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### One Legal Argument

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## Chapter 6

# One Legal Argument

### I. Using Templates

### II. The Components of a Legal Argument

### III. Exercises

A governing rule may be composed of a single legal argument, or multiple legal arguments, particularly if the client's question requires analysis of multiple elements or factors. Each legal argument that an attorney builds will have the same components. Those components are

- A statement identifying the legal issue to be addressed.
- The rule governing the legal issue and, where needed, an explanation of the relevant authorities or cases supporting that rule.
- An application of the law to the facts of your client's case.
- A final conclusion or prediction about how a court might rule on the legal issue.

Although the depth of analysis and the length of each single legal argument may vary, you will need to include each component in the legal argument that you build. Attorneys often use common templates as helpful reminders of these essential components when building a legal argument. This chapter explains several templates and provides examples to help you identify the components of a legal argument.

### I. Using Templates

Example 6.A describes some of the templates attorneys commonly use, and how they match up with the essential components set forth above.

**Example 6.A: Table of Commonly Used Templates and How They Relate to Objective Analysis**

Template	How Components Relate to the Multi-step Process of Objective Analysis
<b>IRAC</b>	<ul style="list-style-type: none"> <li>• I → A statement identifying the legal issue</li> <li>• R → An explanation of the governing rule, which may include an illustration of the relevant cases</li> <li>• A → An application of the law to the client's facts</li> <li>• C → A conclusion or prediction about the legal issue</li> </ul>
<b>TREAC</b>	<ul style="list-style-type: none"> <li>• T → A thesis statement about the legal issue</li> <li>• R → An explanation of the governing rule, which may include the relevant cases</li> <li>• E → An explanation of the rule, which may include an illustration of the relevant cases</li> <li>• A → An application of the law to the client's facts</li> <li>• C → A conclusion or prediction about the legal issue</li> </ul>
<b>CREAC</b>	<ul style="list-style-type: none"> <li>• C → A conclusion about the legal issue</li> <li>• R → An explanation of the governing rule</li> <li>• E → An explanation of the rule, which may include an illustration of the relevant cases</li> <li>• A → An application of the law to the client's facts</li> <li>• C → A conclusion or prediction about the legal issue</li> </ul>
<b>CRExAC</b>	<ul style="list-style-type: none"> <li>• C → A conclusion about the legal issue</li> <li>• R → An explanation of the governing rule</li> <li>• Ex → An explanation of the rule, which may include an illustration of the relevant cases</li> <li>• A → An application of the law to the client's facts</li> <li>• C → A conclusion or prediction about the legal issue</li> </ul>
<b>CRRPAP</b>	<ul style="list-style-type: none"> <li>• C → A conclusion about the legal issue</li> <li>• R → An explanation of the governing rule</li> <li>• RP → An explanation of the rule, which may include an illustration of the relevant cases that prove how the rule has functioned in past cases</li> <li>• A → An application of the law to the client's facts</li> <li>• P → A prediction about the legal issue</li> </ul>

## II. The Components of a Legal Argument

No matter which template you choose, the various components ensure that your analysis of the legal issue is sound. By using a template, you can present your sound legal analysis in a way that your reader will expect and understand. Of all components, the heart of your client's question will be the legal rules that apply and the key facts on which those rules turn.

- **Issue/Thesis/Conclusion**

The first component identifies the legal issue that will be addressed in the legal argument. This component can be framed in one of three ways: as a statement of the issue; as a thesis—that is, an assertion; or as a conclusion or prediction of how the court will decide legal issue.

- **Rule**

Once the legal question you are analyzing has been identified, set forth the governing rule that addresses the issue. The rule may come from a statute, a regulation, a case, a series of cases, or a combination of sources.

- **Explanation: Case Illustration or Rule Proof**

Rules stripped of their context often become unclear; consequently, you will likely need to show, or to prove, how the rule works. To prove how the rule works, you may need to add relevant sub-rules that further explain or support the rule. Most of the time, however, you will prove how the rule works by illustrating how the rule worked in a previous fact situation. The most common rule explanation is the case illustration (setting forth the relevant facts, holding, and reasoning of a prior case) or “rule proof” (that is, showing the reader how the rule has functioned in a past case; thereby proving the rule). The case illustration or rule proof sets forth the relevant facts, holding, and reasoning from a precedent case to illustrate or prove the rule.

