

CRAC: An Overview

Professor Christine Tamer

At UNT Dallas College of Law, we use the “CRAC” structure in our legal writing program. CRAC stands for Conclusion, Rule, Analysis/Application, and Conclusion. CRAC is used to organize our legal arguments, whether those arguments appear in essay responses on an exam, an objective memo, or a persuasive brief¹ to the court. This article provides a helpful overview of the CRAC structure—which is the backbone of excellent legal analysis and successful legal writing.

I. Why CRAC?

CRAC is an acronym that helps you organize your legal arguments. While different lawyers use different acronyms depending on how they were taught in law school,² the result is the same: lawyers first identify the problem/issue; lawyers then provide the rule/governing legal authority for the issue; lawyers next apply the rule/governing legal authority to facts that go to the problem/issue at hand; and lawyers last restate their conclusion on the issue.

II. CRAC: How many? Where do they go?

You will do one CRAC (Conclusion, Rule, Analysis/Application, and Conclusion) for each “issue”³ in your essay, memo, or brief. *Let me say that again, you will do one CRAC for each “issue” in your essay, memo, or brief.* A rookie law student mistake—one that professors see time and time again—is students doing one giant CRAC for the entirety of the question even though the question raises more than one “issue.” The number of “issues” equals the number of CRACs (# of Issues = # of CRACs).

¹ Note that in persuasive writing, we add another C to “CRAC” so that it reads “CRACC.” The added “C” stands for “Counter-analysis.” Counter-analysis will not be discussed in this overview article.

² For example, some lawyers use IRAC (Issue, Rule, Analysis/Application, Conclusion) or CREAC (Conclusion, Rule, Explanation, Application, Conclusion).

³ The reason the word “issue” is in quotation marks is because, as discussed below, what constitutes an issue varies depending on the call of the question you are answering and the type of document you are drafting. An issue might be a cause of action, a defense, or an element.

A. Essay Responses.

On an essay exam, the first thing you must do is read the prompt of the question and identify the issues. Because, remember, the # of Issues = # of CRACs. Let's look at an example. On a contracts exam, you might be given a set of facts and then asked: "Did the parties form a contract?" To answer this question, you must identify and analyze the issues, which here are the elements of contract formation. A valid contract has four elements (offer, consideration, acceptance, mutuality) and, thus, you will have four issues. Because you have four issues, you will have four CRACs. Because, as always, # of Issues = # of CRACs.

The organization of your essay response will have headings for each issue and a CRAC under each heading:

Offer

[CRAC]

Consideration

[CRAC]

Acceptance

[CRAC]

Mutuality

[CRAC]

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B. Memos, Motions, Briefs, Etc.

In first-year legal writing, you will do two major assignments: an objective memorandum and a persuasive response to a motion. The issue(s) will be given to you in the assignment instructions. For example, you may be asked: "Please write a memorandum analyzing whether or not our client, Ms. Piper, has a cause of action for intentional infliction of emotional distress under Texas law." The number of issues you have, which is the same as the number of CRACs you will need, will be tied to the elements of an intentional infliction of emotional distress cause of action under Texas law. You will have four CRACs because, after reading through Texas case law, you will find that an intentional infliction of emotional distress cause of action has four elements: "(1) the defendant acted intentionally or recklessly, (2) the conduct was 'extreme and outrageous,' (3) the actions of the defendant caused the plaintiff emotional distress, and (4) the resulting emotional distress was severe."⁴

The assignment instructions may explicitly tell you that there are certain issues that you do not need to analyze and, if that is the case, you will adjust the number of CRACs needed accordingly. For example, you could be asked: "Please write a

⁴ *Standard Fruit & Vegetable Co., Inc. v. Johnson*, 985 S.W.2d 62, 65 (Tex. 1998).

memorandum analyzing whether or not our client, Ms. Piper, has a cause of action for intentional infliction of emotional distress under Texas law. You do not need to discuss whether Defendant’s conduct caused Ms. Piper emotional distress or whether the distress Ms. Piper suffered was severe. You will, thus, only have two issues (elements) remaining and, therefore, two CRACs.

- (1) the defendant acted intentionally or recklessly,
- (2) the conduct was extreme and outrageous,
- ~~(3) the actions of the defendant caused the plaintiff emotional distress, and~~
- ~~(4) the resulting emotional distress was severe.~~

For memorandums, briefs, motions, etc., the CRACs go in the main body of the document. In memorandums, your CRACs go in the “Discussion” section (the body) under the heading for the corresponding issues. In motions and briefs, your CRACs go in the “Argument” section (the body) under the heading for the corresponding issues.

