Legal Problem Questions: Analyzing Rhetorical Structures and Strategies Using “IRAC”

Christian H. Jensen
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ABSTRACT

This paper looks at a legal writing genre called the problem question. The problem question is an academic genre designed to help law students develop analytical skills in order to “think like a lawyer.” This genre is absolutely central to common law legal education. Indeed, it is easily the most common writing genre encountered by law students.

The paper focuses on analyzing rhetorical structures and strategies in student answers to problem questions. The “IRAC method” was used as a framework for the analysis. IRAC is an analytical technique used, with some variation, in most common law-based law schools. It was hypothesized that higher grade papers would follow the IRAC approach more closely and consistently than lower grade papers. Generally speaking, this proved to be the case.

Two methods of analysis were used: (1) interviews of academic staff at City University of Hong Kong and Hong Kong University; and (2) analysis, both quantitative and qualitative, of actual answers to problem questions from students at City University. The research yielded a number of interesting insights into answers to problem questions, the IRAC method, and the interplay between the two. It is hoped that these insights will be used to develop more effective EALP pedagogy and materials.
I. INTRODUCTION

The area of English for Academic Legal Purposes (EALP) presents special challenges, as well as opportunities, for teachers and students. There are a number of problems and issues that are unique to this area of English for Specific Purposes (ESP). These problems and issues relate to all four communication skills: reading, writing, listening, and speaking. The focus of this paper will be on academic legal writing, specifically on answering what is known as the “problem question.” It will look at the issue of if and how something called the “IRAC method” influences the rhetorical structure of problem questions.

There are many reasons for taking up the problem question genre. First, it is typically the most common genre encountered in common law legal education. Second, the purpose of the genre is to develop core analytical, cognitive, and rhetorical competencies in students; something which is sometimes referred to as “thinking and writing like a lawyer”. The problem question aims to develop broad, general competencies that can then be used in various, specific (academic and professional) legal contexts and in various, specific (written and spoken) legal genres. Third, the paper takes up problem questions because it anticipates finding strong evidence within this genre of use of the IRAC method. Finally, there are strong possibilities for improving EALP pedagogy through the analysis of problem questions since they can be used to link other legal genres, both writing and reading, in an approach discussed later in this paper.

In order to analyze legal problem questions, this paper will look at the IRAC method generally, as well as whether and to what extent it is manifest in the problem question genre. The purpose of studying the relationship between problem questions
and the IRAC method is to better understand the rhetorical structure of problem question answers, particularly in terms of what makes “good” or “bad” answers.
2.1. EALP: PROBLEMS AND ISSUES

As an initial step, it will be helpful to briefly survey the current EALP writing landscape in order to identify some of the major challenges in this area. There are a number of challenges for both teachers and students.

2.1.1. Variations between Legal Systems

One challenge for EALP is the fact that law, much more so than other areas such as business or engineering, includes a number of different types of legal systems. Indeed, every country has its own unique legal system. It is probably safe to assume that if a student is studying law in English, he or she is studying a common law system. But there are significant variations even among common law systems. The British legal system is not exactly the same as the American system, which, in turn, is not the same as the Hong Kong system.

For example, there are differences in the law itself, in legal content. There are also some differences in terms of vocabulary and the types and names of written and spoken legal genres, both academic and professional. There are also differences in terms of legal education. In the U.S., law is studied in “law school”, which is a three-year graduate program leading to a Juris Doctorate (J.D.) degree. In Hong Kong, which follows the British model, law is studied as an undergraduate subject in a program called the LL.B. (Bachelor of Laws), with an additional year of postgraduate study called the PCLL (Postgraduate Certificate in Laws).

These variations between common law legal and educational systems can create problems for EALP. For one thing, it is difficult to write a book or develop materials that are universally valid for EALP or for English for Occupational Legal
Purposes (EOLP). It is also difficult to develop a curriculum or pedagogic approach to EALP that is valid for all, or even most, common law contexts.

