



**6** LAW SCHOOL  
UNMASKED:  
**Legal Writing**

WRITING  
BASICS

INTRO

PERSUASIVE  
WRITING

OBJECTIVE  
WRITING

# WELCOME

Today, we will cover:

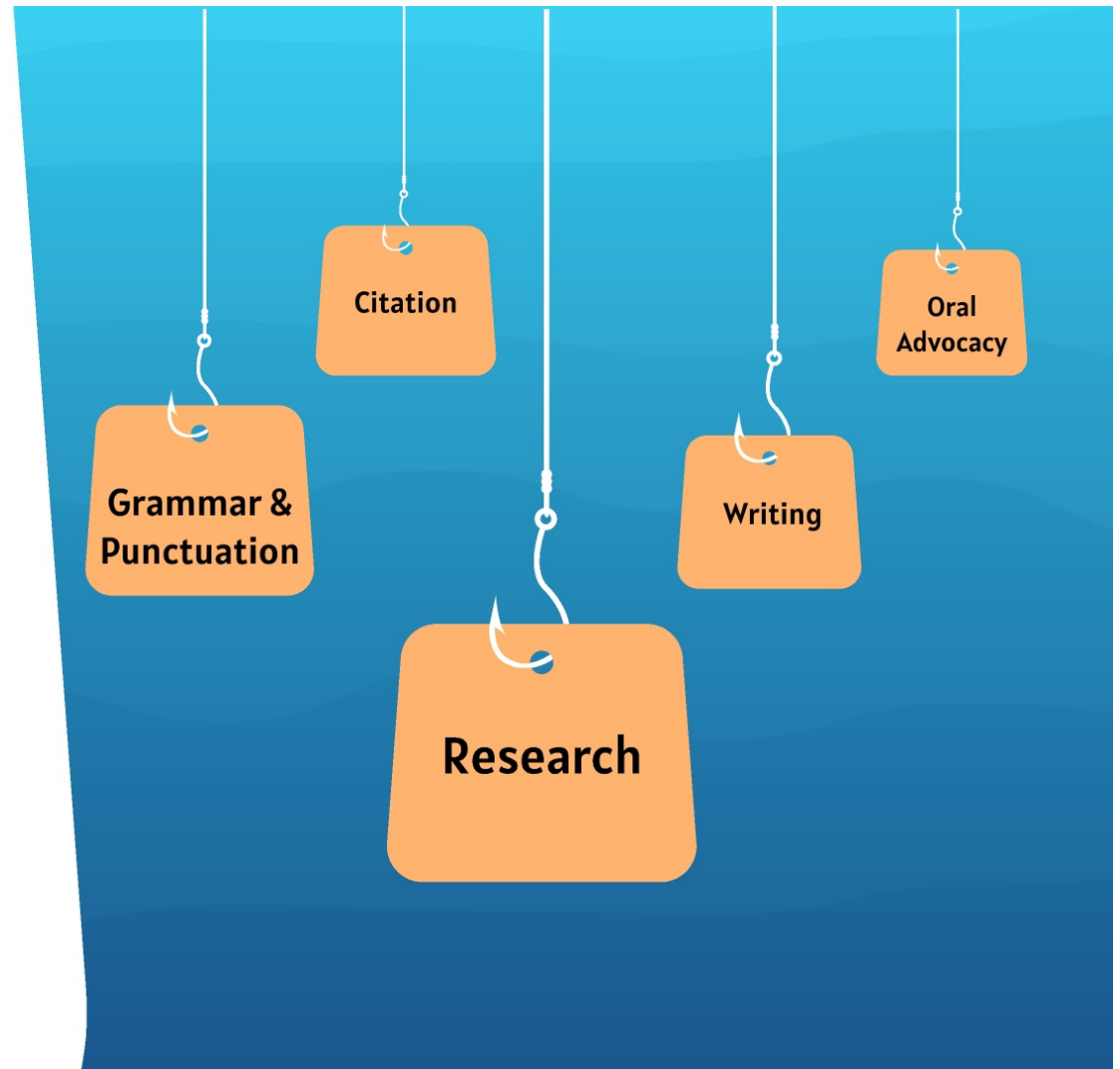
- What to expect in your LW course.
- The importance of LW.
- The format for legal analysis (CREAC).
- Common LW assignments.
- Objective and persuasive LW.
- Simple, written legal analysis.



What to  
expect

**Importance**

**What to expect  
in your IL course?**



# GRAMMAR AND PUNCTUATION

Effectively explain complex legal doctrines with plain language, good grammar, and proper punctuation.



# RESEARCH

Accurate and thorough legal research is the foundation for legal analysis.





# CITATION

Accurate legal citation makes legal research useful to your audience.



# WRITING

Legal writing includes writing and editing a vast range of documents that vary in style, form, and purpose.



# ORAL ADVOCACY

Oral argument is your opportunity to defend your client's position in a formal conversation with the court.

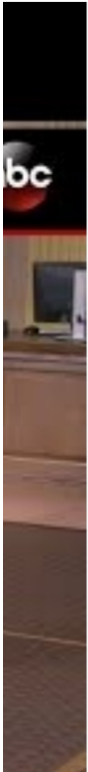
# Importance

Legal writing is the most important skill because *all* advocacy starts with a draft.





III  
ft.





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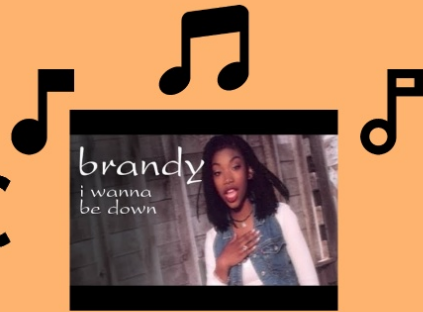
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# CREAC



INFORMAL  
LW

FORMAL  
LW

C: Conveys your answer to the legal question and a reason for your answer

E: Explains what the rule(s) mean

C: Rephrases the initial conclusion to remind the audience of your answer to the legal question

R: Lays out the governing law, starting with the broadest rule

A: Describes the legal reasoning that supports the conclusion

# MEMO OF LAW

A legal memo answers one or more legal questions about a specific case and makes a prediction or recommendation about the outcome.