Here is an example of how the “Discussion” section of your memorandum could look for the second example with two issues and, thus, two CRACs:

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Questions Presented
 Brief Answers
 Statement of Facts
 Discussion
 I. Defendant acted intentionally or recklessly
 [CRAC]
 II. Defendant’s conduct was probably extreme and outrageous
 [CRAC]
 Conclusion

III. What are the different parts of CRAC?

We know that CRAC stands for Conclusion, Rule, Analysis/Application, Conclusion. We also know that we have one CRAC per issue. The pop-out below sets forth an overview of the parts of CRAC, which are then each described in more detail below.⁵

⁵ Note that UNT Dallas College of Law has published additional articles that dive much deeper into the different parts of CRAC. This article provides an overview.

<p>Heading for issue</p> <p>Conclusion</p> <p>Rule</p> <ul style="list-style-type: none"> → General rule → Sub rules → Case illustration(s) <p>Analysis/Application</p> <p>Conclusion</p>
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A. **CRAC: Conclusion.**

The first and last “C” of CRAC stands for conclusion. You will begin and end each CRAC with your conclusion for the specific issue. It is the “bread” to the CRAC sandwich and, like two pieces of bread on a sandwich, the conclusions that starts and ends your CRAC of the issue can look similar.

For example, if you are writing a memorandum on whether Ms. Piper has a cause of action for intentional infliction of emotional distress, you will have a CRAC for each element of the cause of action at issue. Thus, for example, your conclusions for the CRAC under the heading “II. Defendant’s conduct was probably extreme and outrageous” could look like this:

CRAC—Conclusion: Plaintiff will probably be able to prove that Defendant’s conduct was extreme and outrageous.

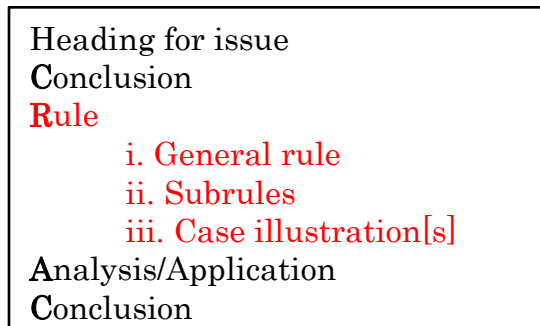
CRAC—Conclusion: Accordingly, Plaintiff will probably be able to prove the second element of her intentional infliction of emotional distress cause of action.

By reviewing the example conclusions above, you will note that that the conclusions are narrow/specific to the element at issue (extreme and outrageous) and do not state an overall conclusion on the cause of action as a whole (intentional infliction of emotion distress).⁶

⁶ That macro-level conclusion is handled in the introduction to your Discussion (called your roadmap) and then again at the close of your memo in the section called “Conclusion.”

B. CRAC: Rule.

After the first “C” (conclusion), comes the Rule for the issue. Under the “Rule” umbrella, there are three parts: (i) general rule; (ii) subrules; and (iii) case illustration[s].



i. General rules.

Immediately after your first conclusion sentence (the first “C” of CRAC), you will state your general rule for the issue. The general rule is broad and sets the overarching standard for that issue. In other words, the general rule will be a sentence that states the element (or factor)⁷ that is the subject of the particular CRAC you are drafting. The general rule will often come from the seminal case on the issue or a statute, which will be cited at the end of the sentence or corresponding footnote.

For the second element, the plaintiff must prove that the defendant’s conduct was “extreme and outrageous.”⁸

ii. Subrules.

After stating the general rule, you need to explain what this general rule means. That explanation is the role of subrules. Subrules further define and explain what the general rule means and how it is satisfied. Subrules are necessarily narrower than the broader general rule. Instead of employing run-of-the-mill transition words, subrules are “bridged” to the general rule through the use of mirroring language.

Looking at the general rule example above, you see terms that need to be defined—namely, what the term “extreme and outrageous” means. This means that

⁷The difference between elements and factors are that elements represent requirements (all of which must be satisfied to meet the standard), whereas factors represent possible considerations (all of which need not be satisfied to meet the standard). The intentional infliction of emotional distress cause of action has four elements (all of which must be satisfied to establish the cause of action).

