IDENTIFYING AND HANDLING MAJOR VS. MINOR ISSUES

One of the most challenging aspects of any bar exam essay answer, and perhaps the most critical aspect for time management, is learning to accurately identify and handle major and minor issues. This handout will help you learn to recognize major and minor issues and handle each type appropriately to ensure maximum points.

**Review: What language do we use to link the facts and the law?**
Remember that good legal analysis requires showing your work. This means you need to *give a reason* for any legal conclusions you draw. Your reason(s) will typically arise out of the facts in the question.

Sometimes, legal analysis can be handled with simple “linking” words. For example:

- “The bodily harm element is met *because* D kicked P in the shin.” This is a “because” clause, because it uses the word “because” to give a reason that links the facts to the law.
- You can also use a “therefore” clause: “D kicked P in the shin, *therefore*, the harmful bodily contact element has been satisfied.”
- Or, you could accomplish the same thing using “since”: “There was a harmful bodily contact *since* D kicked P in the shin.”
- Or, my favorite “which shows that” (because it puts the facts ahead of the conclusion, and is therefore more in line with IRAC): “D kicked P in the shin, *which shows that* there was a harmful bodily contact.”

To recap, these helpful phrases are: *because, therefore, since* and *which shows that*. You can think of these as training wheels for your legal analysis since they help ensure you’re tying the facts to the law and, therefore, adequately explaining your reasoning. You can use these phrases with major or minor issues.

How do you tell what is a major versus a minor issue? Glad you asked!

**Major vs. Minor Issues**
Your bar essays will have analysis problems (and you’ll lose points) if you do not consistently identify and address major and minor issues properly.

**What is a Major Issue?**

- A *major* issue is one that has at least one reasonable argument and counterargument on each side (with facts to support each argument/counterargument).
- A *major* issue may have many different facts related to it.
- A *major* issue matters to the outcome of the case.
• A *major* issue cannot typically be resolved with a single “because” clause. It requires more analysis.

**How can you identify Major Issues?**

When you issue spot and match up facts on your scratch paper outline (a very important process), you can tell which issues are *major* because they will have **more triggering facts or ambiguous facts**.

A “triggering fact” is a fact that suggests you need to discuss a particular legal rule or legal element. “Ambiguous facts” are ones that create uncertainty as to whether an element of law is met. Ambiguous facts give you an opportunity to present both sides of an argument. Here’s an example of each:

• **Triggering Facts**: For example, say you spot and write down the issue of battery on your scratch paper for a Torts essay. You know the legal rule that, “Battery requires an intentional infliction of a harmful or offensive bodily contact to the plaintiff.” Imagine the facts you hunt for in the fact pattern and write below the battery issue on your scratch paper have to do with intent, or lack thereof, and that there are facts to support arguments over whether or not the D acted with purpose or knowledge. There are also facts making it unclear whether this was actually a harmful or offensive contact, and whether the contact was with P’s person or not. With all of these facts that relate to different elements of the battery claim, this would likely be a *major* issue, simply because you’ve been given so much information to work with.

• **Ambiguous Facts**: Alternately, in a Criminal Law question, imagine you spot an issue in the fact pattern that calls to mind burglary. You remember the legal rules: “The breaking and entering of a dwelling at night with the intent to commit a felony” (Traditional Rule); or, “The breaking and entering of a structure with the intent to commit a felony” (Modern Rule). The facts state that the Defendant walked up to an ATM machine at night and inserted a crow bar in the ATM to gain access to the money stored behind the ATM machine for distribution. You are scratching your head because you aren’t sure whether putting a crow bar in the ATM qualifies as “entering.” This is an ambiguous fact. You must argue both possible interpretations to fully analyze whether or not this could possibly be considered a burglary.

A major issue is worth **more points** than a minor issue, so you should take more time to outline and write about it. But remember: Don’t be self indulgent in your writing. A major issue requires complete, quality analysis (explaining your reasoning) – but then you must move on to the next issue to get a passing score! Ignoring other analysis raised by the facts is a quick way to miss points and fail an essay question.
What is a Minor Issue?

A minor issue is often called a “slam dunk” or “clear cut” issue. You still want to raise it and discuss it to get the points, but it’s not really very complicated or involved, so you don’t want to spend a ton of time on it. Here are some ways to identify a minor issue:

- A minor issue can usually be disposed of with one “because” clause.
- On your scratch paper outline, a minor issue will likely have just one or two facts triggering it.
- A minor issue will not involve any ambiguous facts that lead in different directions.

A minor issue is not worth as many points, so you should raise it quickly, dispose of it squarely, and then move on.

For example, in the battery example above, if the facts tell you that D walked up to P and shouted, “I've hated you for years, so I hope this hurts!” and then kicked P in the shin, the facts suggest this is a minor issue. Why? Because the elements of battery are clearly satisfied. Therefore, you should get through your analysis quickly. For example:

- D shouted, “I've hated you for years, so I hope this hurts!,” which shows D acted with intent. There was a harmful bodily contact because D’s foot forcefully struck P’s shin. Therefore, D will be liable for battery.

Note how this analysis can be done in only a few short sentences. But, even here, it’s critical to go through each element in your rule statement and use the facts to show why each is satisfied.

**Whether an issue is Major or Minor always depends on the facts!**

Important! --> As you can see, a given issue (like intent above) could be major or minor in an essay. The categorization depends entirely on the facts you are given.

Therefore, you cannot necessarily structure the analysis of a particular issue the same way every time!

- In the battery example above, you may need to concisely walk through intent, then causation, then result in separate sub-sections with conclusions (you get intent, causation, and result from your attack plan), if this is a major issue.
- Or, you could get through the entire tort in a short paragraph, as we did when it was a minor issue.

The same “issue” might be the central focus of one essay, and a minor add-on in a different essay. The facts in question determine which is which. Here’s another example:

- In a Contracts essay, if you are given lots of facts that would trigger application of your rules for offer, counteroffer, acceptance, consideration, etc. then you know that contract
formation is probably a major issue. You should split your overarching rule (“A valid contract requires an offer, acceptance, and consideration.”) into sub-parts for each element and discuss each one separately by applying each fact you’ve been given.

- If, on the other hand, the same contract formation issue comes up, but the facts say that “the parties entered into a valid, written contract,” then you know that formation is a very minor issue. In a situation like this, you should not spend much time on the formation issue. Just state that this requirement has been met (to get the points) and move on: “The contract formation requirements have been met because the parties entered into a valid, written contract.” Note how this minor issue could be disposed of in one “because” clause. Or, better yet, “The parties entered into a valid, written contract, which shows that the contract formation requirements have been satisfied.” (Try to put the facts before the conclusion wherever possible.)

Learning to identify major and minor issues is a key component of legal judgment! Practicing this skill will serve you well on the bar exam, and in legal practice.