## BRIEFS

### MEMORANDUM

TO: Senior Associate at Allen & Gorski, LLC  
FROM: [REDACTED]  
DATE: September 25, 2020  
RE: Analysis of criminal mischief in the second degree under New York Penal Law for client Thomas Ridge

# MEMO OF LAW

A legal memo answers one or more legal questions about a specific case and makes a prediction or recommendation about the outcome.

Your professor will provide the legal research for a *closed* memo assignment.

## BRIEFS

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TO: Senior Associate at Allen & Gorski, LLC  
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for client Thomas Ridge

For an *open* memo assignment, you will conduct the legal research you need to answer the legal question(s).

# THE LEGAL BRIEF

A formal legal document intended to persuade a court of the legal correctness of a position you have asserted on behalf of a client in a litigated case.

- Appellate brief
- Brief in support of/opposition to a motion (also called a Trial Court Memo of Law/Trial Motion)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

TABITHA JONES,

Plaintiff,

v.

DELTA AIR LINES, INC.,

Defendant.

-----X

**DEFENDANT DELTA AIR LINES' MEMORANDUM OF LAW IN SUPPORT OF**

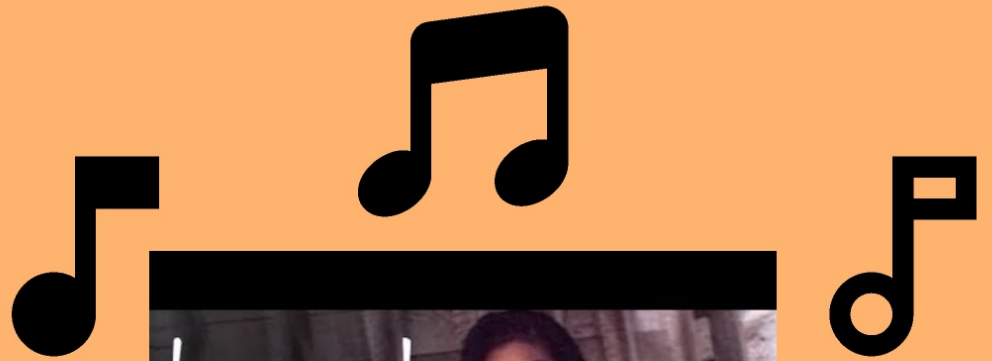
**MOTION FOR SUMMARY JUDGMENT**



# INFORMAL LW

- Letter
- Email
- Instant message
- Text message

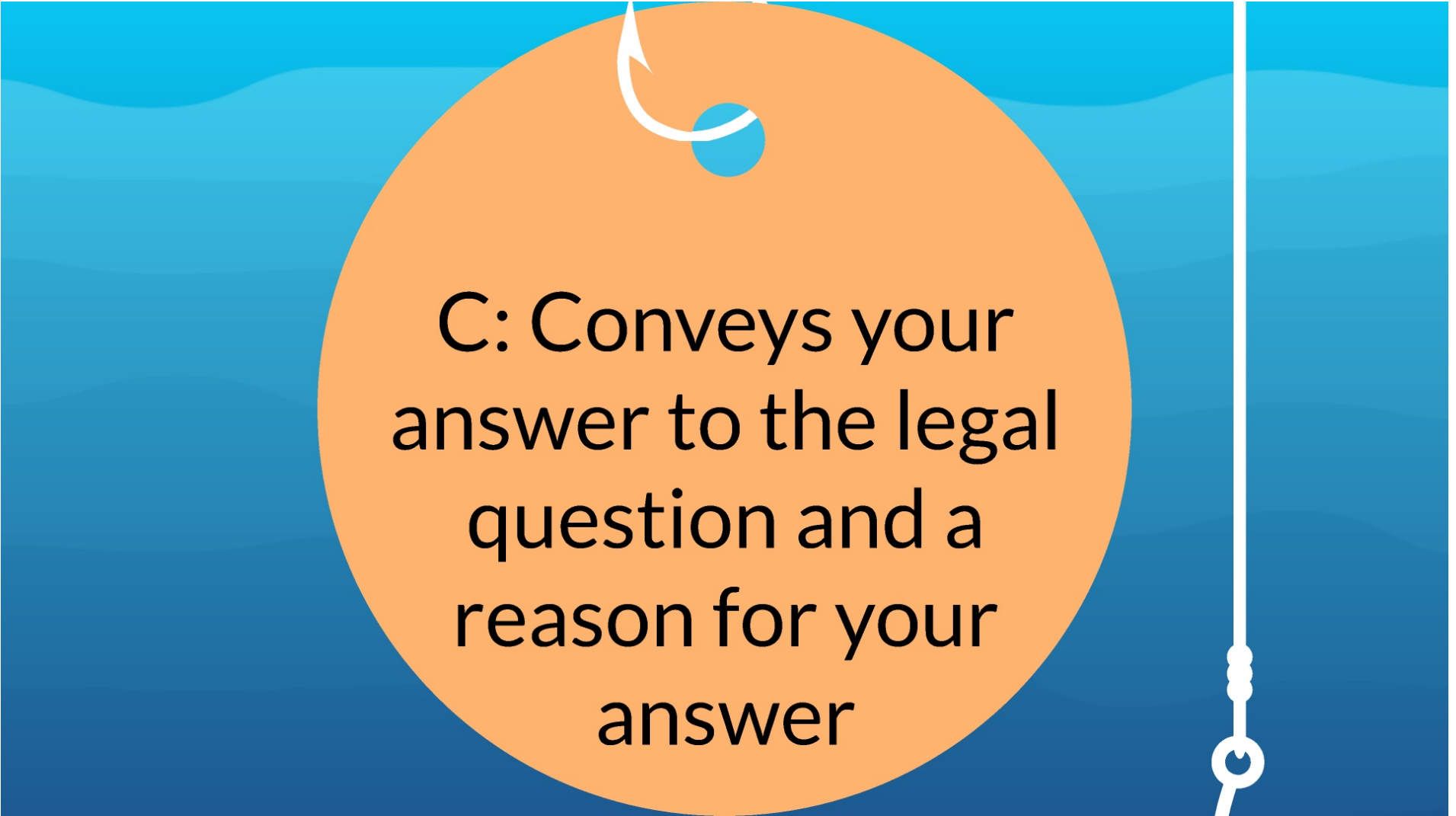
# CREAC



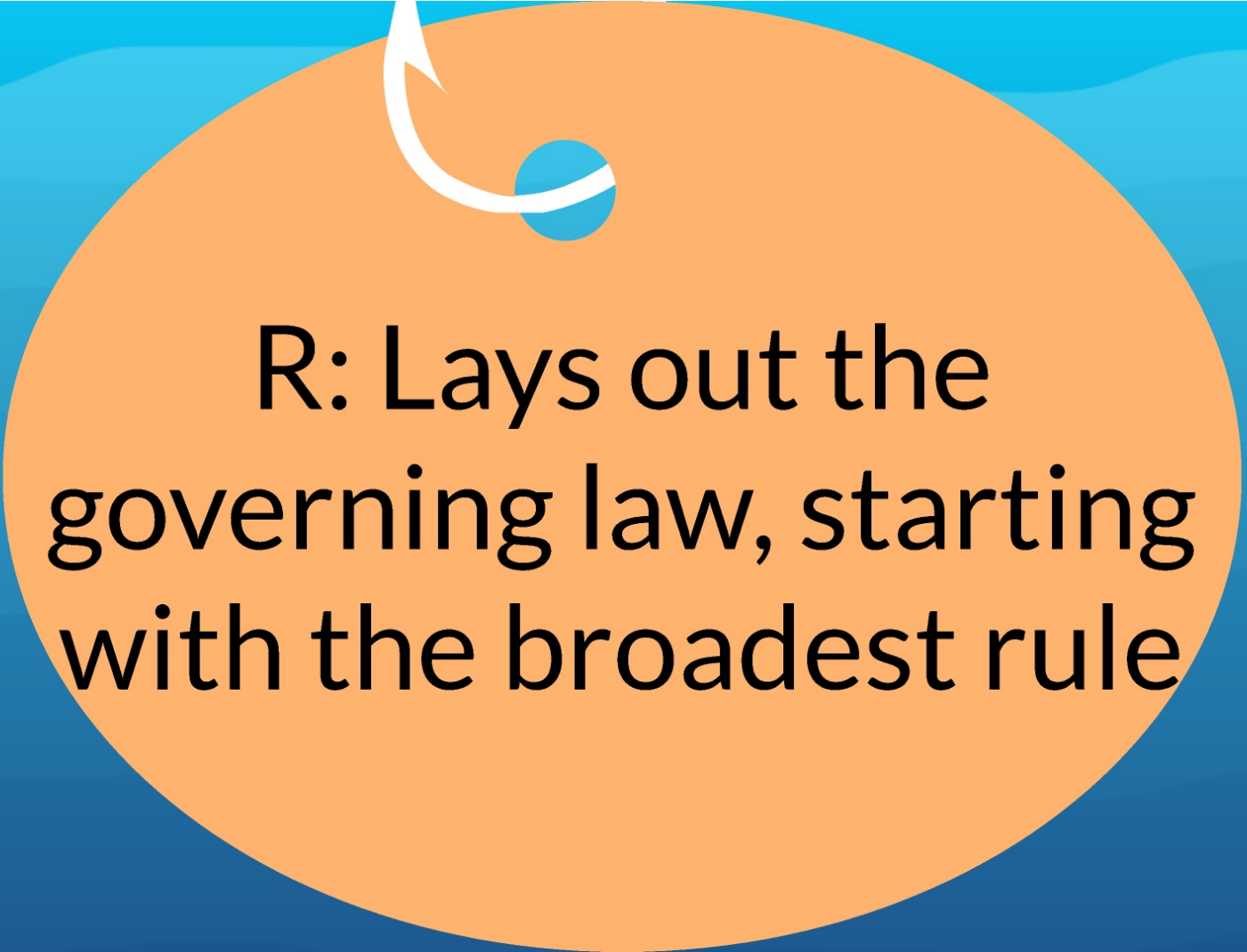
brandy

i wanna  
be down



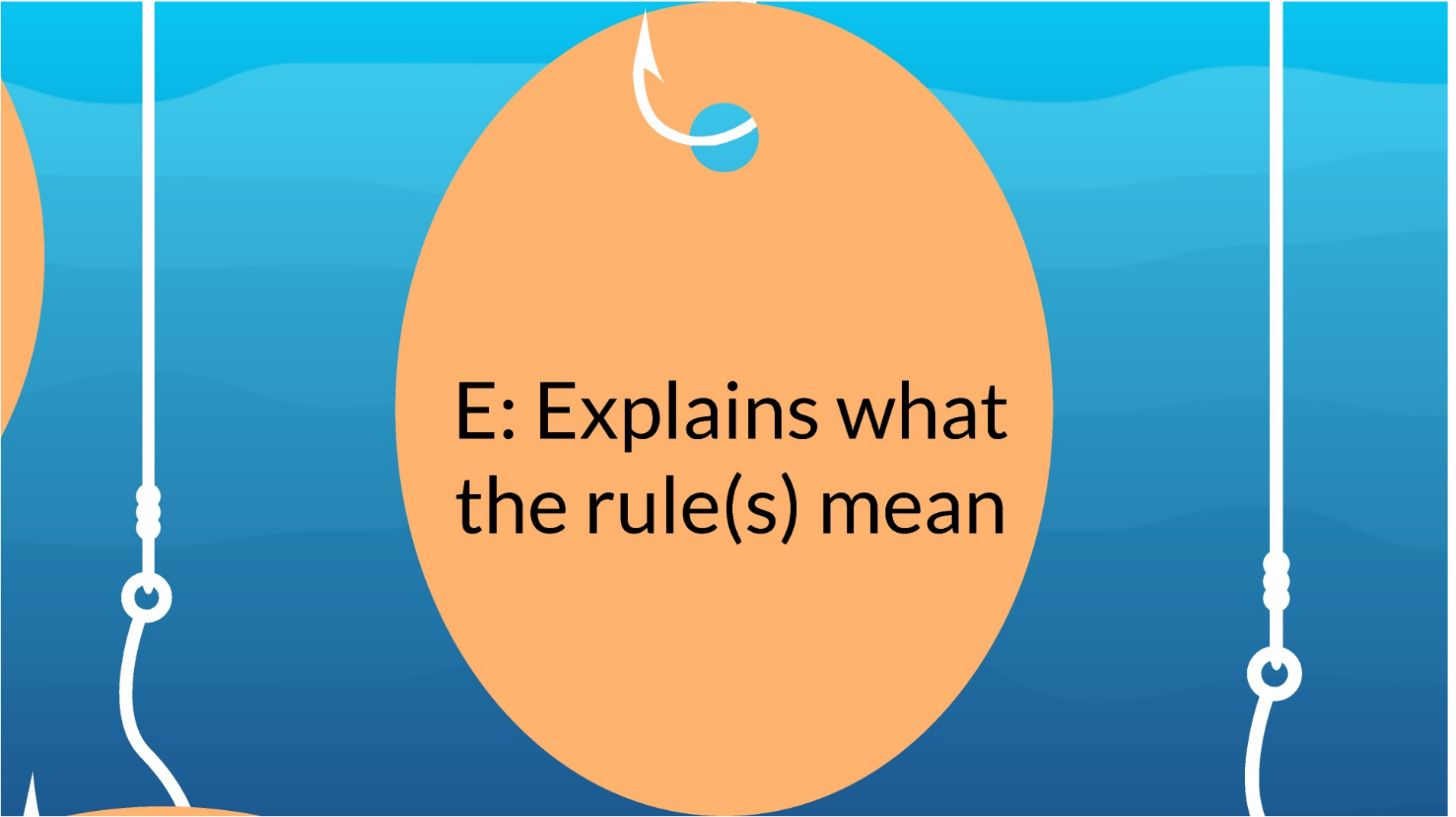


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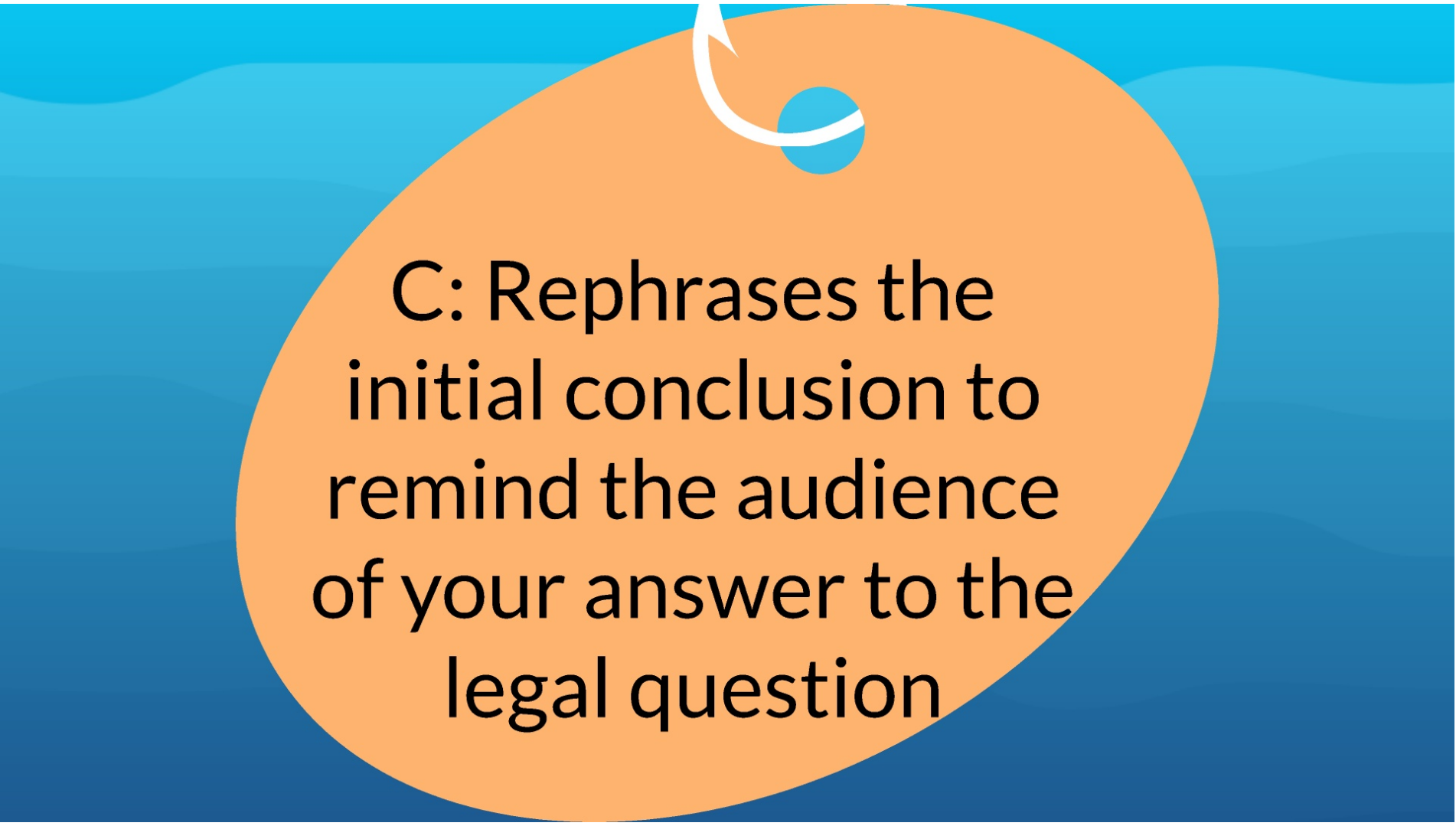