2.1.2. The Large Variety of Written Academic Legal Genres

Another challenge for EALP students and teachers is the great variety of written academic legal genres encountered in law school. Some of these the student will have to read, others the student will have to write. As mentioned above, the exact genres will vary somewhat from legal system to legal system. Examples of the types of written genres a law student may encounter include the following. In terms of writing:

- problem questions
- case notes or briefs (i.e., case summaries)
- critical/argumentative essays
- memoranda
- appellate briefs
- letters

In terms of reading (and sometimes writing):

- cases
- statutes/ordinances
- textbooks/casebooks
- constitutions
- contracts
- wills
- various other legal documents (e.g., writs and pleadings)

2.1.3. The General Difficulty of Legal Language

The discipline of law seems to present unique difficulties for native speaker (NS) and non-native speaker (NNS) students alike. In addition to learning new legal content areas, students also have to come to grips with an entirely new set of vocabulary; new and often strange and difficult styles of English; and new methods of logic, analysis, and critical thinking. Additionally, in law, language plays an especially central role. Law does not exist in a natural state; it is constructed,
interpreted, and negotiated through language. Further, legal concepts and the language that expresses them form a dense, interwoven texture where the distinction between language and content is blurred.

Related to this, a study of NS and NNS law students in Australia yielded some interesting results (Beasley 1994:6). The questions from the study were based on a list of nine types of problems Davie (1982) has identified students as having when studying law. Based on answers to questionnaires, three areas were identified as being problematic for most students: (1) organizing answers to legal problem questions; (2) identifying the area(s) of law at issue in a case or problem question; and (3) legal language at the lexical level.

A further four were indicated by around half the students as being problematic: (1) the grammar and structure of legal language; (2) the rhetoric and logic of the judge's argument in cases, (3) identifying when more information is needed to fully answer a problem question; and (4) citing relevant cases when answering legal problem questions.

2.1.4. Learning a New “Logic”

A related challenge is the fact that a large part of studying law involves more than just mastering new vocabulary and new substantive law, but also involves learning new ways of thinking and new ways of approaching situations; in short, a new “logic”. This is often referred to as “thinking like a lawyer”. As Howe (1990:215) writes:

When (law) students begin, not only do they have to acquire new lexis, but also new concepts and new ways of thinking. Behind the form and the lexis lies the tradition of the logic of the law – the concepts of issues, points of law, authority, opinion, decision, and so on, arranged in a discourse peculiar to the subject. These concepts and techniques of arguments are different from other subjects in the social sciences and have to be learnt.
And the problem runs even deeper. There are cultural variations in methods and styles of learning. As Ballard and Clancy (1984:7) point out, NNS students usually expect some problems with lack of English fluency and accuracy but fail to anticipate “the need to change habits of thinking, studying and learning to suit the demands of the foreign education system.”

There are also different rhetorical traditions – what may be called different “logic” – from culture to culture, as well as different patterns of ordering and structuring information. (See Kaplan, 1966, 1987) In the 1966 article, Kaplan introduced the concept of contrastive rhetoric, which suggests that analytical paradigms are based in culture and that there is no inherent “logic” in thought but rather that cultures create their own “logic” in problem-solving.

In another relevant article, Ramsfield (1997) suggests that the legal “logic” (which she also refers to as “rhetorical preference”) U.S. law schools teach their students is really only one type of logic. She points out that NNS students bring a different type of logic with them from their own country and culture, and that even NS students probably bring a different kind of logic still from their prior, non-legal disciplines of study. Her point is that it is important for U.S. law teachers to be aware of these differences and to make a deliberate effort to induct new law students into these new rhetorical preferences in order to help them “thinking like a (U.S.) lawyer”.

2.1.5. Lack of Legal Knowledge among ESP Teachers

A final challenge is presented by the fact that most EALP teachers do not have a legal background. Of course, this is a potential problem in any area of ESP: the teacher does not normally have expertise in the ESP area being taught. But for many ESP teachers, law seems to be more daunting a subject matter than most. Indeed, due to their lack of legal knowledge, many ESP instructors are extremely uncomfortable
teaching such courses. As Bhatia states, “most ESP practitioners find it difficult to
penetrate the complexities of legal language and thought even with a lot of genuine
interest and serious effort.” (1987:231)

2.2. PROBLEM QUESTIONS AND THE IRAC METHOD

As previously mentioned, this paper looks how IRAC influences the rhetorical
structure of answers to problem questions.

2.2.1. Problem Questions

Problem questions are fact scenarios created by law teachers for law students
to analyze from a legal perspective. A good definition is provided by Enright
(1986:347):

By a problem or problem question is meant a question or exercise where a
student is asked to discuss the legal consequences of a set of facts. Normally
these consequences are expressed in terms of the availability of some remedy.
Further, it is a common practice to construct a problem so that the legal
consequences of the facts are not immediately clear. . . The areas where the
legal consequences of the facts are not clear constitute “the issues”, and are the
very essence of the problem question.

