

Peerceptiv Assignment Instructions and Examples: 14 April 2016 DRAFT

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I. Peerceptiv Assignment General Instructions

In your first Peerceptiv assignment, you will be asked to write an answer to a practice exam question in the IRAC format with a word limit of 200 words. This is not because the IRAC format is the best method for writing exam answers, although it is not a bad method. You are required to use it for the Peerceptiv practice exam question assignments to make it easier for me and the 5 peer reviewers to provide you feedback using Peerceptiv.

Peerceptiv is a software platform designed to make it easier for instructors to give concrete feedback to students on writing assignments, and to make it possible for students to give each other peer feedback that is accurate and helpful. Here are the steps in this assignment:

- We will discuss this assignment in class and in light of your feedback I will revise and upload the “rubrics” (called “dimensions” in Peerceptiv, i.e., templates for providing feedback) to Peerceptiv.
- I will distribute a short issue spotter practice exam question to you, then you will:
 - write your answer using the IRAC formula as explained below;
 - use the rubrics described below to insure you have completed the assignment correctly; and
 - upload your work WITHOUT YOUR NAME to Peerceptiv by the deadline.
- I will review and provide feedback to all students in Peerceptiv and distribute an answer key.
- All students will provide anonymous feedback in Peerceptiv to 5 other students selected at random.
- After the deadline for peer feedback, all students will provide “back evaluations” (i.e., feedback on feedback) to the students who gave them peer reviews.

II. Formula for IRAC Exam Answers

A. I in IRAC: “Four-Part Issue Statement

An “issue statement” is a pivotal concept in both legal reasoning and legal writing. An issue statement frames the legal problem to be solved, either in a judicial decision or in the analysis of a hypothetical fact pattern in an exam question. The “four-part issue statement” formula provides a simple, mechanical way to generate basic issue statements. It is not a part of legal reasoning *per se*. Outside the context of practicing the IRAC exam answer format, such a simple, mechanical formula should not be used because it would artificially limit a student’s ability to describe a legal issue in clear, persuasive terms.

Here is the formula for writing an issue statement:

WHETHER [Subject Verb Object (*describing focal point of dispute*)] WHEN [Relevant Facts]

The four parts of this formula are:

1. Rule Element in Dispute
2. Key (i.e., Outcome Determinative) Facts
3. “Whether...When” sentence structure
4. Identifying the parties to the dispute

Each of these parts is explained further below.

1. Legal rule and elements of rules

One way to think about a rule is that it is like a process for sorting facts, or a mathematical operation (+, -, x, ÷) performed on facts, or a test that is performed on facts. The authoritative version of a rule is usually found in the holding of a case, in a statute or in a Restatement. In your IRAC answers to Peerceptiv practice exam questions, however, you are required to state the relevant legal rule in your own words. You must not copy the legal rule verbatim from primary materials.

Most legal rules are not so simple that they can be converted to a single, simple “if/then” statement without losing much of their content. They are complex rules made up of multiple elements, each of which can be thought of as a sort of “mini-rule.” The process of breaking rules down into their elements is another foundational step in legal reasoning. Here is an example of a legal rule followed by one way to break it down into elements:

Restatement (Second) of Contracts, § 24 Offer Defined: An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

- E1 Manifestation of willingness to enter into a bargain made by offeror
- E2 Communicated
- E3 Offeree is justified in understanding assent will conclude a bargain

2. Legal fact

As with the notion of a rule, it is relatively simple to articulate a common-sense understanding of what facts are. On the one hand, it is possible to think of facts as simply information about the world. On the other hand, it is also possible to problematize almost without limit the question of what reality is and to explain our ability (or inability) to know what it is. The role of facts in legal reasoning is somewhere between these two extremes. A fact can also be thought of as the data that a process or operation or test acts on:

	3	FACT
RULE	+ <u>1</u>	FACT
	4	OUTCOME

For the purpose of writing a “four part issue statement,” facts that appear in judicial decisions or in law school issue spotter exam questions can be divided into three general categories:

- **Key facts:** those facts which, if they were changed or eliminated, would change the outcome of the case,” i.e., outcome determinative.
- **Background facts:** background information to help the reader understand the case.
- **Spinning/Shading/Coloring facts:** facts that are not key facts and that are presented in such a way as to persuade the reader of the correctness of a legal outcome.

3. Whether/When and Parties

The remaining two parts of a “four part issue statement” are:

- Beginning the sentence with “**Whether**” followed by a brief description of the focal point of the dispute, followed by “**when**” and a description of the facts that make it clear which party is most likely to win; and
- Identification of the main parties to the dispute either by their names (e.g., Bob and Alice) or their roles (buyer and seller).