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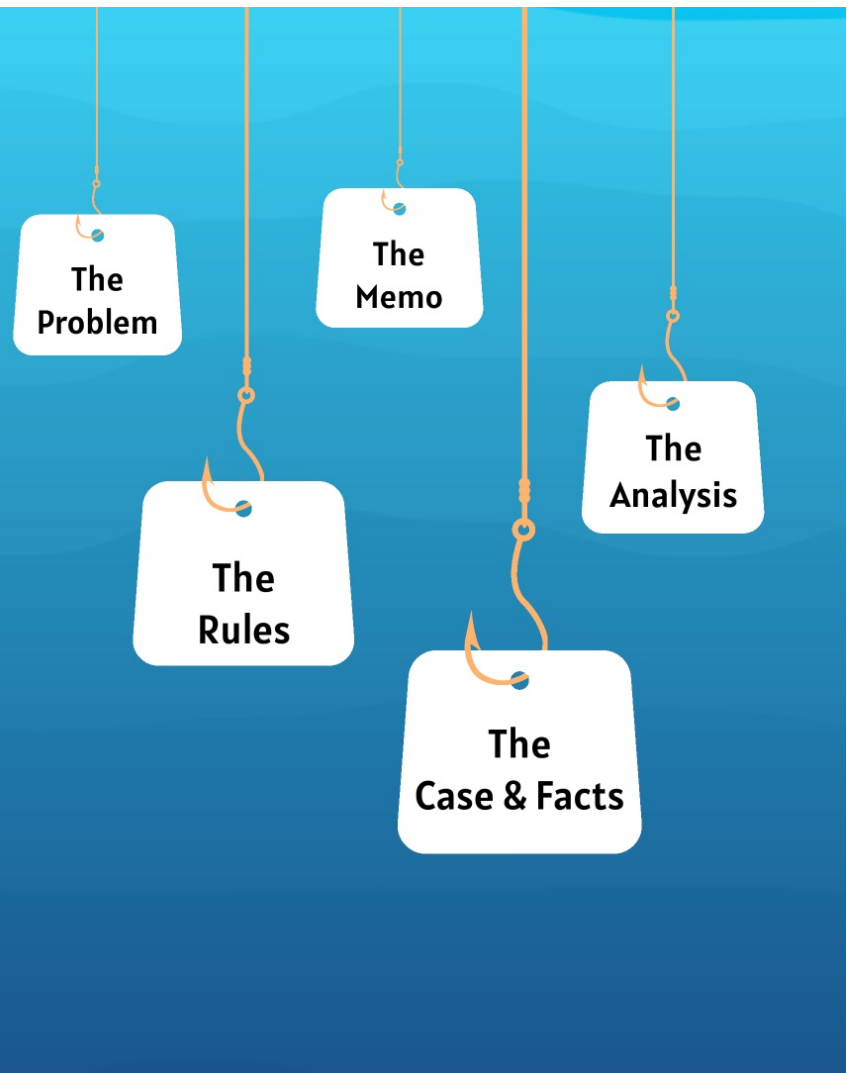
**OBJECTIVE  
WRITING**



# What is objective legal writing?

The purpose of an objective legal document is to inform and counsel. An objective document analyzes a legal issue to predict the most likely outcome.

The key to writing objectively is to fully and fairly examine both sides of the arguments surrounding your legal question and to make an accurate prediction about the most likely result.



## MEMORANDUM

TO: Legal Intern

FROM: Senior Associate at Allen & Gorski, LLC.

DATE: September 29, 2020

RE: Arson case

---

We represent Urooj Rahman. On May 29th Rahman and a friend attended a protest in Brooklyn. At approximately 12:30 a.m., surveillance cameras captured Rahman as she tossed a Molotov cocktail into the busted driver side window of an inoperable police sprinter. A small dashboard fire ensued.

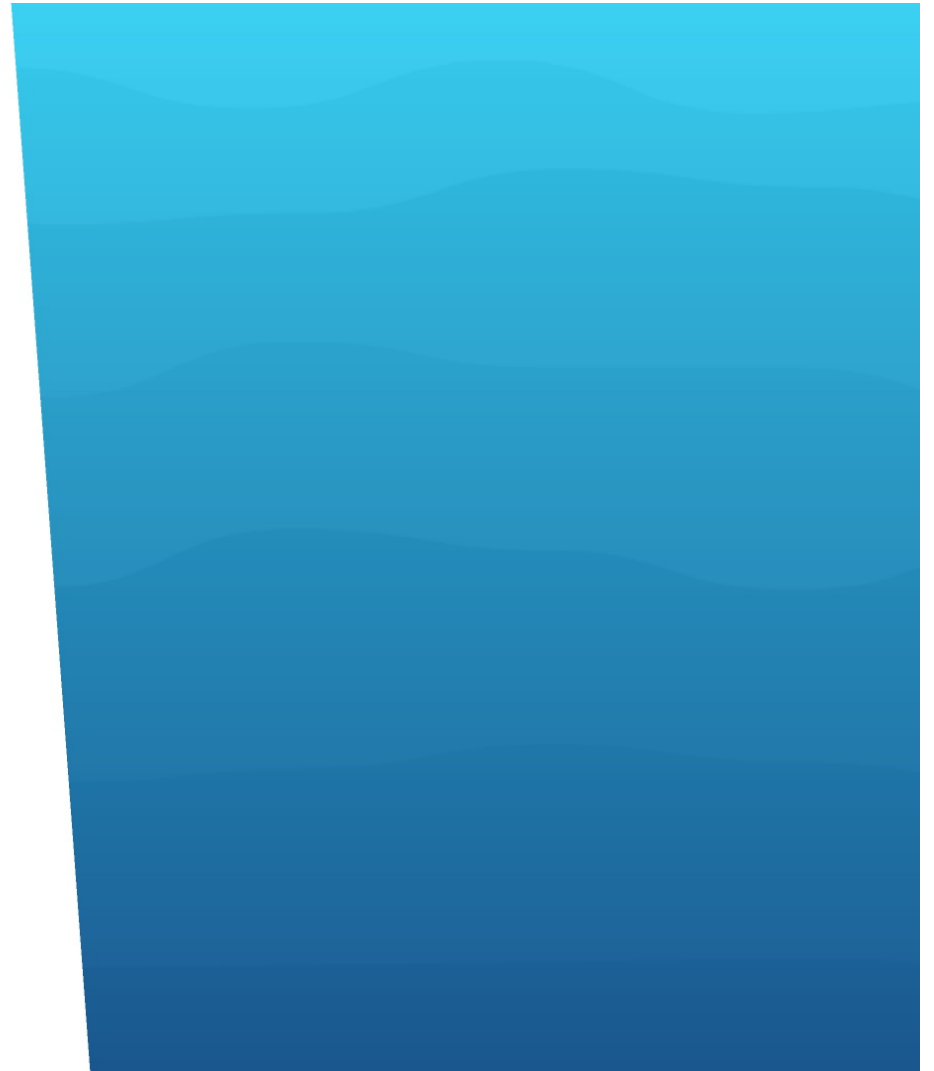
Rahman has been charged with second degree arson. We hope to have her charges dismissed.

