

## **Contracts I**

Section 5  
Fall 2003  
Mark Sidel

### **Legal methods exercises**

#### **Case briefing assignment**

This case briefing assignment is handed out on Tuesday, August 26 and is due to Amanda Bibb in BLB room 486 on Wednesday, August 27 by 3:00 pm. Please put your name on this assignment. It will be returned to you.

Please brief either *Lucy v. Zehmer* (Burton casebook p. 12) or *Oswald v. Allen* (Casebook p. 22). Please use no more than one typed page for the brief and include sections dealing with the facts, issue(s), holding(s), reasoning and, if applicable, policy.

Pp. 33-40 of the Shapo, Walter and Fajans volume, Writing and Analysis in the Law provides a useful approach to case briefing. The Legal Writing Center may also have useful materials available.

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### **Legal methods exercises**

#### **Case holdings and synthesis assignment**

This case holdings and synthesis assignment is handed out on Tuesday, August 26 and must be returned to Amanda Bibb in BLB room 486 by 3:00 pm on Tuesday, September 3. Please put your name on this assignment. It will be returned to you. This assignment must be typed, double-spaced, with a minimum of one inch margins and a minimum font size of 12, and a page limit of two pages. Thus there is a premium on careful expression in the very few words you have available in two pages.

State the holdings of each of the following cases and write a brief synthesis of these cases:

*Mesaros v. United States* (Casebook page 26)

*Lefkowitz v. Great Minneapolis* (Casebook page 31)

*Chia T. Chang v. First Colonial Savings Bank* (attached as edited)

#### **Additional information:**

Several excellent articles on writing case holdings and syntheses are available from the Writing Center, and you are encouraged to pick those up and read them. In addition to the materials at the Writing Center, a good source of information on how to find the holding of a case is contained in chapter 2 of Shapo, Walter and Fajans, Writing and Analysis in the Law.

Another useful source is Burton, An Introduction to Law and Legal Reasoning 37-39 (2d ed. 1995). He indicates that a holding is “a statement that captures in a sentence or two the probable significance of a single precedent as a base point for reasoning by analogy in future cases.” Thus, a holding will refer to those facts “that are likely to become a point of important similarity or difference” between the case at hand and cases that might arise in the future. It will also state the legal consequences of those facts in the particular case.

Make your statements of holding clear, substantively precise and grammatically correct. A case may have more than one holding, but even complicated opinions usually lend themselves to a brief statement of what it was the court actually decided.

The materials you will obtain from the Writing Center as well as the relevant sections of the Shapo, Walter and Fajans volume provide useful guidance on how to write a synthesis.

As Professor Andersen puts it, “[a] synthesis must be something more than a stringing together of abridged briefs of several cases. Although you will find it useful to say something about each opinion, you must show how the cases fit together within the context of a doctrinal idea. A synthesis will compare the important similarities and differences – both factual and legal – of the cases at hand. It will show how the holding of each contributes to a broader legal concept [or concepts]. The synthesis should leave the reader with a clear understanding of the law represented by the cases in question,” including how the cases are related to each other and relate to principles of law.

Good luck!

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### **First memorandum**

To: Attorney (use #)  
Fr: M.S., Vernon Law Offices  
Re: Request for a Memorandum of Law

The firm's client, Mr. Johns and his children (as described below), reported the following facts to me. They have asked us to give advice about their rights and obligations in the following situation:

In response to a fund-raising program Hines University was undertaking, Ms. Jane Johns, a lawyer and a member of the Hines Board of Regents, pledged \$800,000 and agreed to pay that amount within six months of the pledge by means of cash and bonds. Ms. Johns signed and delivered to the University a statement detailing her promise.

A few days after the pledge was made, the President and Vice Presidents of the University met to discuss possible uses of the income generated by the \$800,000 Ms. Johns had pledged. Ms. Johns was a strong supporter of women's athletics and of the University's College of Law. After several hours of discussion, a decision was made to use half the money to support women's athletics at the University and the other half to provide merit scholarships to students at the Hines University College of Law, the recipients of the scholarships to be named "Johns Scholars." On the following day Ms. Johns dies without having executed a will.