Unlike the rule and fact parts of a four part issue statement, neither the whether/when format nor identifying parties is an essential element of legal reasoning. Using the whether/when format will make it easier to provide feedback using the Peerceptiv templates. Identifying the parties by name or role in the transaction is a strategy for insuring that the issue statement is not too abstract (e.g., “Was the contract breached?”).

B. R in IRAC: Rule Statement

The rule statement in an IRAC format exam answer should be a general description of the rule. The facts of the exam question should not appear in the rule statement. The rule should be written in your own words and not copied verbatim from primary materials.

C. A in IRAC: Apply Rule to Facts

In the apply rule to facts part of an IRAC format exam answer, elements of the relevant rule of law and the “key” or outcome determinative facts are woven together.

When writing a real exam answer, it is not mandatory or even desirable to describe two competing, alternative interpretations of all relevant facts. If one interpretation of the facts is clearly weaker than another one, it may be summarized or even omitted.

However for this exercise, you should provide two competing alternative interpretations of all relevant facts, signaling one interpretation with the phrase “On the one hand,...” and the other interpretation with the phrase, “On the other hand...”

If possible, you should link rule elements and key facts with conjunctions such as “because” (e.g., the predominant purpose seems to be a sales transaction because the price of the goods so far exceeded the price of services).

D. C in IRAC: Conclusion

The conclusion of an IRAC answer should respond to the question prompt. The basic answer to an issue spotter exam question may be NO or MAYBE or YES. The conclusion should be clear and concise and not repeat any of the analysis from the Apply Rule to Facts section.

III. Practice Exam Question 1 and Answer Key

In 2014, Rhonda Ready founded a new company, Robo-Flora, to deliver flowers using drones. She approached Dynamotech, a defense contractor producing drones for the U.S. military about producing a custom “flower drone.” Rhonda negotiated with Doug Digby, a vice president of Dynamotech, to modify one of their military drone models to create a new kind of drone designed to deliver flowers. Dynamotech estimated that its design and manufacturing setup costs would be \$50,000, after which time it would cost \$1,000 to manufacture each flower drone. Rhonda signed an order form containing all the standard Dynamotech terms and conditions to place an order for 60 flower drones at a cost of \$2,000 each in 2015 with an option to buy an additional 100 drones in 2016 for \$1,500 each. Dynamotech began delivering 5 flower drones a month in January 2015, and Rhonda paid promptly for the flower drones delivered in January, February and March. On February 1, 2015, Rhonda publicly launched Robo-Flora with an advertisement during the Super Bowl football game and began delivering flowers on February 2. On March 1, one of Robo-Flora’s flower drones crashed into the windshield of a public bus in Metropolitan City, causing the bus to veer off the road and crash. Fortunately none of the passengers on the bus were injured, but Robo-Flora now faces the threat of a lawsuit by the Metropolitan City public transportation agency for hundreds of thousands of dollars. On March 2, the Federal Aviation Administration issued an emergency ruling prohibiting the use of drones to deliver flowers anywhere within the U.S., forcing Rhonda to shut down Robo-Flora. If Rhonda sued Dynamotech for millions of dollars for malpractice in professional engineering and design services, do you think she would recover anything? Why or why not?

Answer Key:

Word count = 180

Issue: Whether Rhonda formed a sales or services contract with Dynamotech when she asked them to design and manufacture a new type of drone?

Rule: A contract is within the scope of Article 2 only if it the parties’ predominant purpose is to enter into a transaction in goods with additional services. *Princess v. GE*.

Apply: On the one hand, it looks like the predominant purpose of the parties is services because Rhonda paid \$50,000 to create a new type of drone.

On the other hand, the predominant purpose might also be to purchase specially manufactured goods because she committed to pay \$120,000 for 60 drones, so less than half the cost is design services.

Because the contract was drafted by the seller Dynamotech, they probably disclaimed any warranty on the goods or services and limited Rhonda’s recovery to a refund of the purchase price or repair.

Conclusion: The predominant purpose looks like sale of goods, so malpractice for design would be difficult to establish, but Rhonda will not be able to recover millions no matter which theory she uses

IV. Peerceptiv Assignment Dimensions (Rubrics) for IRAC Exam Answers

Form

1. Are ideas expressed clearly and concisely, and is the word limit observed?
 - Is the grammar and punctuation correct?
 - Is the meaning of each sentence conveyed in a clear and direct style?
 - Was the word limit of 200 words observed?