Problem questions are typically used for law school exams and are the most
common type of exam. They do not, of themselves, constitute a genre encountered in
legal practice. Their purpose is purely academic. Although one of their purposes is to
test the student’s knowledge of the content area, an equally important purpose is to
teach students how to “think like a lawyer”. They help students develop legal critical
and analytical skills which they can later use in various professional contexts and with
various professional genres.

In the law school at City University of Hong Kong, as in all other common
law-based law schools, students encounter the problem question in many courses. In
the LLB program, courses that contain a problem question component include: Law
of Contracts, Law of Tort, Legal Systems & Method, Criminal Law, Equity &Trusts,
and Law of Organizations. In the PCLL program, courses that contain a problem question component include: Wills & Probate, Conveyancing, Landlord & Tenant, Commercial Law & Practice, Revenue Law, and Professional Conduct. As can be seen, the problem question is a very significant part of the writing requirements of the law program.

The following is an example of a problem question taken from a City University Criminal Law coursework assignment.

Wong, who lives in an old person’s home, is a bad tempered 85 year old man who also suffers from hypoglycaemia. His condition sometimes leads to bouts of memory loss. He is also partially deaf. One morning, he was in a very bad temper and threw his medicine at a nurse. He also drank two large glasses of brandy. Later, he overheard a conversation between Betty, the nurse in charge of the home, and a doctor. Their conversation was about the need to exterminate the cockroaches in the home but Wong thought they were plotting to kill him. The next day, Wong secretly put some poison in Betty’s tea. Suzy, another nurse drank the tea and fell into a coma. She was rushed to hospital in an ambulance accompanied by Mary, a trainee nurse. Along the way, Suzy’s heart stopped but Mary, thinking that Suzy would end up in a vegetative state if she survived, did nothing to help Suzy who died. Wong says he remembers nothing after his consumption of the brandy. Discuss the liability of Wong and Mary.

2.2.2. The IRAC Method

“IRAC” is a pneumonic formulation which stands for “Issue, Rule, Application, Conclusion”. It is a cognitive, rhetorical, analytical, organizational, and pedagogical technique or tool taught, with some variation, in many common law-based law schools, including virtually every U.S. law school. Its main purpose is to provide a useful model for writing a legal analysis of individual legal issues. As Yelin (1996:381) puts it, it is the “architectural blueprint for the legal discussion. It gives legal writing continuity and clarity and organizes the contents of the discussion. IRAC provides legal support and analysis for the issue posed by the problem and guides the writer toward a well-supported conclusion.”
The idea is that, when approaching a situation from a legal perspective, one first determines what the legal issue(s) are, then states the relevant legal rule(s), then analyzes the situation by applying the rules to the facts of this situation, and finally reaches a legal conclusion based on this analysis.

Although IRAC can also be used in legal practice, it is first introduced and practiced in law school. It is presented to law students as an effective way of approaching problem questions.

2.2.3. Using IRAC to Answer Problem Questions

When using IRAC to answer problem questions, the “I”, identifying the issues, is one of the most important parts of the answer. It is important because it displays the student’s ability to recognize what the real problems are, the gray areas, the issues the court will have to decide. This is an important and difficult skill as it involves taking an everyday situation, described in everyday language, and reconceptualizing it into legal terms. As Goodrich (1987:187) puts it:

In any given instance the predominant ideological characteristic of legal argument is the highly selective manner in which it “particularizes” or translates a series of sociological relations and conflicts into a narrow set of legally relevant facts or issues. As a number of studies have argued, this particularization or decontextualization of legal discourse is its most significant ideological hallmark: concrete social relationships and real (social) people are transmogrified into the abstractly free and equal legal subjects of the legal code.

The application portion of IRAC is also very important. This is where one uses the facts of the problem to demonstrate (i.e., not merely conclude) why and how the legal rule should apply to the issue posed. This is the legal analysis. Within the law school context, how a student goes about applying the legal rules to the facts and analyzing the various possible outcomes is much more important than the eventual conclusion reached.
Of course, having IRAC as a tool for analyzing situations from a legal perspective still does not make the task automatic or easy. Indeed, legal analysis should never be, and really cannot be, automatic. As one book cautions, “IRAC is merely a framework within which to build your analysis: It should not appear to your readers that you have merely plugged information into a rigid formula.” (Charrow, 1995:142)

Further, as Farrar and Dugdale (1984:75) point out, various analytical skills are required when performing an IRAC analysis. As stated, one must first identify the issue(s). Analogical reasoning must then be used to select the relevant legal precedents. Inductive reasoning must be used to synthesize the precedents and produce a statement of law, or rule, from these precedents. Finally, deductive reasoning must be used to answer the question posed in the issue.