Draft a memo that analyzes the following legal question:  
Is the police sprinter a building?



# What are the components of a memo?

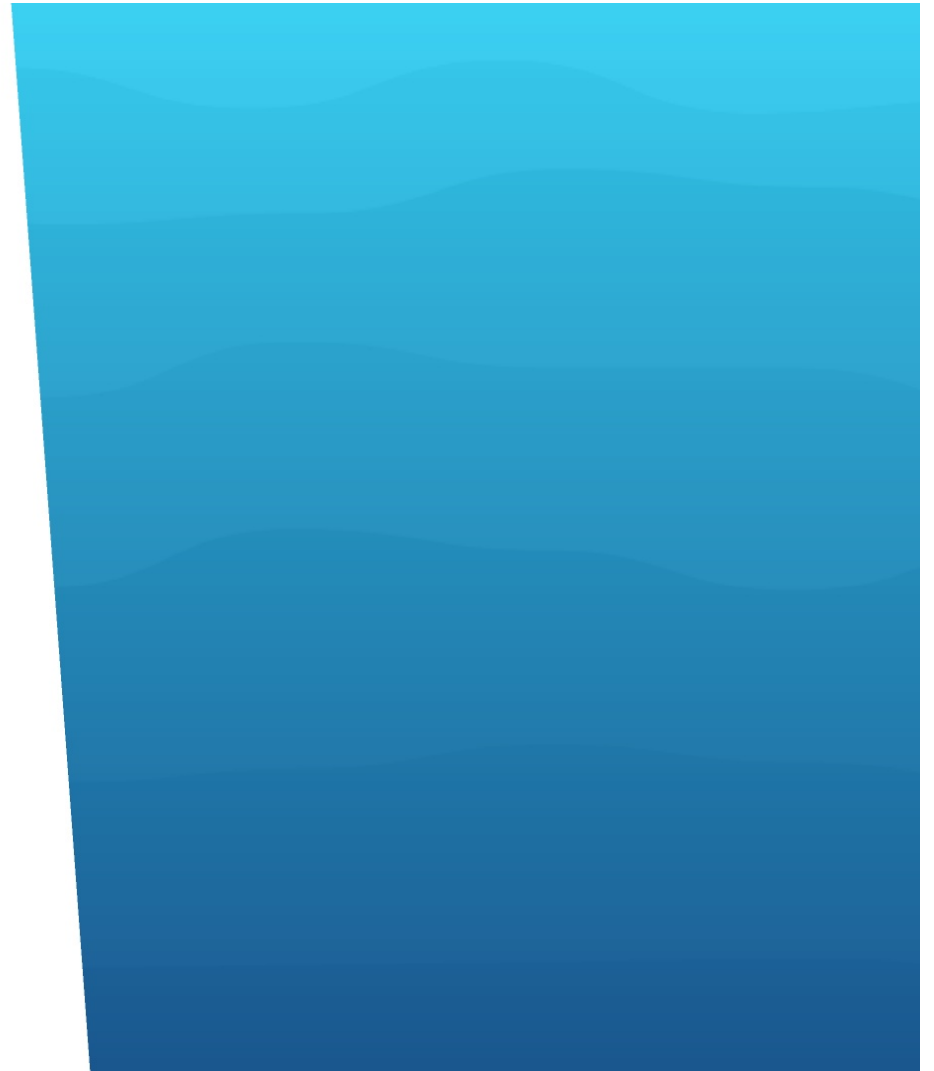
Formal Heading  
Question Presented  
Brief Answer  
Facts  
Discussion



# What are the components of a memo?

Formal Heading  
Question Presented  
Brief Answer  
Facts  
Discussion

The heading should contain: (1) the recipient's name, (2) your name, (3) the date, and (4) a "re" line that briefly describes the subject of your memo.



# What are the components of a memo?

Formal Heading  
Question Presented  
Brief Answer  
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The heading should contain: (1) the recipient's name, (2) your name, (3) the date, and (4) a "re" line that briefly describes the subject of your memo.

## MEMORANDUM

TO: Senior Associate at Allen & Gorski, LLC  
FROM: [REDACTED]  
DATE: September 25, 2020  
RE: Analysis of criminal mischief in the second degree under New York Penal Law  
for client Thomas Ridge

## § 150.15 Arson in the second degree

A person is guilty of arson in the second degree when he intentionally damages a building ... by starting a fire ....



## § 150.15 Arson in the second degree

A person is guilty of arson in the second degree when he intentionally damages a building . . . by starting a fire . . . .

## § 150.00 Definitions

Building, in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.





FACTS

## The sprinter:

- was abandoned and inoperable.
  - had a busted driver side window and an intact roof.
  - contained old surveillance equipment, a small mattress, a small microwave, a sink, and discarded snack packages.
  - contained hygiene products (deodorant, toothpaste, hand sanitizer, a partially used bar of soap).
  - did not have generator or propane tank.
-

**Under New York law, is  
the sprinter a building?**





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# What is persuasive legal writing?

