



# Legal Writing Center

## Don't Crack Up Because of "CREAC"!

### How to Effectively Structure and Write Your Legal Arguments

Beatrice C. Thomas, Legal Writing Fellow, 2017-19

You are in a final exam. You have read the hypothetical twice, spotted all the issues and you understand the call of the question. You turn to your computer, put your fingers on your keyboard and . . . you've got nothing. You panic, asking yourself how to formulate all that you have read and outlined into a cohesive essay that will answer the question you have been given. Before you know it, ten minutes have passed, and you are still staring at the screen, feeling like you are losing control!

First things first: Breath. Keep in mind that law school exams are meant to test you under stressful circumstances. Take pride in realizing that you have recognized the issues you need to address and you are more than prepared to answer the question. See, you're already halfway there!

This Due Diligence guide addresses how to effectively outline persuasive legal arguments utilizing the "CREAC" method. As you prepare to become an attorney, one of the most essential skills that you must possess is your ability to write persuasively. Whether you are in a final exam, writing an office memo, or serving as a judicial clerk, the logical organization, tone, and style of your writing will dictate whether your audience understands the arguments you are trying to make, and, ultimately, whether your audience agrees with them. Understanding how "CREAC" works in connection with legal writing ultimately will benefit you as an exam taker in law school and on the bar.

### Difference Between Predictive and Persuasive Writing

Before we go any further, let's first differentiate between *predictive* and *persuasive* writing. In predictive writing, you write objectively, providing an in-depth analysis on both sides of a legal issue. This type of writing is usually found in an office memo, and the reader is usually an attorney in a firm. The reader may or may not know much about the legal topic that you're addressing. Your job, therefore, is to provide a comprehensive picture on the legal topic, so that the reader can make a decision with the information provided. In contrast. With persuasive writing, you are writing to influence the decision-makers—a judge or a panel of judges typically— to decide in favor of the client you represent. Your writing will take a side, and you want to write in way so that the court concludes that your viewpoint is correct. Persuasive writing is seen in court motions and appellate briefs.

**Nifty Note:** Know what type of writing you are doing! Predictive and persuasive writing have two different purposes, and it is important to know



which one is most applicable to your assignment. The good news is that the CREAC method can be applied to both predictive and persuasive writing, so once you have figured out what type of writing you are doing, you are well on your way to effectively structuring your legal argument so that the reader can make an educated decision.

## The CREAC Method

CREAC is an acronym for:

**(C): Conclusion** – A *declarative statement* about how the legal issue should be decided. Consider it the “Bottom Line.”

- Ask, “What is the answer to the question (legal issue) you have been asked?” On law school exams, the question is extremely important. Don’t lose out on points on an exam because you didn’t answer the question asked on the exam.

**(R): Rule** – The *standard* you used in reaching your conclusion.

- Ask, “What are the statutes and case law that are applicable to the question (legal issue) I’m answering?”

**(E): Explanation** – *Outlines* how the standard has been applied to your legal issue(s). Ask, for example, “How have courts applied this ‘standard’ in case law? What was the legislative intent of this statute?” or “How have courts decided what a particular standard means?” For example, if the standard is the “totality of circumstances,” what factors have courts used in determining whether something qualifies or doesn’t qualify under a “totality of circumstances” test.

**(A): Application** – *Applies* the rule and explanation to the facts of the case at hand.

- Ask, “With the rule and explanation in mind, how might the court address the issues in my case?” This is where you spend the bulk of your time on law exams and in legal writing. The ability to engage in analysis is key to law school and lawyer success.

**(C): Conclusion** – Your *brief restatement* of how the legal issue should be decided.

- Simply reiterate your “Bottom Line”.

While there are a number of ways to outline your analysis of a legal issue or questions, I find that the CREAC method is most effective because it is comprehensive. It starts with your **(C): Conclusion** of law, and ends with **(C): your Conclusion** of law. All that is between your conclusion statements – **(R): Rule**; **(E): Explanation**; **(A): Analysis** - is simply how you got there. This method also allows your reader to see your conclusion first, permitting them to examine your argument with the conclusion in mind; they can check to see if your analysis and conclusion match. The best way to explain CREAC – or anything in law school, for that matter – is with, of course, a hypothetical.<sup>1</sup>

---

<sup>1</sup> The CREAC outline provided will not attempt to answer the question presented. Instead, the outline will consider questions one should think about when analyzing and writing their legal argument(s).



*Ivan works for Michael as roofer in the State of Maryland. One day, while Ivan was repairing a roof, one of the steps on the ladder snapped and Ivan fell off the ladder, injuring his back, neck and elbows. Ivan went to the hospital and got a bill for \$11,000. Michael knew that the ladder's steps were faulty, but he did nothing to make sure the ladder was not used by Ivan. Ivan wants to sue Michael for negligence. You represent Ivan and you are preparing a motion for the court. Is Michael liable to Ivan for negligence?*

## The Hypothetical's CREAC

Let's CREAC this:

### (C): Conclusion

- Is Michael liable to Ivan for negligence? For an issue as simple as this, you could answer in the affirmative or the negative. Your conclusion might look like:
  - **Michael is liable to Ivan for negligence. Michael had a duty to Ivan and he breached that duty. Michael's conduct caused Ivan's injury and Ivan suffered damages.**

### (R): Rule

- Look for case law and/or statutes in Maryland on negligence. Research would yield the four elements required to prove negligence, which are:
  - **Defendant has a duty of reasonable care.**
  - **Defendant breached that duty.**
  - **Defendant's conduct was the proximate cause of the plaintiff's injury.**
  - **Plaintiff suffered compensable harm—i.e. damages.**

*See generally Washington Metro. Area Transit Auth. v. Seymour*, 387 Md. 217, 874 A.2d 973 (2005). *See also* PAUL MARK SANDLER & JAMES K. ARCHIBALD, PLEADING CAUSES OF ACTION IN MARYLAND, Chapter 3 (6th ed. 2018).

