

An ELEMENTary Approach to Legal Reasoning

FIRAC: An ELEMENTary Approach to Legal Reasoning

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1.1 An overview of the FIRAC approach.

FIRAC is an acronym for a five step analytical process that can be used to learn any law or to determine whether any law has been violated. Each letter represents one step of the process and the ideal order in which they should be performed.

"F"	—	The first step is to ascertain the Facts of the case.
"I"	—	The second step is to identify a law Issue raised by the facts.
"R"	—	The third step is to find an accurate statement of the Rule .
"A"	—	The fourth step is to Apply the rule to the facts.
		(1) Identify one element issue.
		(2) Use one or more legal reasoning methods to compare the element to the facts and determine whether the element is satisfied.
		(3) Repeat (1) and (2) for each element.
"C"	—	The final step is to determine the Conclusion to the issue.

A Primer of the FIRAC Terminology

What follows is an introduction to the FIRAC terminology. The intent is only to convey the essence of each step. Subsequent sections will discuss each of the steps in more depth. >/p>

Facts of the case

”**Case**” refers to an actual, potential, or hypothetical dispute which raises a question of whether one or more laws were violated. A lawsuit is an example of a case. So is a “case analysis” on an exam.

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.

Sometimes, the facts are presented as a given. The parties to a dispute may have agreed upon (stipulated to) the facts. A trier-of-fact (such as a jury or hearing officer) may have considered the evidence and decided the facts. A professor may have prepared a statement of facts for an exam question. Other times, the facts must be ascertained from scratch.

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Issue (question)

Lawsuits are brought because one person believes another has violated some law. Thus, the primary ”**issue**” a court has to answer is whether a named defendant is guilty of or liable for violating a specific law. “Did James Allen Cook violate North Carolina General Statute § 14-34.2?” and “Is Bill Derr liable under the common law of negligence?” are examples of law issues.

CAUTION: In the context of FIRAC, the term “*legal issue*” is frequently used to refer to two related but distinctly different types of questions:

(1) A question that asks whether a specific law has been violated – what I call a **law** issue (as distinguished from a *legal* issue.) Example:

Did Len Lorde violate Sec. 554.602 of the Michigan Landlord-Tenant Relationship Act?

(2) A question about the meaning of a particular word or phrase used in a law -- what I call an **element** issue. Example:

Is a building leased for use as a retail store a “rental unit?”
[“Rental unit” is only one of the many words and phrases that, together, make up the entire law known as Sec. 554.602.]

After reading the rest of this section, you will have a better understanding of these two types of legal issues. However, it should be apparent from the examples above that the phrasing and focus of the questions are notably different.

Right now, just keep in mind that *identifying **law** issues is the focus of the “I” step.*
Recognizing element issues is part of the application step.

The issue sets up the problem. What happens in the remaining steps depends upon the law issue identified in this step. Change the issue and everything that follows also changes. Among other things, this means that when the facts give rise to multiple law issues it is necessary to do a separate FIRAC analysis for each one.

To identify a law issue, it is necessary to (1) know the facts of the case and (2) understand a law well enough to recognize when it may have been violated. When the conduct described by the facts causes you to believe, suspect, or even question whether a specific law has been violated, you have discovered a law issue.

“Issue spotting” may seem easy but don’t be misled. There are so many variables at work that a law issue may remain hidden in plain sight. The facts may be screaming that a law has been violated but you will be oblivious to the outcry if you are ignorant of the law. You may know everything about a law except for the key piece of information needed to make the connection in the particular fact situation before you. You may misread the facts or fail to pick up on a nuance. Time pressure may cause you overlook something that would have been apparent if you had not been in a rush. A haphazard approach may miss things that a systematic approach would find.

Not noticing a law issue, for whatever reason, has consequences. To not ask a question is to forfeit the answer and all the associated benefits. Overlooking a law issue on an exam means giving up all the points allocated to that issue. Missing a law issue in a real case can mean a damage award that might have been, a defense that never was, or an upset client.