Issue

2. Is the correct issue identified and expressed in the “Four Part Issue Statement” format?
 - Whether [rule element in dispute] when [key facts]
 - Identify the parties by name or role (e.g., buyer)
 - Rule element in dispute (the element with the closest relationship to the dispute)
 - Only key facts, no background facts or spin facts

Rule

3. Is the rule described accurately, in a student’s own words, with an indication of origin and without reference to the facts of the exam question?
 - The legal rule should be described in general terms and stated correctly
 - The legal rule should be stated in the student’s own words and not copied verbatim from a primary source
 - There should be no exam facts in the rule statement
 - A rule source might be an indication of a case name (not a citation), or a pointer to a statute or restatement

Apply

4. Were the facts of the exam question considered from more than one perspective?
 - Have arguments for both sides been considered?
 - It is helpful but not mandatory to use the words “On the one hand...on the other hand...”.
 - It is not required to give competing interpretations equal time so a weaker interpretation of the facts may be given less attention than a strong interpretation,
5. Are key facts linked to relevant rule elements, and inferences limited and relevant?
 - Key facts should be linked to the rule element in dispute
 - That connection may be emphasized with conjunction such as “because”
 - Inferences based on class discussion, casebook problems or cases covered in class are relevant
 - The focus should be on key facts, with little or no discussion of background or spin facts

Conclusion

6. Does the conclusion follow from the “apply rules to facts” analysis and answer the exam prompt?

- The correct conclusion can be positive, uncertain or negative, and it should be very brief (one sentence)
- If a student interprets the facts the same way as they are interpreted in the answer key, then the conclusion should be the same as the answer key.
- If a student made different assumptions about the facts compared to the answer key but the assumptions are nevertheless reasonable, then the conclusion is correct if it follows from the student’s analysis
- If a student made different assumptions about the facts which are unreasonable, then the conclusion will not be correct either

V. Hypothetical Student IRAC Answer plus Hypothetical Peerceptiv Rating and Comments

Hypothetical Student IRAC Answer

Here is a hypothetical student IRAC answer to the practice exam question about Rhonda Ready to illustrate how the Peerceptiv dimensions (rubrics) can be used to provide feedback:

Word count = 141

Issue: Is Dynamotech liable to Rhonda Ready for breach of contract?

Rule: Whether a transaction is within the scope of UCC Article 2 depends on its primary purpose.

Apply:

Rhonda hired Dynamotech for both design services and to produce drones, thus it is a hybrid contract with both services and sales elements.

The services cost \$50,000 while the drones cost \$2,000 each. It is clear that the services are more valuable than the drones, so the primary purpose is probably services.

There is a duty of workmanlike services for services contracts which is like negligence. It is not clear whether Dynamotech was negligent in providing services to Rhonda.

The real reason that Rhonda’s company went bankrupt is that the government revised the law to make it illegal to deliver flowers with drones which was not Dynamotech’s fault.

Conclusion: the answer is maybe

Hypothetical Peerceptiv Ratings and Comments

1. Are ideas expressed clearly and concisely, and is the word limit observed?

Rating 5/7 Comment: the word limit was observed, ideas are often clearly and concisely expressed

2. Is the correct issue identified and expressed in the "Four Part Issue Statement" format?

Rating: 1/7 Comment: did not use Whether/When format; did identify parties by name; did not identify rule element in dispute (predominant purpose intended by parties); did not include any key facts

3. Is the rule described accurately, in a student's own words, with an indication of origin and without reference to the facts of the exam question?

Rating 3/7 Comment: rule is stated in students own words and no exam question facts appear, but it is not very accurate (primary should be predominant), and no source is indicated (Princess v. GE) for predominant purpose test

4. Were the facts of the exam question considered from more than one perspective?

Rating 3/7 Comment: arguments for both sides were considered but the analysis of the relative cost of services and goods is incorrect ($60 \times \$2,000 = \$120,000 - \$50,000 = \$70,000$ total price of goods is more than services); if it is a sales contract, then the duty of workmanlike services is not relevant; no mention of key fact that Dynamotech drafted the contract so is sure to disclaim warranty liability under either goods or services

5. Are key facts linked to relevant rule elements, and inferences limited and relevant?

Rating: 3/7 Comment: thus connects rule and facts in the same way as because but the fact that the government changed the law is a spin fact, it is not relevant to determining predominant purpose of a sales/services contract.

6. Does the conclusion follow from the "apply rules to facts" analysis and answer the exam prompt?

Rating 3/7 The conclusion is concise and follows form the apply rules to facts analysis but does not clearly answer the exam prompt question.