Discussions of IRAC, with exercises, samples answers, and so on, can be found in a number of legal writing books and manuals, especially those written for an American audience. (See, e.g., Calleros, 1998:149; Charrow, 1995:140; Edwards, 1996:86; McVea & Cumper, 1996:16; Yelin, 1996:381.) Additional materials on IRAC can be found at a number of legal web sites.

There are variations on IRAC depending on the book being used, the legal education context, and the preferences of the individual teacher, student, and legal practitioner. One variation is “IPCAC”, which stands for Issue, Principle, Case, Application, and Conclusion. This approach has been developed and is currently used in the Hong Kong University English Enhancement for Law (EEL) courses.

Another variation is “IREAAC”, which stands for Issue, Rule, Explanation, Application for one side, Application for the other side, and Conclusion. (Wojcik, 1998)
Gaskell (1989:79) recommends the following when answering legal problem questions:

The form in which you should write is that adopted by the textbook writers. You should state a proposition of law; you should give the authority for that proposition; and you should then apply that proposition. …A fuller way of presenting the argument would be (1) Problem/issue; (2) Proposition; (3) Authority; (4) Application.

In their handbook for studying business law, Crosling and Murphy (1994:127-8) put forward a tentative model for answering problem questions. They stress that it “is not a rigid formula that must be applied exactly in this format…there is room for flexibility.” It is (1) state the known; (2) raise the issue; (3) cite the case; (4) state the rules, principles, or statutes; (5) state the facts and analyze them in terms of (2) and (4); (6) come to an opinion; and, if appropriate, (7) state a remedy.

Although these approaches do not strictly follow IRAC, they are substantially similar. And by far the most common approach remains IRAC.

2.3. PRIOR RESEARCH ON PROBLEM QUESTIONS

As Howe (1990:218) has stated, “Jurists have studied and analyzed the discourse of law for a long time, but with their own terminology and techniques and at such a sophisticated and philosophical level that works on the discourse of law were found to be only marginally helpful to the language teacher and non-lawyer.” From a language perspective, prior research into problem questions, or other academic legal genres for that matter, is very limited. The most significant work on problem questions has been done by Howe (1990) and Beasley (1993 & 1994).

Howe looked at 20 problem question scripts, 10 by students and 10 by teachers. These were taken from students and teachers at the University of Buckingham from four areas: Criminal Law (6 papers), Public Law (3 papers), Contract Law (6 papers), and Tort Law (5 papers). One of the papers was written as a
class paper; the other nine under exam conditions. Six of the students were NS, four NNS with Chinese as their first language.

The 10 model answers by teachers were from a variety of sources. Three came from the university’s study handbook, one was written by a lecturer for a previous study skills leaflet, and six were from a reputable law tutorial college.

Based on an analysis of these texts, Howe found what she calls eight “units of discourse”, as follows:

1. The situation
2. The instruction
3. The forecast
4. The issue
5. The law
6. Its authority (case or statute)
7. The application of the facts
8. Opinion (and advice)

The first two units pertain to the problem question itself; the other six to the answer.

Not all of the units were present in all of the scripts. For example, the “forecast” would appear to be optional, as it was found in only nine of the 20 scripts. On the other hand, the “law”, “its authority”, and the “application (of the law) to the facts” are more central as they were found to be present in all of the papers. (Indeed, Howe refers to these three units as the “central nucleus” (230).) Also, these three units could be repeated depending on the number of issues in the problem. The “issue” was stated in 17 of the 20 scripts. But Howe asserts that the issue “may sometimes be assumed”. (224) It always preceded the three central units.