- **Application**

After you have identified the specific issue or principle you need to resolve, set forth the governing rule, and have explained how the rule has functioned in the past, you are ready to apply the rule to your client’s facts. We apply the law by using rule-based reasoning, analogical reasoning, or a combination of both.

- **Conclusion**

By the time you reach the conclusion, you have done all of the hard work. Now, all that remains is to state (or restate, because you may have started the legal analysis with a conclusion) the prediction you have drawn from the governing rule, the way that you explained or proved the governing rule, and your application of the law to your client’s facts.

### III. Exercises

The following exercises will help you to dissect and identify the various components of a legal argument. You will also see a process for drafting a single legal argument. Finally, you will continue to evaluate and identify the components of a legal argument by practicing with a variety of sentences.

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#### Exercise 6.1: Identifying Components of a Legal Argument

Read through the following facts, and examples of analysis, and answer the questions that follow:

Ralph Singh is a part-time actor who is friends with Vanessa Redgave, the creator and co-producer of a hit television show called “Let’s Be Real.” Ralph admits to you that he is not a household name and that he is just starting out in show business. “Let’s Be Real” is a reality show in which the host interviews celebrities about their lifestyle, shopping and dining choices, vacation spots, and other personal topics. The host for “Let’s Be Real” is Martin Cheen. Ralph and Martin both have outgoing personalities, a good sense of humor, and comedic timing. Both Ralph and Martin have previously done stand-up comedy in prior shows. Ralph feels slighted that Vanessa chose Martin over him for the host spot. He also feels that

Martin is trying to imitate Ralph's persona by dressing like him and using some of his mannerisms and speech patterns. Martin's name on the show is "Marty." Martin and Vanessa tell Ralph that Marty's persona is unique and that it was created by Martin and Vanessa.

Ralph seeks your advice, as his attorney, about whether he has a cause of action against the show's producers. The filming is taking place in New York. You've done your research and found that there is no common law cause of action in New York. However, one statute is on point, the Civil Rights Law, particularly sections 50 and 51.

As Ralph's attorney, you write the following analysis in a letter:

Dear Mr. Singh:

You have asked whether you are entitled to damages or injunctive relief against the producers of the hit reality television show, "Let's Be Real." You have told me that you observe similarities between yourself and the show's host, played by Martin Cheen. After researching the law in this state, my conclusion is that you would not have a cause of action based upon these facts.

According to Section 50 of the New York Civil Rights Law, a person or corporation is prohibited from using for "purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person." N.Y. Civ. Rights Law § 50 (Westlaw 2019). Under Section 51, the plaintiff is entitled to an equitable remedy (such as an injunction) or damages. N.Y. Civ. Rights Law § 51 (Westlaw 2019).

The New York courts have not recognized a viable cause of action under this statute for situations where real life inspires works of art. *Hampton v. Guare*, 195 A.D.2d 366, 366, 600 N.Y.S.2d 57, 58 (1st Dep't 1993). In *Hampton*, the intermediate court held that an individual who claimed that his real life criminal acts inspired a hit Broadway play did not have a cause of action. In that case, the plaintiff was an aspiring actor who had been convicted of attempted burglary, impersonation, and other charges when he pretended to be someone he was not and scammed victims for money. Later, the award-winning play was created, "Six Degrees of Separation," which was inspired by these true crimes. At the center of the play was a con artist who pretended to be the son of the famous actor Sidney Poitier, and convinced people to give him money. The *Hampton* court reasoned that, "works of fiction and satire do not fall within the narrow scope of the statutory phrases 'advertising' and 'trade.'" *Id.* (quoting sections 50 and 51).