Her husband of 48 years and two children, aged 41 and 43, survived her. The husband and the two children are our clients. Under the intestacy laws of the state in which she lived, one-third of the property she owned at death was to pass to her husband, with the other two-thirds being divided equally between her children. The administrators of Ms. Johns' estate have refused to honor the University's demand that the \$800,000 pledge be honored.

The University is exploring the possibility of filing a suit to require that the pledged funds be turned over to it.

I plan to meet with Mr. Johns and his children and would like to know the legal status of the parties so that I can advise the clients as they have requested. Please prepare a memorandum of law that will permit me to give informed advice to the client about the legal status of the parties. In particular, it would be useful to know whether Ms. Johns' pledge is an enforceable contract on a theory of consideration or reliance, and/or

enforceable under subsection (2) of section 90 of the Restatement (Second) of Contracts even without consideration or reliance. On the basis of your memo and my discussions with the client, I will decide what “action advice” to give. I am not seeking your assistance on “action advice” issue, however.

In preparing the requested memorandum of law, assume that the jurisdiction has no case in point and that the only case authorities available are the following three cases, which you should read and analyze:

*Congregation Kadimah Toras-Moshe v. DeLeo*, 540 N.E.2d 691 (Mass. 1989).

*Jewish Federation of Central New Jersey v. Barondess*, 560 A.2d 1353 (N.J. Super. Ct. Law Div. 1989).

*Arrowsmith v. Mercantile-Safe Deposit and Trust Co.*, 545 A.2d 674 (Md. 1987).

Please locate these cases in the law library. You will almost certainly want to copy them for your use in thinking through and writing the memo. Please keep in mind that the summary of the case just preceding the Headnotes and the Headnotes themselves are comments by editors and not part of the court’s opinion. Do not cite or quote from the summary or the Headnotes, unless the case report indicates that the court itself prepared the Headnotes. Please do not focus on the portions of *Arrowsmith* that are not directly related to the issues raised above.

In addition to the three cases, you may cite or quote Restatement (Second) of Contracts § 90 (1981), with Comments as set forth following the three cases. No materials other than the three cases and the Restatement (Second) materials may be cited in the memo.

The fact that you have cases and a Restatement provision to cite should not be taken as eliminating the need for you to exercise your independent judgment and reason.

Citation form should follow the Bluebook, which is available at the law library or the bookstore. If you cite a case for anything but a general proposition of its holding or you quote from a case, the citation should include a reference to the page of the opinion on which the case as such starts, eg. 290 for *Mount Sinai*, and, in addition, the page from which the quote is taken or on which the cited point is made.

This memo must be double-spaced, no longer than four pages, with at least a one inch margin on each side and a font size of 12 or larger. This assignment is handed out on Tuesday, August 26 and must be turned in to Amanda Bibb in BLB room 486 by 3:00 pm on Friday, September 26. Points will be deducted for late memos.

## **Suggestions on the first memo**

A few thoughts on the first memo assignment:

One useful way to think about structuring these kinds of memos (and some other forms of legal writing as well) is encapsulated by the acronym IRAC. IRAC stands for Issue, Rule, Application, and Conclusion. I've attached a two page brief description of IRAC by Joyce Klouda discussing this approach.

In general, the other advice I've been giving is to put yourself in the position of the senior lawyer and the client (as well as the more junior lawyer writing the memo) when you are thinking about this assignment, and to focus on what seem to be the key issues in the problem.

For example, you might consider what the client needs to know. He or she needs to know the legal issues he or she is faced with, the key rules that apply to those issues, how those rules might be applied to the facts of his or her particular situation, and some conclusion, or at least a sense, of how those rules, as applied to the client's facts, come out in the end. (By now you can spot IRAC in that last sentence!)

The senior lawyer needs much the same information. She or he needs to know what the legal issues are. You cannot assume that the senior lawyer will spot those from the facts presented, which a client may have presented in non-legal terminology, and without understanding which facts are more or less important from a legal perspective. The senior lawyer needs to know the key rules that govern those kinds of issues, rules that emerge from the very restricted universe of the three cases and Restatement provision you've been given. The senior lawyer needs to have some sense as to how those rules would be applied to the factors before you both. And the senior lawyer needs to have a sense for what the result might be – not necessarily expressed in a definitive or “hard” way, but some sense for how this might come out. (At this point I need not point out that this paragraph goes through IRAC once again.)