The “I” step is only about recognizing the question. Figuring out the answer is the purpose of the remaining steps. Even if you are absolutely, positively certain you know what the answer is, restrain the urge to jump to the “C” step. Your initial reaction could be wrong. You may have overlooked a critical fact. Your understanding of the law may be incorrect. Bias or emotion may have influenced your perception. Doing a complete FIRAC analysis is the only way to catch such errors.

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Rule (law)

The “**rule**” is the text of the law that was identified in the “I” step. What is needed is a quotation of the rule, preferably from a primary source. The name of the rule is not sufficient. Neither is a paraphrased statement. In the application step, words of the rule will be compared to the facts. The words of the rule also provide information needed for the conclusion step. If the rule is not expressed accurately here, the rest of the analysis will be flawed.

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Application

An “**application**” is, in essence, a comparison of two sets of words:

Set 1: the words of the rule that describe the conduct it prohibits/requires
/permits

Set 2: the words (facts) that describe the conduct that occurred.

The task is to ascertain whether the two sets of words describe the same conduct.

The words of a rule describe certain conduct. Those words have been chosen with care to create a precise and unique description of that conduct and to distinguish it from conduct not covered by the rule. The result is a list of separate and identifiable things which have been combined together in sentence form. One word or phrase of the rule may describe a *specific behavior*. A different word or phrase may describe *who* must have engaged in that behavior; or a *state of mind* that must have been present while engaging in the behavior; or *circumstances that must have been present* when the behavior occurred; or *who or what must have been affected* by the behavior. Other words may describe other things.

Each of these things is one **element** of the rule. Where do you get a complete and accurate list of a rule’s elements? It may be provided by an instructor. Judicial opinions often identify the elements of the law at issue in that case. Do an Internet search. There are lots of sources. And once you truly comprehend what an element is, it is relatively easy to look at the text of a rule and pick out the elements.

The best way to do an application is to compare each element, one at a time, to the facts. Each element describes one part of the conduct covered by the rule. By proceeding methodically through all the elements, each and every part of the conduct is compared to the facts. Nothing essential is overlooked and nothing extraneous is considered.

Begin by converting each element into what I call an “**element issue**.” An element issue is a question that asks whether an element is satisfied. It may be stated in general terms, such as “Was there ‘state action?’” [“State action” is one of the elements of the Equal Protection Clause of the U.S. Constitution.] It is preferable, however, to phrase an element issue as a question that states the relevant facts and asks whether they come within the meaning of the element. “Was the New York Yankees’ policy to exclude female reporters from its locker room in Yankee Stadium ‘state action?’” is a better statement of an element issue than “Was there ‘state action?’”

An element is “**satisfied**” or “met” if the thing described by the element (the who, what, circumstances, etc.) is also described by the facts. If *all* the elements are satisfied, the rule and the facts describe the same conduct. But it’s all or nothing. Close doesn’t count. There must be a perfect match. If one or more of the elements are *not* satisfied, the rule and the facts describe different conduct. There may be some other rule that encompasses the conduct – but not the one you are analyzing.

What if there is uncertainty or disagreement about whether an element is satisfied? “Maybe” is not an option. The element is either satisfied or not; those are the only two choices. To figure out which answer is the correct one, lawyers and judges use a variety of reasoning methods. They may look up the definition of the element’s words, rely upon precedents for guidance, apply a test or standard, consider the purpose of the rule, or use some other method.

Doing an application is like playing a matching game. The following game illustrates the concept.

Consider the following pairs of words. Does the word in the “element” column mean the same thing as, or include, the word directly opposite it in the “fact” column?		
<u>Element</u>	<u>Fact</u>	<u>Answer</u>
spouse	wife	YES or NO
forty percent	two-fifths	YES or NO
statue	Consumer Protection Act	YES or NO
state capitol	Washington, D.C.	YES or NO
pig	greedy	YES or NO
species	Cetacea	YES or NO

And just like a matching game can be tricky, so can an application. Grammar and punctuation can affect how a word or phrase should be interpreted. A word may have multiple meanings. If you think an element means one thing but the legal definition is different, you will be searching the facts for the wrong thing. It is all too easy to misread, overlook, or ignore relevant facts, consider irrelevant ones, or assume the existence of facts that are not stated.

