2d 150 (1979), the New Jersey court affirmed defendant's conviction for "assault with an offensive weapon (his dog)". The dog, a German shepherd, responded to defendant's command "sic 'er" by growling and stalking the victim. The statute claimed to have been violated, like the Michigan statute in the instant case, referred only to inanimate objects. It read:</p> <p style="padding-left: 40px;">Any person who willfully or maliciously assaults another with an offensive weapon or instrument * * * is guilty of a high misdemeanor.</p> <p>Finally, in <i>People v Torrez</i>, 86 Misc 2d 369; 382 NYS2d 233 (1976), defendant sought a dismissal of an indictment charging him with use of a dangerous instrument, a German shepherd dog. The New York statute defined dangerous instrument in inanimate terms:</p> <p style="padding-left: 40px;">13. "Dangerous instrument" means any instrument, article or substance, including a "vehicle" as that term is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.</p> <p>The court held that the statutory definition of dangerous instrument, which broadly included any article or instrument which could cause serious injury, did not exclude large dogs trained to attack.</p> <p>In view of the authorities cited from other jurisdictions and the fact that the Michigan statute, like the statutes cited in the New Jersey and New York decisions, broadly defines "dangerous weapon" to include any object which, when used, may be considered dangerous, we hold that a dog may be a dangerous weapon within the meaning of MCL 750.82; MSA 28.277. We reject defendant's claim that MCL 750.82; MSA 28.277 <i>per se</i> excludes animate objects.</p> <p>The fact that one is inanimate and the other animate is not controlling. It is the manner in which the instrumentality is used and the nature of the act which determines whether the instrumentality is dangerous.</p>
Conclusion	Affirmed.

[Continue to Section 2.2](#)