Two additional points from Howe are worth noting:

It is interesting to note that a student whose first language is Chinese can allow the accuracy of his English to disintegrate quite substantially under the pressure of a test, so long as he has the accepted schema and discourse, clearly indicated by plentiful signalers. . . (233)

And:
Apart from the shorter model answers, the lack of variation among the scripts and their degree of conformity to the accepted discourse, the schema, are impressive. It is a far less flexible discourse than that found in academic essays. It reproduces on paper the expectation in the lawyer’s mind – the “cognitive structure(s) which the individual uses to organize experience” (citations). (235)

Turning to Beasley, both of his articles derive from the same research. For the research, he focused on a first year course at Murdoch University in Australia called Principles of Commercial Law. As part of this research, he contacted NS and NNS students who had failed the examination component of the course, a problem question. He interviewed them and also gave them a questionnaire about their experience and about the difficulties they experienced in the course. (See Beasley, 1993.)

Beasley also analyzed answers to problem questions from the course. He first looked at the lecturer’s model answers to the following problem question:

An infant student took a lease of a flat for 12 months and undertook not to damage the flat in any way and to keep it in a tenantable condition. During a party held in the second month of occupation, considerable damage was done to the flat and the student repudiated the lease. Is he liable for the damage done and/or for the rent due prior to repudiation? Can he recover the rent he has already paid prior to the date of repudiation? (1993:9)

He determined that the model answer from the course tutor could be divided into four tightly organized sections:

1. A brief restatement of the problem question. (1 paragraph)
2. A detailed discussion of the law relevant to the question. (4 paragraphs)
3. An in-depth application of this law to the facts of the question. (6 paragraphs)
4. A summary of conclusions in regard to the questions posed by the problem. (1 paragraph)

(1993:10) He also notes that, while later lecturers on this course disagreed with some aspects of this model answer, such as the appropriateness of restating the question presented, and even the concept of a model answer, they all agreed on the need to
organize answers in a systematic and logical way that addresses the issues raised by applying relevant legal principles, backed up by authority. (1993:11)

In a later article (1994), Beasley looks at additional model answers to problem questions from tutors. He also represents these diagrammatically. He concludes that:

Analyses of model or suggested answers to legal problem questions set in the C165 course by lecturers either as tutorial, assignment or examination questions confirm the generic structure proposed by Howe (1990): Forecast/Overview – F/O, Issue – I, Law – L, Authority – A, Application of Law to Facts – F, Opinion/Advice – O; and also, the somewhat simpler structure outlined by Gaskell (1989) as: Problem/Issue, Proposition, Authority, Application. This is the prototypical pattern although variation occurs in some contexts depending on the area of law and type of problem as well as the intended audience. (214)

Beasley also analyzes four student answers to problem questions written under exam conditions. His analysis looks at both content and language usage. Again, he also represents these diagrammatically. He concludes that:

Analysis of four students’ attempts at writing answers to legal problem questions under exam conditions reveal different degrees of understanding of how to construct generically appropriate answers to problem questions. All four students displayed some knowledge of relevant legal principles and authorities (i.e. content) but this by itself will not necessarily ensure a good mark if the appropriate generic staging is not followed. This staging is part of the process of demonstrating sound legal reasoning because the task is fundamentally about “reasoning like a lawyer” in order to reach conclusions of legal opinion or advice for clients.

On the other hand, he notes that, if students do construct their answers according to the generic structure and even reach accurate conclusions but fail to satisfy the content requirements of the genre, (not surprisingly) they do not score well. (1994:221)
III. METHODOLOGY

To improve the validity of the analysis, two research methods were used: (1) Interviews of City University of Hong Kong and Hong Kong University teaching staff, and (2) textual analyses of various student answers to problem questions. The textual analysis was both quantitative and qualitative, as described below.

3.1. STAFF INTERVIEWS

For the interviews, City University of Hong Kong and Hong University teaching staff were interviewed. From Hong Kong University, two tutors on the course “English Enhancement for Law” (EEL) were interviewed. This course is designed to prepare Hong Kong University law students for the study of law in English. From City University of Hong Kong, two tutors on the course “English for Legal Purposes” (ELP) were interviewed. The purpose of this course is the same as EEL: to prepare City University of Hong Kong law students for the study of law in English. Five tutors in the City University of Hong Kong School of Law were also interviewed. Tutors from the following courses were selected:

- Legal Systems and Method (LLB; Year 1)
- Law of Torts (LLB; Year 1)
- Constitutional and Administrative Law (LLB; Year 1)
- Criminal Law (LLB; Year 2)
- Conveyancing/Landlord & Tenant/Wills & Probate (PCLL)

Tutors were selected who would provide a representative cross-section of the various types of course content and teaching methods students encounter throughout the course of their legal education. Course tutors from the ELP and EEL courses were
selected because those courses are more language-based and specifically designed to help students with their legal reading and writing. Also, courses were selected from which student writing samples were collected and analyzed as part of the textual analysis.

