

Using Counter Arguments in IRAC

Counter arguments are a great way to advance the level of the analysis you are making, get more points on an exam, make your arguments stronger, and meet the expectations of your professors.

What is a Counter Argument?

A counter argument is one part of the analysis section (A) of your IRAC, and is where you present both side's arguments. Using counter arguments during analysis is very important, not only because some professors expect it, but using a counter argument shows that you are analyzing the facts from all angles and thinking of all the possibilities that an argument can be made.

How to Use Counter Arguments in an Essay Answer

In most real-life courtroom situations the plaintiff and defendant are going to disagree on mostly everything. There might be some concessions, but if a case makes it to trial the parties will have major disagreements. When presenting counter arguments in your analysis you want to simulate this scenario.

The first step is to read the fact pattern and issue spot. Once you spot the issues, you want to pretend you are the attorney on both sides of the case. Let's imagine you spot a battery. If you were the plaintiff's attorney, what is your best argument in favor of there being intent? Similarly, if you were the defendant's attorney, what is your best argument against there being intent? If you can think of *reasonable* arguments on both sides you want to present them. The key word, though, is *reasonable*. You do not have the time on an exam to present every possible counter argument. You want to be creative, but only want to present those counter arguments that are reasonable.

The next step is to write the counter arguments into your analysis. You first want to present the losing side. Then you want to present the winning side. You want to end by stating which side the court will favor and *why*. It is important to explain why one side is stronger than the other because if you just leave it at "the court will agree with the plaintiff," you will be conclusory and likely lose points. A good way to explain why a court will favor one side over another is to use your case illustrations since, barring any facts stating otherwise, the hypothetical court on your exams is bound by the cases you read throughout the semester.

Imagine this hypothetical scenario: *Joe and Sam were brothers who lived next door to Fiona. The brothers decided to break into Fiona's home to steal her television. On Saturday night, when they thought Fiona was out to dinner, Joe and Sam broke through her living room window. Fiona was actually home and was sitting on the couch in her living room when this happened. Joe and Sam, seeing Fiona was home and not out to dinner, began to retreat back out the window and run back to their house. Fiona followed them onto her front lawn with her handgun.*

Disclaimer: If any law used in this handbook differs from how your professor discussed the law, always defer to your professor. The law used in this handbook is meant to serve as a vehicle for teaching the skills, only. Likewise, if any exam writing advice differs from your professor's expectations, always defer to your professor.

She took aim at Joe and shot the gun. Unfortunately, she was not very skilled with the gun and the bullet flew right past Joe's head, hitting Georgia, an elderly woman who also lived in the neighborhood. You are the judge in this case, ignoring any defenses, did Fiona have the requisite intent for battery against Georgia?

The first step is to imagine yourself as the attorney representing Fiona, and then as the attorney representing Georgia. If you were Fiona's attorney you would argue that she did not have the requisite intent for a battery because Fiona did not intend to injure Georgia, she intended to injure Joe. Since Fiona did not intend to injure Georgia she should not be held liable. If you were Georgia's attorney you would argue that Fiona did have the requisite intent for a battery because intent can transfer from one person to another through the doctrine of transferred intent.

The next step is to work this counter argument into your analysis. Here is what your answer could look like:

The issue is whether Fiona had the requisite intent for a battery.

Intent for a battery can be defined as either purpose (desire) or knowledge to a substantial certainty. Through the doctrine of transferred intent, when a defendant commits a tort against a different person than intended, the intent from one person to another is transferred.

In Talmage v. Smith, Smith threw a stick at a boy who was on his property. The stick missed the boy Smith intended to hit, and hit Talmage, a boy Smith did not even see. The court held that Smith did have the requisite intent for a battery through the doctrine of transferred intent. Under this doctrine, Smith accidentally inflicting injury on Talmage when he intended injury on another boy does not relieve Smith of liability.

Here, Fiona will argue she did not have the requisite intent for a battery. Although she had the purpose to shoot Joe, being that she took aim and shot the gun at him, this intent was directed at Joe and not Georgia. Georgia, however, will argue that Fiona did have the requisite intent for a battery because her purpose to injure Joe transferred to Georgia through the doctrine of transferred intent. The court will agree with Georgia because of the precedent set forth in Talmage v. Smith. This situation is extremely similar to Talmage because in both cases the defendant had the intent to cause injury to one person, when in reality they caused injury to someone else. Due to these similarities, the court will follow the Talmage precedent and hold that Fiona did have the requisite intent for a battery.

Thus, Fiona did have the requisite intent for a battery.

If we break this analysis down, we can clearly see four parts. First, we state what Fiona will argue (*Fiona will argue she did not have the requisite intent for a battery. Although she had the purpose to shoot Joe, being that she took aim and shot the gun at him, this intent was directed at Joe and not Georgia*). Next, we state what Georgia will argue (*Georgia, however, will argue that Fiona did have the requisite intent for a battery because her purpose to injure Joe transferred to Georgia through the doctrine of transferred intent*). Third, we state which side the court will agree with (*The court will agree with Georgia*). Finally, we explain why Georgia's argument is stronger (*because of the precedent set forth in Talmage v. Smith. This situation is extremely similar to Talmage because in both cases the defendant had the intent to cause injury to one person, when in reality they caused injury to someone else. Due to these similarities, the court will follow the Talmage precedent and hold that Fiona did have the requisite intent for a battery*).