The purpose of a persuasive legal document is to argue, convince, and induce action. A persuasive document analyzes a legal issue to persuade the reader of the correct outcome.

**ETHOS**  
*Credibility*



**PATHOS**  
*Emotion*



**LOGOS**  
*Logic*



**The Trial  
Memo**

**The "A" in  
CREAC**

**PERSUASION**

# The components of a persuasive legal document:

Caption

Introduction

Facts or Background

Legal Standard

Argument (with CREAC for each issue)

Conclusion

Signature Block





**Rule**



**Fact**



**Analysis**



**Rule**

An adverse employment action is a materially adverse change. It includes a demotion evidenced by a decrease in wage or salary or a material loss of benefits.



**Fact**



**Analysis**



## Rule

An adverse employment action is a materially adverse change. It includes a demotion evidenced by a decrease in wage or salary or a material loss of benefits.



## Fact

Plaintiff, a flight attendant, was demoted from the first class to domestic cabin. As a result her wages decreased and she was ineligible for bonuses.



## Analysis



## Rule

An adverse employment action is a materially adverse change. It includes a demotion evidenced by a decrease in wage or salary or a material loss of benefits.



## Fact

Plaintiff, a flight attendant, was demoted from the first class to domestic cabin. As a result her wages decreased and she was ineligible for bonuses.



## Analysis

Here, a reasonable jury could find that Plaintiff suffered an adverse employment action **because** her demotion was a materially adverse change in her employment's conditions. The adverse employment action **is evidenced by** decreased wages and ineligibility for bonuses.



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Presentations:**

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Prezi presentation adapted from content by JT O'Donnell; original available at  
<https://www.linkedin.com/pulse/6-warning-signs-job-posting-fake-jt-o-donnell/>

Content adapted from: *The Handbook for the New Legal Writer* by Jill Barton &  
Rachel H. Smith (Wolters Kluwer, 2d ed. 2019).



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## MEMORANDUM

TO: Legal Intern  
FROM: Senior Associate at Allen & Gorski, LLC.  
DATE: September 29, 2020  
RE: Arson case

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We represent Urooj Rahman. On May 29th Rahman and a friend attended a protest in Brooklyn. At approximately 12:30 a.m., surveillance cameras captured Rahman as she tossed a Molotov cocktail into the busted driver side window of an inoperable police sprinter. A small dashboard fire ensued.

Rahman has been charged with second degree arson. We hope to have her charges dismissed.

Draft a memo that analyzes the following legal question:  
Is the police sprinter a building?



## § 150.15 Arson in the second degree

A person is guilty of arson in the second degree when he intentionally damages a building . . . by starting a fire . . . .

## § 150.00(1) Definitions

Building, in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.



115 A.D.3d 1306

The PEOPLE of the State of New York, Respondent,  
v.  
Alan NORCUTT, Defendant–Appellant.

March 28, 2014.

## Opinion

### MEMORANDUM:

**\*1306** On appeal from a judgment convicting him following a jury trial of arson in the third degree, defendant contends that the People failed to establish that the “1978 Terry make Trailer” (trailer) to which he set fire was a “building” as defined in the arson statute and thus that the conviction is not supported by legally sufficient evidence. We reject that contention.

“A person is guilty of arson in the third degree when he intentionally damages a building or motor vehicle by starting a fire or causing an explosion.” For purposes of the arson statute, a “[b]uilding[.]” **\*1307** in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.”

“The ‘ordinary meaning’ of the term ‘building’ has been alternatively defined as ‘a constructed edifice designed to stand more or less permanently, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls, and serving as a dwelling’ ..., ‘a structure with a roof and walls’ ... and ‘[a] structure or edifice inclosing a space within its walls and usually, but not necessarily, covered with a roof’ ... The term generally, though not always, implies the idea of a habitat for a

person's permanent use or an erection connected with his or her permanent use."

Inasmuch as the trailer herein was "a constructed edifice enclosed by walls, covered by a roof, designed to stand permanently, and serving a useful purpose, it is included within the ordinary meaning of the word 'building.' " Indeed, the structure's walls and roof were much more "permanent" than the carpets, shower curtains and tarp used to create the shanty deemed a building in *Fox*. In addition to furnishings for sleeping, the trailer had a bathroom and a kitchen. Moreover, the trailer was equipped with a power cord for immediate access to power and a propane tank that could be used to power the refrigerator and heaters. At the time of the arson, the trailer was being used to secure the owners' property while they were remodeling the inside of their house. In any event, with respect to the trailer's character as a building in the ordinary sense of the word, it is of no moment that no one was actually residing \*1308 in the trailer on the day of the incident.

Even assuming, arguendo, that the trailer did not fit within the ordinary meaning of the term, we conclude that it constituted a building under the secondary definition of building contained in the statute, i.e., a "structure ... used for overnight lodging of persons, or used by persons for carrying on business therein." Defendant recognized that the trailer was used for overnight lodging "on 'vacations' or weekend retreats," and it is undisputed that defendant had previously rented the trailer as overnight lodging for a period of four months. Although no one was residing in the trailer on the day of the fire, we likewise conclude that such fact does not alter the essential character of the structure as one used for overnight lodging.

Defendant contends that the phrase "used for overnight lodging" requires that the structure be in current use for overnight lodging. Otherwise, defendant posits, the statute



would have set forth that a building is a structure that “could be” used for overnight lodging. In our view, it is defendant who is adding language to the statutory definition. The statute provides that a building is any structure used for overnight lodging; it does not provide that a building is any structure that is *currently* being used for overnight lodging. Inasmuch as defendant “used [the trailer] for overnight lodging” and recognized that such trailers were used for overnight lodging on vacations and weekend retreats, we conclude that the trailer was a building under the secondary definition contained in the statute.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

## **MEMORANDUM**

TO: Renee Nicole Allen, Senior Associate at Allen & Gorski, LLC.  
FROM: Legal Intern  
DATE: November 20, 2020  
RE: Analysis of "building" issue for Urooj Rahman

---

### **QUESTION PRESENTED**

Under New York law, is the sprinter a building?