- ✓ **Nifty Note #1:** Always be cognizant of the precedent you are using in case law. In Maryland, the Court of Appeals is the highest court, followed by the Court of Special Appeals, followed by the circuit and district courts.
- ✓ **Nifty Note #2:** You want to make sure the Rule section of your argument is clearly outlined because your Explanation section should follow the Rule that you set out. And if your "Rule" can be broken into component parts, it's a good idea to plan on one or more new paragraphs for each component part. For example, in our negligence hypothetical, you should exhaust all of your discussion about whether Defendant has a duty under the facts given before determining whether Defendant breached that duty.

### (E): Explanation

- Carefully examine how the court has applied the standard of negligence to different sets of facts in case law. This section can be lengthy, depending on the amount of case law and statutes you find that are applicable to your legal issue. Here are some things you would want to discuss:
  - **How does the court define duty? Reasonable care? Who has a duty to whom?**



- **What is a breach of duty? Is there a threshold one must meet? What type of analysis does the court perform in determining if a breach has occurred?**
  - **What does “proximate cause” mean? Does the court draw a line regarding events that happen after an alleged injury?**
  - **How does the court define harm? How “compensable” does the harm have to be? Is there a set dollar amount? Are there limits to the amount of harm that can be claimed?**
  - **In Maryland, can one be contributory negligent? Comparatively negligent? What is the difference? Does that apply here?**
- ✓ **Nifty Note:** If you have consistent case law discussing the elements of a particular legal issue, that’s great. However, if you notice that the court seems divided on how an element is applied to different sets of facts, consider the facts of your case, and utilize the case law that most favors your facts. That way, when you get to the Analysis section of your argument, you can analogize your facts with the case law that most supports your argument.

#### **(A): Analysis**

- If you love writing as much as I do, the Analysis is the fun part of legal arguments. Here, you are going to synthesize the rule and explanation section to efficiently state why the court should decide that Michael was negligent. This section is the most important section of your exam, memo, or court paper because it explains to the judge why he or she should rule in your favor. Essentially, this section *explains* how the *rules* lead to **your conclusion**. Your Analysis section, for example, would illustrate:
    - **Michael employed Ivan and Ivan fell while working for Michael. Michael owed Ivan a duty of care as he was Ivan’s employer. (Duty)**
    - **Michael knew that the ladder’s steps were faulty, but didn’t do anything about it. (Breach)**
    - **If it had not been for the faulty ladder’s steps, Ivan would not have fallen. (proximate cause)**
    - **Ivan suffered damage to his back, neck and elbow, in the amount of \$11,000. (Damages)**
- ✓ **Nifty Note:** As noted in the Explanation section, you would want to analogize facts from case law that support your argument. But you do not want to ignore case law precedent that does not fit your facts. Instead, *distinguish* your facts from the facts of case law that are not favorable to you side. This way, if/when the other party brings it up, you are prepared to combat their assertions.

#### **(C): Conclusion**

- Briefly restate your conclusion as to your determination that Michael was negligent.
  - **Therefore, because Michael had a duty to Ivan, breached that duty, was the proximate cause of Ivan’s injuries and Ivan had compensable damages, Michael is liable to Ivan for negligence.**



- ✓ **Nifty Note:** In this hypo, you represented Ivan. But let's say you worked at the firm that Ivan came seeking help from, and your boss asks you to write a memo as to whether Ivan had a case. Let's say that you didn't think that Michael had a duty to Ivan after reaching applicable case law. That's fine! You will come to learn that law isn't necessarily about the right answer; it's about what can be proven with the rules applied and the specific facts of the case in front of you. Don't be afraid to take a perspective that is not immediately noticed. If the facts allude to an alternative viewpoint and there is case law to support it, then argue that. What's most important is that you give a complete analysis of the legal argument so that your supervising attorney can make an informed decision.

You now have a strong foundation for breaking down legal matters and analyzing them. You are equipped to tackle any legal issues, no matter how many there are. So the next time you have to write a memo or feel stuck in an exam, don't overreact, CREAC!

### **Need more help?**

Contact the Legal Writing Center for an appointment -- [law.ubalt.edu/legalwriting](http://law.ubalt.edu/legalwriting) or contact Prof. Diamond at [cdiamond@ubalt.edu](mailto:cdiamond@ubalt.edu).

### **Additional Sources:**

RICHARD K. NEUMANN, JR., ET AL., LEGAL WRITING 2-3, 144-159 (3rd ed. 2015).