⁸ *Johnson*, 985 S.W.2d at 65.

you need subrules. Subrules will usually come from statutes and/or case law. For intentional infliction of emotional distress, which is a common law cause of action (i.e. not from a statute), the subrules come from case law.

You will look to case law in order to find how courts have interpreted “extreme and outrageous.” Obviously this term mean different things to different people, but we need to understand how courts have defined “extreme and outrageous” generally and, more specifically, in the context of intentional infliction of emotional distress claims. You will look to case law in order to find how courts have interpreted this term and, thus, to find the subrules you need to explain the general rule.

In order for a defendant’s conduct to meet the standard of “extreme and outrageous,” it must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”⁹ Conduct will not meet the standard of “extreme and outrageous” if it is “merely insensitive or rude.”¹⁰ In determining whether a defendant’s conduct rises to the level of “extreme and outrageous,” courts look at the context of the conduct and the relationship between the plaintiff and defendant.¹¹

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You will notice that at the end of each subrule sentence, there is a citation to the legal authority where the subrule was found. This is important. Each sentence in your “R”/Rule should have one or more citation to legal authority.

iii. Case illustrations.

Case illustrations are the third and final part under the “Rule” umbrella.

a. **What are case illustrations?**

Case illustrations are real life examples of when a court applied a set of facts to the rule and reached a result that either the rule’s standard was satisfied or was not satisfied.

People learn by example and that is what case illustrations provide—examples of specific, real-life facts that a court applied to the rule and the result that followed. Building on our rule above—“extreme and outrageous” conduct— you might think after reading the rule and subrule: “That’s all well and good, but give me an example. Give me an example of a case where the court held conduct met that standard and an

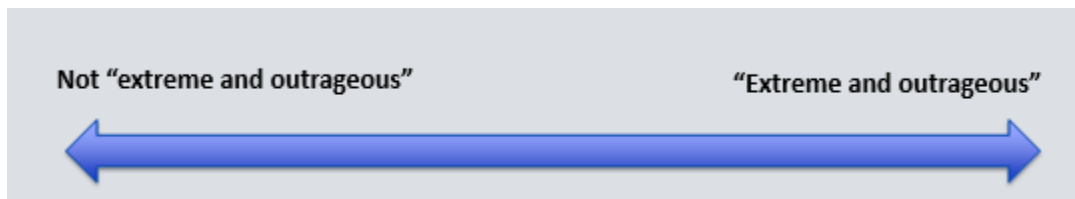
⁹ *Kroger Texas Ltd. Partnership v. Suberu*, 216 S.W.3d 788, 796 (Tex. 2006).

¹⁰ *Id.*

¹¹ *GTE SW., Inc. v. Bruce*, 998 S.W.2d 605, 612 (Tex. 1999).

example of where the court held conduct did not meet that standard.” That is the role of case illustrations—case illustrations are examples of the rule being applied to a factual scenario and the result of that application.

In addition to simply providing examples, case illustrations are helpful to establish parameters of behavior. For example, for “extreme and outrageous” conduct, you might illustrate two cases: one on each end of the spectrum, i.e. one where the court held that the conduct was “extreme and outrageous” and one where the court held that the conduct was not.

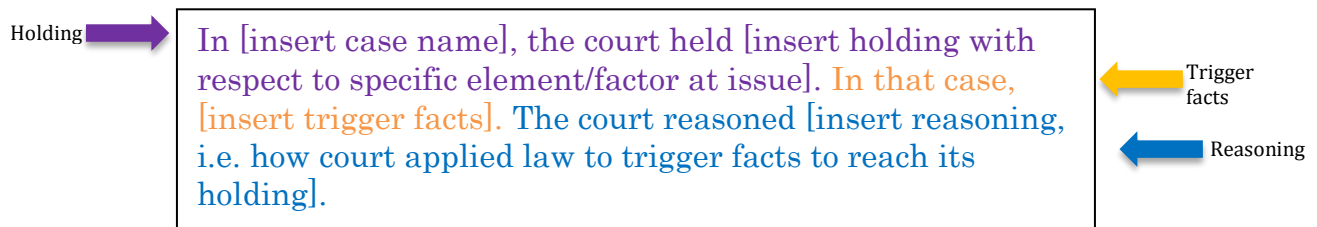


By having a case illustration of each (standard met vs. standard not met), later in your Analysis (CRAC), you will be able to compare/contrast your client’s facts to the facts of the illustrated cases to predict (objective) or argue (persuasive) where your client’s facts fall on the parameter.