In most cases you will find it useful to begin the memo (before going into IRAC) with a brief review of the key facts presented. The problem here is digesting the facts to draw out the most important, not using too much space in a very limited four page memo. Merely repeating all the facts will likely take too much space, space that you do not have available.

I hope this helps as you work on the first memo. Feel free to ask me questions about any of this in office hours or after class next week.

This introduction to IRAC was published at [lawschool.lexisnexis.com](http://lawschool.lexisnexis.com).  
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# Introduction to IRAC

by

Joyce Deatrck Klouda

What is IRAC?

**IRAC** is the acronym for Issue, Rule, Application, and Conclusion. One can use **IRAC** to organize a **legal** argument based on one or more cases. This argument structure is divided into the following parts:

**I**SSUE    **R**ULE    **A**PPPLICATION    **C**ONCLUSION

## **I**SSUE

**I** stands for issue which is the general area or topic of law you plan to discuss. This is usually set forth in a phrase or sentence.

For example: To prove the defendant is liable  
for committing battery, . . .

## **R**ULE

**R** stands for the rule or rules that you draw from a case or cases concerning a specific area or topic of law. The order in which one

presents rules is essential to a full understanding of a given area of law. Thus, keep in mind the following conventions when drafting the rule section of any analysis.

Generally, one should describe:

the general or "standard situation" rule first,  
then the remaining rules in logical order from general to specific; or  
the elements first, followed by the defenses; or the claims, followed by the defenses; or  
the major requirements, then the minor or occasional requirements; or  
the general rule, then the exceptions to the rule.

Keep these common orders in mind whenever you discuss rules. They are useful tools when presenting essay examinations.

## **A**PPPLICATION

**A** stands for application of precedent. In most analyses, you will need to illustrate a case first, using its facts, holding, and reasoning. Then, you will compare that case (or set of cases) to the fact pattern you wish to analyze.

## **C**ONCLUSION

Finally, **C** requires you to describe the conclusion or result of your analysis.

For example: In conclusion, the plaintiff proved the necessary elements to show the defendant is liable for battery by establishing the defendant intended to harm. . .

## Contracts I

Section 5  
Fall 2003  
Mark Sidel

### Second memorandum

To: Attorney (use #)  
Fr: M.S., Liebig Law Offices  
Re: Request for a Memorandum of Law (statutory)

Our client, Sundari Kumar, is a producer and seller of computer equipment. She has come to us for advice about a dispute she is having with Priya Viswanath, the owner of a consulting firm that uses computer equipment. Viswanath orders computer equipment using a standard form that she has drawn up and that she calls an "Equipment Sales Agreement." The form contains printed terms, and a blank space in which Viswanath can write the particulars of the transaction. To order a particular type of equipment, she fills in the blank space on the form and send it to the appropriate supplier.

On April 1, 2003, Viswanath sent an Equipment Sales Agreement to Kumar. In the blank space, Viswanath wrote:

Twelve (12) 17-inch flat screen monitors Dell model A-62984,  
will pay \$175 per monitor, to be delivered on June 1, 2003,  
payment to follow by July 1, 2003.

Among the pre-printed clauses on the Equipment Sales Agreement was the following:

**REJECTION OF DEFECTIVE GOODS.** Buyer shall have a reasonable time, which in no event shall be shorter than thirty (30) business days, in which to complain to Seller about defects in the goods. In no event shall Buyer be deemed to have waived its right to reject defective goods prior to the expiration of that reasonable time.

**ADDITIONAL TERMS.** Buyer reserves the right to object to additional terms added by Seller in any order acknowledgement.

One day after receiving the Equipment Sales Agreement, Kumar sent Viswanath a form labeled "Response to Order." The form stated, "Kumar has received your Order and will provide goods meeting the following specifications," after which it repeated the specifications, price, delivery, and payment terms in Viswanath's Equipment Sales Agreement. A pre-printed clause on the front of the Agreement said, in bold red type, "Please see provisions on reverse." On the reverse side, the following clause appeared:

REJECTION OF DEFECTIVE GOODS. Buyer shall have five (5) business days after receiving the goods in which to complain about defects in those goods. If the buyer does not complain to seller within those five days, Buyer will have waived its right to reject those goods as defective.