Similarly, courts have held that plaintiffs do not have a cause of action when the subject matter is a work of fiction. *Costanza v. Seinfeld*, 279 A.D.2d 255, 255, 719 N.Y.S.2d 29, 30 (1st Dep't 2001). In *Costanza*, an acquaintance of the creators of the television sitcom "Seinfeld" claimed that defendants used his name and persona to create a television character for the hit television series. The court reasoned, "defendants have never used plaintiff's actual name, or filmed plaintiff himself or made use of a photograph of plaintiff, in any form." *Id.* The court held that the television series was a work of fiction and, therefore, any potential resemblance to the plaintiff did not violate the statute. *Id.*

In applying the reasoning of the *Hampton* and *Costanza* courts to the issue presented, a court would likely conclude that Marty does not actually depict you in the show, thus precluding recovery against the creator and producers of "Let's Be Real." Similar to the events with Hampton's crimes that inspired the play, your persona may have inspired Marty's clothing choices, mannerisms, and speech patterns, but

you are not actually portrayed on the show. Furthermore, applying similar reasoning from the *Costanza* case, none of the following occurred: your actual name was not used, you were not filmed in the show, nor was your photograph used.

Although “Let’s Be Real” is based upon real-life celebrities, as opposed to fictional stories in the precedent cases, nonetheless, your true life is not portrayed in the show. Even if Marty’s dress, mannerisms, and speech patterns are similar to yours, you as an individual are not identifiable to the viewing audience. As you have explained to me, your prior work as a stand-up comedian has not materialized into your stage presence being known by the general public. Like in *Hampton*, where the events depicted in the show were inspired by real life but extremely exaggerated and meant to entertain, Marty’s persona, whether similar to you or not, is probably too extenuated for the audience to draw a connection to you.

In conclusion, a court would likely determine that you do not have a claim for violation of Civil Rights Law Sections 50 and 51 against the producers of the television show “Let’s Be Real.” Although the show is based upon the lives of actual people, the show did not use your name, portrait, or picture for purposes of trade.

#### Questions:

1. Describe the issue being addressed in the client letter.

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2. Can you identify the governing rule for the legal issue being addressed?

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3. Identify the relevant facts, holding, and reasoning of the *Hampton* case.

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4. Identify the relevant facts, holding, and reasoning of the *Costanza* case.

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5. Identify how Mr. Singh's claim is similar to or different from the plaintiff in *Hampton*.

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6. Identify how Mr. Singh's claim is similar to or different from the plaintiff's claim in *Costanza*.

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7. What are the primary reasons why the writer predicts Mr. Singh will not recover?

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### Exercise 6.2: Identifying the Components of a Legal Argument

Exercise 6.2 sets forth a single legal argument concerning one element of the tort of “alienation of affection.”<sup>1</sup> In this case, Russ Price is suing David DeAngelo. Russ alleges that David’s pursuit of Lana Price, while she was married to Russ, was the “controlling or effective cause” of their divorce. Read through the argument and identify the following components in the margin beside the exercise: Issue, Governing Rule, Case Illustration, Application, and Conclusion. After you have identified the components of the legal argument, answer the questions that follow.

The critical issue in David’s case is whether his active and unwelcome pursuit of Lana during her marriage was a “controlling or effective cause” of the break-up of her marriage to Russ. A defendant may be the “controlling or effective cause” of the alienation of affections, even if other causes also contributed to the alienation. *Hutelmyer v. Cox*, 514 S.E.2d 554, 559 (N.C. Ct. App. 1999). For example, it is sufficient if there is “active participation, initiative or encouragement on the part of the defendant in causing one spouse’s loss of the other spouse’s affections.” *Id.* In *Hutelmyer*, the defendant paramour flirted openly with the plaintiff’s husband, allowed him to stay overnight in her home, and had a sexual relationship with him. *Id.* As the plaintiff’s husband began to spend more time with the defendant, he began to spend less time with his family, and his sexual relationship with his wife deteriorated. *Id.* Ultimately, the plaintiff’s husband left the marital home and moved in with the defendant. *Id.* at 557–58. The court observed that even though other causes might have contributed to the breakdown of the plaintiff’s marriage, it was not until the plaintiff’s husband began to spend time alone with the defendant, at the defendant’s urging, that the plaintiff’s marriage began to deteriorate. *Id.* Therefore, the court held that a jury could find that the defendant was a “controlling or effective cause” of the alienation of affections. *Id.*

Here, the evidence is also sufficient for a jury to conclude that David was the controlling or effective cause of Lana’s alienation of affection. First, like the defendant in *Hutelmyer*, whose conduct encouraged the plaintiff’s husband to ignore his family, David initiated a course of conduct aimed at causing Lana to leave Russ. Second, just as the defendant in *Hutelmyer* openly flirted with the plaintiff’s husband, David publicly professed his desire for Lana, even in front of Russ. Third, in both cases, the defendant ignored requests that the couple be left alone. The defendant in *Hutelmyer* ignored the husband’s statements that he wished to work things out with his wife. Similarly, David at first ignored Lana’s repeated pleas for him to leave her alone.