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b. Drafting case illustrations.

When writing a case illustration, you should use a three-part formula, each of which is explored in more detail *infra*.



- *Part 1: The Holding*

In [insert case name], the court held [insert holding with respect to specific element/factor at issue].

In the first sentence of your case illustration, you will state the court’s holding with respect to the specific element at issue (as opposed to the holding of the court with respect to the entire cause of action).

In *Bruce*, the court held that the defendant’s conduct was extreme and outrageous.¹²

- Part 2: The Trigger Facts

In that case, [insert trigger facts].

After stating the specific holding of the case, next you will set forth the facts underlying the court’s holding. These facts are called the trigger facts—they are the facts that were essential to the court’s holding with respect to the element at issue.

In that case, the defendant supervisor “engaged in a pattern of grossly abusive, threatening, and degrading conduct” toward his employees over the course of two years.¹³ The supervisor used vulgar language, such as “f---” and motherf---er,” on a daily basis and constantly made obscene jokes and used sexual innuendos.¹⁴ The supervisor was “continuously in a rage” and assaulted the employees by physically charging toward them and getting close to their faces while screaming.¹⁵ The supervisor “frequently yelled and screamed at the top of his voice, and pounded his fists when requesting the employees to do things.”¹⁶ The supervisor humiliated employees by making them vacuum their offices daily and get on their hands and knees to spot clean their offices, while the supervisor stood over them yelling.¹⁷ The evidence also showed that the supervisor called one employee into his office every day to “simply stare[]” at her for as long as 30 minutes.¹⁸

- Part 3: The Reasoning

The court reasoned [insert reasoning, i.e. how court applied law to trigger facts to reach its holding].

After you state the trigger facts, you set forth the court’s reasoning. The court’s reasoning consists of how/why the court reached its holding based on the trigger facts before it. What was the court’s reasoning in holding that the defendant’s conduct you just described met the standard of “extreme and outrageous”? The reasoning is what connects the trigger facts to the holding—it shows why the court reached the result it did.

¹² *Bruce*, 98 S.W.2d at 616.

¹³ *Id.* at 613.

¹⁴ *Id.*

¹⁵ *Id.* at 613–14.

¹⁶ *Id.* at 614.

¹⁷ *Id.* at 615.

¹⁸ *Id.* at 614.

The court reasoned that, evaluating the conduct as a whole, the regularity and severity of the supervisor’s conduct rose to the level of “extreme and outrageous” because “[b]eing purposefully humiliated and intimidated, and being repeatedly put in fear of one’s physical well-being at the hands of a supervisor is more than a mere triviality or annoyance.”¹⁹ The court explained that “once conduct such as that shown here becomes a regular pattern of behavior and continues despite the victim’s objection and attempt to remedy the situation, it can no longer be tolerated.”²⁰

As you advance in your legal writing career, you will see that there are other effective ways to illustrate cases. However, a strong case illustration will always include the above three parts (holding, trigger facts, reasoning). Therefore, as a legal writing beginner, employing the *supra* case illustration formula is a fail-safe way to make sure your case illustrations are strong and complete.

c. Do you always need a case illustration?

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No, case illustrations are not always needed. Sometimes, the rule and subrules are so straightforward that no one would ask: “Can you give me an example of that?” In these situations, a case illustration is not necessary.

Imagine you have been asked if Paula, who witnessed the fatal car accident of her mother, Martha, can recover damages under the bystander doctrine. Below are the general rule (first sentence) and subrule (second sentence) you would find for the third element of the bystander doctrine:

Under the third element of the bystander doctrine, the bystander must show that they are “closely related” to the victim of the accident in order to recover damages.²¹ A bystander is “closely related” if the bystander is one of the “parents, siblings, children, [or] grandparents of the victim.”²²

Do you need a case illustration example to help you determine if Paula is “closely related” to her mother, Martha, such that she can recover damages? No, it is straightforward! Paula is the victim’s child and, therefore, “closely related” as defined by the rule. You don’t need an example to explain the rule.

¹⁹ *Id.* at 617.

²⁰ *Id.*

²¹ *Freeman v. City of Pasadena*, 744 S.W.2d 923, 924 (Tex.1988).

²² *Garcia v. San Antonio Housing Auth.*, 859 S.W.2d 78, 81 (Tex. App.—San Antonio 1993, no writ).