If you haven’t already done so, play the “matching game” above. Some of the comparisons are designed to take advantage of mistakes that beginners often make when doing an application. [ANSWERS](#)

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Conclusion

Every rule, in addition to describing certain conduct, also states a conclusion to be reached when that conduct occurs. It may help to think of a rule as an “if-then” statement:

IF the conduct described by the rule occurred,
THEN the **conclusion** stated in the rule should be reached.

The comparison conducted in the application step provides the information needed to determine whether the “IF” condition has been met. If ALL the elements were SATISFIED, the conduct occurred. If ONE OR MORE of the elements were NOT satisfied, the conduct did not occur.

But you still need one more piece of information before you can complete this step – you need to know the conclusion stated in the rule. You will find it in the words of the rule, which were quoted in the “R” step.

Picking out the conclusion may be easy – or not. Likewise, understanding what the conclusion means may be easy – or not. This is because there are many different

conclusions as well as different ways of stating them. Here are some general guidelines and examples to get you started.

A straightforward example:

“Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, *is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100).*” [Italics mine.]

The first half of the rule describes the conduct it prohibits. Those are the words that were compared to the facts in the application step. If it was determined that the facts and the rule described the same conduct (i.e., all the elements were satisfied), the italicized words state the conclusion to be reached -- guilty.

What if the facts and the rule described different conduct (i.e., one or more elements were not satisfied)? The conclusion stated in the rule is not reached – not guilty.

Another straightforward example:

“If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog *shall be liable for any damages suffered by the person bitten . . .*” [Italics mine.]

Like the previous example, the first part of the rule describes the conduct it prohibits. If that conduct occurred, the italicized words state the conclusion to be reached -- liable. If the prohibited conduct did not occur -- not liable.

A more difficult example:

“The operator of a vessel involved in a collision . . . , to the extent that he or she can do so without serious danger to his or her own vessel, crew, and passengers, *shall* render reasonable assistance to a person affected by the collision” [Italics mine.]

This example differs from the previous examples in two significant ways. First, both of the previous rules described conduct that was prohibited. Doing what a rule prohibits results in guilt/liability. The rule in this example, however, describes conduct that is *required*. The italicized word “shall” – a single word buried among all the others – tells you that the conduct described by the other words is required. And that is enough to determine whether the rule has been violated. If the conduct described by the rule occurred (i.e., all the elements were satisfied), the person did what was required so the conclusion is not guilty/no liability. If the conduct did not occur (i.e., one or more elements were not satisfied), the person did not do what was required and the conclusion is guilty/liable. Note that this is the *opposite* of the reasoning used when a rule prohibits conduct.

Second, unlike the first two examples, this rule does not state the consequences if it is violated. This is common. It doesn’t mean there are no consequences. It just means the consequences are specified elsewhere.

Another more difficult example:

“Any alien who is not an enemy, *may* own, sell, devise, dispose of, or otherwise deal with property in the same manner as if he had been a citizen of the State by birth.” [Italics mine.]

Once again, a single word is the key to determining the conclusion. But unlike the previous example, the italicized word in this rule is “may,” not “shall.” “Shall” means required; “may” means optional. This rule does not prohibit conduct or require conduct. Rather, it *permits* conduct.

All the words of the rule except “may” describe the permitted conduct. If that conduct occurred (i.e., if all the elements were satisfied), the person did what was permitted so the conclusion is “the rule was not violated” – not guilty/no liability/no consequences.

Likewise, a person who never attempted to do what the rule permitted cannot be found guilty of violating it. The conduct is optional. There is no penalty for not doing something that didn’t have to be done.

With rules that permit conduct, a violation occurs when a person attempts to do what is permitted but the attempt is defective in some way. For example, if an alien who was not an enemy attempted to deal with property in a *different* manner than a citizen could, that would violate the rule. (The rule only permits dealing with property in the *same* manner a citizen could.) The rule would also be violated if an alien who *was* an enemy attempted to deal with property in the same manner as a citizen would. (The rule only extends the option to aliens who are *not* enemies.)

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