It is insignificant that David did eventually stop pursuing Lana, unlike the defendant in *Hutelmyer*; this distinction is not controlling. Lana’s own journal confirms that she had a growing obsession with David, which led to the break-up of her marriage. Most likely this obsession would not have developed if David had not been so persistent in his earlier efforts to win her affections. Therefore, Russ can probably establish that David was a “controlling or effective cause” of the alienation of affections between him and Lana.

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1. Adapted from teaching materials created by Prof. Laura Graham, Director of Legal Analysis, Writing, and Research at Wake Forest University School of Law.



1. What is the governing rule? Is it written in the present or past tense?

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2. Can you identify any sub-rules that may show how the governing rule works?

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3. What is the purpose of the *Hutelmyer* case illustration in this legal argument?

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4. Does the writer analogize *Hutelmyer* or distinguish it?

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**5. The writer makes three analytic points in the application. What are they? What technique does the writer use to let the reader know she is making three separate points?**

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**6. Does the argument contain a counter-argument? If so, what is it?**

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**7. What is the writer's prediction as to the outcome of the legal issue?**

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### Exercise 6.3: Evaluating the Components of a Legal Argument

Evaluate the following excerpts from an objective memorandum of law to a supervising attorney.<sup>2</sup> Then, identify whether the statement is an issue, rule, case illustration, application of law to fact, or conclusion. A list of each of these terms follows each excerpt. Circle the appropriate term that describes the excerpt.

**1. An owner has no duty to protect or assist an invitee unless the owner placed the invitee in peril or the invitee is helpless. *Osterlind v. Hill*, 160 N.E. 301, 302 (Mass. 1928).**

Circle the term that best describes the above excerpt:

- Issue
- Rule
- Case Illustration
- Application
- Conclusion

**2. Like the canoe in *Osterlind*, which was not alleged to be out of repair or unsafe, there is no indication that the raft rented by Clark was faulty. Similar to the invitee in *Osterlind*, who was able to hang onto the canoe for one-half hour and call loudly for assistance, Clark handled the raft for most of the rafting trip, showing he was not helpless. He also assured Eddie, the guide, that he was fine after Eddie noticed he was limping and warned him that the rapids were rough in certain areas.**

Circle the term that best describes the above excerpt:

- Issue
- Rule
- Case Illustration
- Application
- Conclusion

**3. Because Rafts-R-US placed Clark in a perilous situation and because Clark's injuries rendered him helpless, as seen by Clark's dizziness and inability to swim, Clark can most likely establish that Rafts-R-US had a duty to protect and assist him.**

Circle the term that best describes the above excerpt:

- Issue
- Rule
- Case Illustration
- Application
- Conclusion

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2. Adapted from teaching materials created by Prof. Laura Graham, Director of Legal Analysis, Writing, and Research at Wake Forest University School of Law.

4. The issue in this case is whether Eddie, the owner of Rafts-R-Us, had a duty to protect Clark, an invitee, by refusing to let him ride the raft due to his severely twisted ankle, or to assist Clark, when the rapids became extremely rough.

Circle the term that best describes the above excerpt:

- Issue
- Rule
- Case Illustration
- Application
- Conclusion

5. In *Osterlind*, the defendant, Hill, rented a canoe to the plaintiff's son, Osterlind, who was intoxicated at the time. *Id.* at 301. The canoe overturned, and Osterlind held onto the side for about thirty minutes while loudly calling for assistance. His loud cries went unanswered by Hill. *Id.* The court held that there was no duty on the part of Hill to either refuse rental or offer assistance, since Osterlind was not helpless, nor was Hill responsible for placing Osterlind in a perilous situation.

Circle the term that best describes the above excerpt:

- Issue
- Rule
- Case Illustration
- Application
- Conclusion