C. CRAC: Analysis/Application.

After you fully explain the law in your “R”/Rule section, you must apply it to the facts of your case to predict (in an objective memorandum) or to argue (in a persuasive motion/brief) the outcome. Your Analysis (CRAC) is where you take the law that you just explained above and, for the first time, apply it to the facts before you. Importantly, in your Analysis section, you do not introduce any new law—the law should already have been fully explained in the “R”/Rule section. Your “A”/Analysis section has two parts.

i. Part 1 of Analysis.

As will be described *infra*, in your Analysis, you will use either rule-based reasoning or analogical reasoning. Regardless of which you use, you will start your Analysis the same. The first sentence of your “A”/Analysis will predict (in an objective memorandum) or argue (in a persuasive motion/brief) what happens when you compare the facts of your case to the Rule.

Ex: Here, a court will likely hold that the Defendant’s conduct was “extreme and outrageous.”

Ex: Here, Paula will be able to establish the third factor of the bystander doctrine.

ii. Part 2 of Analysis.

After you state or argue what happens when you compare your facts to the Rule (Part 1), you will explain (objective) or argue (persuasive) why that result occurs by using either rule-based reasoning or analogical reasoning.

a. **Rule-based reasoning**

Rule-based reasoning is used when the application of the rule to your facts is straightforward (like the bystander example above). If you did not include a case illustration in your “R” above, you will be using rule-based reasoning. You conduct rule-based reasoning by tying language from the rule to your facts to predict or argue an outcome. Using the bystander doctrine example from above, your Analysis using rule-based reasoning might look like this:

Because Paula is Martha’s daughter, she is “closely related” to the victim Martha.

b. **Analogical reasoning**

Analogical reasoning means reasoning by analogy. You will use analogical reasoning whenever you have included a case illustration or case illustrations in your “R” section. You will use analogical reasoning to compare the facts of your case to the precedent case or precedent cases that you have illustrated. You will show that your case is either like the precedent case such that your case requires the same result or you will show that your case is unlike the precedent case such that your case requires a different result. When doing analogical reasoning, you should compare discrete facts from the case you illustrated to the corresponding discrete facts in your case. In your Analysis, when you use analogical reasoning, you are conducting fact-to-fact comparisons to show that the facts of your case are either like or unlike the facts of the precedent case.

To help you engage in analogical reasoning, you should use and repeat the following “formula” sentences:

To compare: Like [precedent case], where [trigger fact from precedent case], here [similar trigger fact from your case].

To contrast: Unlike [precedent case], where [trigger fact from precedent case], here [different trigger fact from your case].

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Imagine you are writing an objective memorandum determining whether Ms. Piper, the Plaintiff, has a cause of action for intentional infliction of emotional distress. One of the facts of Ms. Piper’s case is that her boss, Mr. Stevens (the Defendant), would say curse words to her on a daily basis. In a deposition, Ms. Piper testified “he cussed like a sailor. It’s always F-this and F-that.”

You predict that the facts of your case are similar enough to the facts of *Bruce* (the illustrated case) that the same outcome is warranted. That was Part 1 of your Analysis: Here, a court will likely hold that the Defendant’s conduct was “extreme and outrageous.” One of the sentences in your analogical reasoning (Part 2) might look like the one below. You will see that the sentence compares a discrete fact from the illustrated case *Bruce* (cursing on a daily basis) to a similar discrete fact from your case (cursing on a daily basis).

Trigger fact from illustrated case

Like *Bruce*, where the employer supervisor used vulgar language like “f--“and motherf---er” on a daily basis,²³ here Ms. Piper testified that the Defendant “cussed like a sailor” saying “F-this” and “F-that” on a daily basis.

Similar trigger fact from your case

²³ *Bruce*, 998 S.W.2d at 613.

From there, you would conduct additional fact-to-fact comparisons with the illustrated case or cases (i.e. repeat Part 2).

The Analysis section is arguably the most important part of your CRAC. In the Analysis, you are showing your audience how the law applies to your specific set of facts to support your prediction (objective) or argument (persuasive) that a certain outcome is warranted. In your Analysis, you show your thinking. You do not say, “Trust me, this case is very similar to *Bruce* and, therefore, the same result is warranted.” Instead, you show the audience, through fact-to-fact comparisons, how this case is similar to *Bruce* and, thus, warrants the same outcome. Think of math class, you lost points if you had the right answer but did not “show your work.” Same is true of legal writing: It is not enough to have the right answer, you must also “show your work.”

