

Chapter Three



PREDICTIVE WRITING

Predictive legal Analysis

- It includes legal memorandum client letter or legal opinion
- legal memorandum
 - It predicts the outcome of a legal question by analyzing the authorities that govern the question and the relevant facts related to the rise of the legal question
 - It ends with offers of advice or with recommendations
 - It must be sensitive to the needs, level of interest and background of the parties to whom it is addressed
 - Ex: in memo to a colleague no need to define legal concepts
 - It serves as a record of the research undertaken on a given legal question

Paradigm of Predictive Writing

- IRAC rule is the most logical, expected and acceptable method of organizing predictive analysis
- IRAC stands for the following detail:
 - I. identification of issues
 - R. describing the rule
 - A. analysis of facts
 - C. describing the conclusion

Cont'd

- Issue: Identifying the problem to be solved
 - An issue may be a pure legal question (issue of law)
 - It examines the scope or interpretation of a law or legal principle irrespective of the facts under the case
 - Ex: Whether our property law allows private ownership of immovable property ?
 - A fact based question (issue of fact)
 - It examines how a law or legal principle applies to particular facts
 - An issue might be stated in the question or conclusion (topic sentence) form

Cont'd

- Rule

- State the rule of law that governs the issue framed
 - It places the rest of the analysis in context for the reader
 - The rule may be prohibitive, mandatory or discretionary
- Organizing the application of a rule
 - A rule is a structured idea: the presence of all the elements causes the result and the absence of any of them cause's the rule not to operate
 - So thorough analysis of the elements of the rule is very significant
 - Ex: burglary consists of the following and each should be discussed
 - a breaking
 - and an entry
 - of the dwelling
 - of another
 - in the nighttime
 - with intent to commit a felony therein

Cont'd

- Analysis of Facts

- The process of application of rule starts with analysis of facts
- What is a fact?
 - First you should identify the factual statements from the legal questions
 - Factual questions are to be answered by looking the event happened on the ground
 - Legal questions are to be answered by looking to the law
- The nonexistence of a fact can itself be a fact
 - Where the law imposes the obligation to do
- Types of facts
 - Determinative facts: are those which are essential for the court to determine the controversy
 - The change in such facts would cause the court to come to a different decision
 - Explanatory facts: they help make sense out of a situation that would otherwise seem disjointed
 - Coincidental facts: they have no relevance or usefulness at all
 - they merely happened

Cont'd

- Conclusion
 - After applying the rule to the relevant facts, the conclusion should be stated or restated (if you have already stated it in your topic sentence)
 - It summarizes your prediction
 - draw a conclusion only as to the issue under discussion