### **BRIEF ANSWER**

Probably not. A building is a long-lasting structure enclosed by walls, covered by a roof, and serving a useful purpose, such as being a dwelling. A building is also a structure used for long-term overnight lodging, not necessarily at the time of the fire. Here, the Court will likely find that the police sprinter is not a building because it cannot serve a useful purpose without a generator or a propane tank, and evidence is insufficient to show the sprinter's use for long-term overnight lodging.

### **STATEMENT OF FACTS**

On May 29, Ms. Rahman attended a protest in Brooklyn. When Ms. Rahman arrived, the protest was peaceful. At 8:15 p.m., the protest became chaotic. Suddenly, officers began spraying tear gas in the crowd, and protesters started running. Ms. Rahman fell and scraped her knee. She limped away from the crowd and entered a parking lot located on an adjacent block.

The parking lot contained about thirty inoperable police vehicles, including an abandoned sprinter with a busted driver side window. Ms. Rahman thought she could rest inside the sprinter and tried to open the sprinter's door, which was locked. Ms. Rahman then used the light on her iPhone to see inside the sprinter and observed old surveillance equipment, a small

mattress, a small microwave, a sink, discarded snack packages, and hygiene products—a deodorant, a toothpaste, a hand sanitizer, and a partially used bar of soap. Ms. Rahman noticed that the sprinter's roof was intact but did not see a generator or a propane tank. The lights surrounding the lot began to fade. After her iPhone died, Ms. Rahman looked for a source of light and spotted a rag that was stuffed in a bottle on the ground next to the sprinter. She lit the rag, and a fire quickly ensued. Ms. Rahman tossed the bottle and ran. The bottle landed in the sprinter.

On May 30, at approximately 12:30 a.m., the lot's surveillance cameras captured Ms. Rahman as she tossed the bottle into the busted driver side window of the sprinter. The bottle—which contained a Molotov cocktail—caused a dashboard fire.

Ms. Rahman is charged with two counts of arson in the second degree. One count is for the fire to the sprinter, and the other is for the fire to the tarp.

## DISCUSSION

It is unlikely that Ms. Rahman will be convicted of arson in the second degree. The People likely cannot establish that the police sprinter is a building because it cannot serve a useful purpose, and evidence is insufficient to prove that the sprinter has ever been used for long-term overnight lodging.

In New York, "A person is guilty of arson in the second degree when he . . . damages a building . . . by starting a fire . . . ." N.Y. Penal Law § 150.15. Building "in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein." N.Y. Penal Law § 150.00(1). The ordinary meaning of the term "building" refers to a long-lasting structure enclosed by walls, covered by a roof, and serving a useful purpose, such as being a dwelling; the structure does not need to be completed, used, or occupied. *People v. Norcutt*, 115 A.D.3d 1306, 1307 (4th Dept. 2014). The secondary meaning of the term "building" refers to a structure used for long-term overnight

lodging; such a use does not need to be current. *Norcutt*, 115 A.D.3d at 1308.

A long-lasting structure enclosed by walls, covered by a roof, and serving a useful purpose is a building in the ordinary meaning, even though it is not completed, used, or occupied at the time of the fire. *Norcutt*, 115 A.D.3d at 1307. In *Norcutt*, a trailer equipped with a bathroom, a kitchen, a power cord, and a propane tank constituted a building, although nobody was residing in the trailer at the time of the arson. 115 A.D.3d at 1307.

A structure, vehicle, or watercraft used for long-term overnight is a building in the secondary meaning, even though it is not currently used for overnight lodging. *Norcutt*, 115 A.D.3d at 1308. In *Norcutt*, a trailer constituted a building because the owners had used it for overnight lodging on vacations or weekend retreats and had rented it as overnight lodging for four months. 115 A.D.3d at 1308. The fact that the owners were currently using the trailer to secure property "[did] not alter the essential character of the structure as one used for overnight lodging." *Id.*

Here, the police sprinter is likely not a building because it cannot serve a useful purpose, and evidence is insufficient to show the sprinter's use for long-term overnight lodging. First, the Court will likely find that the sprinter—which does not have a generator or a propane tank—cannot serve a useful purpose and therefore is not a building in the ordinary meaning. *See Norcutt*, 115 A.D.3d at 1307. Unlike the trailer in *Norcutt*, the sprinter does not have access to power or a propane tank. *See* 115 A.D.3d at 1307. Also, the sprinter only has a small microwave and a sink, unlike the trailer in *Norcutt*, which had a kitchen and a bathroom. *See Id.* Thus, unlike in *Norcutt*, the Court will likely find that the sprinter does not serve a useful purpose. *See Id.*

Second, the Court will likely find that evidence is insufficient to show the sprinter's use for long-term overnight lodging and therefore cannot establish that the sprinter is a building in the secondary meaning. *See Norcutt*, 115 A.D.3d at

1308. Here, evidence is insufficient to show the sprinter's use for long-term overnight lodging, unlike in *Norcutt*, where the trailer had been used for overnight lodging on vacations, weekend retreats, and had been rented as overnight lodging for four months. See 115 A.D.3d at 1308.

However, the People could argue that the sprinter is a building in the secondary meaning because the presence of hygiene products is sufficient to show the sprinter's use for overnight lodging. See *Id.* Ms. Rahman's statement that she saw hygiene products—such as deodorant, toothpaste, and a partially-used bar of soap, which by definition are used for the daily care of the person—in the sprinter is comparable to the defendant's statement that the trailer was used for overnight lodging on vacations and weekend retreats in *Norcutt*, because both show the structure's use for overnight lodging. See *Id.* Yet, the sprinter is likely not a building because the presence of hygiene products is insufficient to show that the sprinter has ever been used for long-term overnight lodging. See *Id.* The presence of hygiene products in the sprinter is unlike the trailer's use for overnight lodging on weekend retreats, on vacations, and for periods of four months in *Norcutt*, because hygiene products alone do not demonstrate a long-term use for overnight lodging. See *Id.*

Thus, evidence is likely insufficient to establish that the sprinter is a building.

Books recommended during the session:

- Open Book: The Inside Track to Law School Success
- A Weekly Guide to Being a Model Law Student