IV. Pulling it together.

Pulling together all the CRAC sections for the “extreme and outrageous” example, below is what CRAC may look like in the “Discussion” of an objective memo.

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II. Defendant’s conduct was probably extreme and outrageous

CRAC—Conclusion

Plaintiff will probably be able to prove that Defendant’s conduct was extreme and outrageous. For the second element, the plaintiff must prove that the defendant’s conduct was “extreme and outrageous.”²⁴ In order for a defendant’s conduct to meet the standard of “extreme and outrageous,” it must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”²⁵

CRAC—Rule
- General Rule
- Subrules
- Case illustration[s]

Conduct will not meet the standard of “extreme and outrageous” if it is “merely insensitive or rude.”²⁶ In determining whether a defendant’s conduct rises to the level of “extreme and outrageous,” courts look at the context of the conduct and the relationship between the plaintiff and defendant.²⁷

Topic sentence

Conduct is more likely to be deemed “extreme and outrageous” when there is a regular pattern of it. In *Bruce*, the court held that the defendant’s conduct was extreme and outrageous.²⁸ In that case, the

Case illustration
Part 1: Holding

²⁴ *Johnson*, 985 S.W.2d at 65.

²⁵ *Kroger Texas Ltd. Partnership v. Suberu*, 216 S.W.3d 788, 796 (Tex. 2006).

²⁶ *Id.*

²⁷ *GTE SW., Inc. v. Bruce*, 998 S.W.2d 605, 612 (Tex. 1999).

²⁸ *Bruce*, 98 S.W.2d at 616.

defendant supervisor “engaged in a pattern of grossly abusive, threatening, and degrading conduct” toward his employees over the course of two years.²⁹ The supervisor used vulgar language, such as “f---” and motherf---er,” on a daily basis and constantly made obscene jokes and used sexual innuendos.³⁰ The supervisor was “continuously in a rage” and assaulted the employees by physically charging toward them and getting close to their faces while screaming.³¹ The supervisor “frequently yelled and screamed at the top of his voice, and pounded his fists when requesting the employees to do things.”³² The supervisor humiliated employees by making them vacuum their offices daily and get on their hands and knees to spot clean their offices, while the supervisor stood over them yelling.³³ The evidence also showed that the supervisor called one employee into his office every day to “simply stare[]” at her for as long as 30 minutes.³⁴ The court reasoned that, evaluating the conduct as a whole, the regularity and severity of the supervisor’s conduct rose to the level of “extreme and outrageous” because “[b]eing purposefully humiliated and intimidated, and being repeatedly put in fear of one’s physical well-being at the hands of a supervisor is more than a mere triviality or annoyance.”³⁵ The court explained that “once conduct such as that shown here becomes a regular pattern of behavior and continues despite the victim’s objection and attempt to remedy the situation, it can no longer be tolerated.”³⁶

Case illustration
Part 2: Trigger
facts

Case illustration
Part 3: Reasoning

[You could add an additional case illustration]

CRAC—Analysis

Here, a court will likely hold that the Defendant’s conduct was “extreme and outrageous.” Like *Bruce*, where the employer supervisor used vulgar language like “f---“and motherf---er” on a daily basis,³⁷ here Ms. Piper testified that the Defendant “cussed like a sailor” saying “F-this” and “F-that” on a daily basis.

Analysis Part 1

Analysis Part 2

[Repeat fact-to-fact comparisons to complete]

²⁹ *Id.* at 613.

³⁰ *Id.*

³¹ *Id.* at 613–14.

³² *Id.* at 614.

³³ *Id.* at 615.

³⁴ *Id.* at 614.

³⁵ *Id.* at 617.

³⁶ *Id.*

³⁷ *Bruce*, 998 S.W.2d at 613.

CRAC—Conclusion

Accordingly, Plaintiff will probably be able to prove the second element of her intentional infliction of emotional distress cause of action.

In summary, CRAC allows you to think and write like a lawyer. By using CRAC, you will guarantee that your legal analysis is presented in a way that your audience (other lawyers, judges, clients, etc.) will understand and, accordingly, be in the best position to be persuaded. That is because CRAC forces your writing to be clear, supported by the law, and well-reasoned.

This Article provided a broad overview of CRAC. You are encouraged read additional UNT Dallas College of Law articles that dive deeper into the different parts of CRAC.