PAYMENT TERMS. Buyer agrees to pay for goods received within thirty days. If payment is not received within thirty days, Buyer agrees to pay an additional 2.5% per month on overdue payments.

INDEMNITY. Buyer shall indemnify us for any claims of injury or defect in connection with the use of these goods.

Viswanath does not reply to this communication. The next week, Kumar saw Viswanath on the street. "Good to know you have a lot of monitors in stock," Viswanath said. Kumar smiled and said, "We try."

On June 1, 2003, Kumar delivered to Viswanath twelve monitors meeting the Purchase Order's specifications. Viswanath, who has located another supplier, declines the delivery from Kumar, saying, "We don't have a contract." Later that day Viswanath mailed Kumar a letter objecting to the Rejection of Defective Goods, Payment Terms and Indemity clauses in her Response to Order form, and reiterating that she had no contract with Kumar.

Kumar has come to us for advice about her rights against Viswanath. Please write me a memo discussing the issue of whether Viswanath (buyer) and Kumar (seller) formed a contract, and, if they did, what the terms of that contract are. Please assume that Article 2 of the U.C.C., and particularly section 2-207, govern the transaction. There are no cases interpreting the statute in this jurisdiction, so you have only the statute (U.C.C. sec. 2-207) and its comments to rely upon addressing the partner's concerns. The memo should provide an accurate analysis of your client's legal prospects, identifying and evaluating possible arguments where the law is reasonably arguable.

### **Notes on the second memorandum**

The memo should provide an accurate analysis of your client's legal prospects, identifying and evaluating possible arguments where the law is reasonably arguable. This assignment differs in a significant way from the first memorandum (on charitable pledges). That memo required you to derive and discuss common law rules by synthesizing cases. This assignment, however, focuses on carefully applying the language of a statute. **Consequently, please do not refer to any source other than the text of U.C.C. § 2-207 and its official comment**, which appear on pages 41-43 of the green Burton and Eisenberg contracts statutory supplement. If there are issues that you

think you cannot resolve based solely on the language of § 2-207 and its official comment, simply say so in your discussion.

Please discuss all issues that might reasonably arise under § 2-207, even if you find that one of them alone could determine the outcome.

**Page limit, format and other requirements:** The memo may not exceed four pages, double-spaced. Because the page limit is intended to be constraining, you will need to exercise good judgment in determining what to discuss briefly and what to discuss at greater length.

Please double-space, using 8½" x 11" paper, with only the following exceptions: (1) Quotations of more than 50 words should be single-spaced and indented one tab stop on both left and right margins. In general, however, you should avoid lengthy quotations. (2) The TO, FROM, DATE and RE lines at the beginning of the memo may be single spaced.

Please use a minimum of 12 point font. All margins should be at least 1 inch. Do not put your name on your paper. When you turn in the paper, Amanda Bibb will assign a number to you, as we did with the first memo which I will use to identify your paper until I have finished commenting on it. Keep track of your number; you will need it when you pick up your paper.

Please use "Bluebook" citation form in this memo. That will in most cases be easier than in the first memo. Cite the section number of the U.C.C., and, when possible, indicate the subsection or comment number. Use "id." to refer back to the immediately preceding cite. If you can't make the "§" symbol on your computer, use "sec." instead (or consult the Writing Resource Center's guide to making "§" symbols). So, for example:

The parties' course of performance can also shed light on the meaning of their agreement. U.C.C. § 2-208(1). A single occasion of conduct, however, does not establish a course of performance. Id.; see also U.C.C. § 2-208 cmt. 4.

I encourage you to discuss the assignment with one another as you formulate your ideas, but you may not collaborate with any other students in the writing process. You may, of course, consult the Writing Resource Center with your written drafts. The Writing Center also has materials on memo writing available for you. Otherwise, you may not discuss the assignment with or receive any information about it from anyone other than members of this small section and Writing Center staff.

**Deadline:** This memo is due by **3:00 pm on Friday, October 17 to Amanda Bibb in room 486.**