The purpose of the interviews was to gain insights into the following issues:

- Whether students are required to answer problem questions as part of the course assessments.
- Whether and to what degree students receive instruction from the tutor on legal analysis and reasoning, especially regarding how to answer problem questions.
- Whether tutors subscribe to the IRAC approach, or another similar approach, to legal analysis and reasoning, especially with regard to problem questions.
- If they do subscribe to IRAC or a similar approach, whether they teach this approach to their students.
- Whether they know of other courses where students receive instruction in legal analysis and reasoning generally, and approaches to problem questions specifically.
- How tutors go about marking student answers to problem questions; in other words, what they consider to be criterial when marking problem questions.

The highlights and common themes of these interviews can be found in the next section, FINDINGS 1.

3.2. TEXTUAL ANALYSIS

3.2.1. Papers Analyzed

A textual analysis was also performed on the following student answers to problem question answers:

- **Group A**: Six (6) exam papers from the LLB Year 1 Law of Tort course at City University. The answer analyzed was only one out of a total of four questions the students had to answer in a three-hour exam. It was worth 25% of the total score. If students allocated equal time to each question, they would have had about 45 minutes to write this answer.

- **Group B**: Ten (10) take-home papers from the LLB Year 2 Criminal Law course at City University. Word limit of 1800 words.
These two courses were chosen for various reasons. First, because they required the students to write answers to problem questions. Second, because Torts and Criminal Law are core courses that must be taken by all law students. Third, Groups A is a Year 1 course and Group B is a Year 2 course. This provides a comparison between Year 1 and Year 2 students. Fourth, the papers from Group A were written under exam conditions, whereas the papers from Group B were a take-home assignment. Again, this provides a broader view of problem questions written under varying conditions. Fifth, the fact pattern and question(s) posed for the two groups varied considerably. Finally, the overall length, and therefore the depth of analysis, was very different between the two papers, thus providing a broader perspective of different types of problem questions.

For purposes of validity, it was important to factor the above variables into the analysis. That is, it was important to choose samples of differing length, of differing subject content, written under different conditions, presenting different fact scenarios, and asking different kinds of questions based on these facts. It was important because “problem questions” is a deceptively broad category of academic legal writing, precisely because it can take so many forms. Only by taking these variations into account is it possible to make valid conclusions about “common” or “typical” rhetorical features in problem questions.

Because Group B papers were written out of class and with no time limitation, and because the assignment itself required a more complex organization, analysis, and discussion of the problem question, analysis of this group proved to be more rewarding. The length and complexity of the papers allowed for clearer rhetorical patterns to emerge, and to thus be analyzed. Consequently, more of these papers were chose for analysis (10) than those in Group A (6).
The papers from Groups A and B were selected according to grade received. High-, middle-, and low-grade papers were selected in order to provide a means of comparison. The main purpose of the comparison was to try to determine what makes a paper “good” or “bad” in the eyes of the marker. Special attention was paid to whether there was a correlation between the grade received and the degree to which the rhetorical structure followed IRAC.

The six Group A papers received the following grades out of 100 possible points: 87, 85, 60, 38, 25, and 25. The 10 Group B papers received the following letter grades: A-, B++, B+, B+, C-, C-, C-, D, and D.

3.2.2. Type of Analysis

The analysis was a type of rhetorical structural analysis. It was initially thought that something called Rhetorical Structure Theory (RST) would be the best approach for analyzing the papers. (See Mann & Thompson 1986) RST offers a tool for analyzing the organization of texts in terms of 22 “relations” which can be identified between pairs of text spans.

After struggling to apply the RST approach to the analysis of legal problem question, it was decided that it would not be the best approach after all. The RST approach is best suited to classic student essay type writing. It breaks a paper into rhetorical units. These are placed into a diagrammatic structure according to their function in the paper. Some units are classified as central arguments, called “nuclei”, while others are classified as supporting arguments, called “satellites”. This creates a “picture” of the essay. This picture can then be analyzed in terms of consistency and overall balance and cohesiveness of structure.

This overall balance and cohesiveness of structure, however, is anathema to problem questions. Problem questions are by nature disjointed, consisting of a number
of discrete issues. Each issue is expected to be taken up and discussed one by one, and overall cohesiveness of structure is not only not important, but actually undesirable.

RST was therefore abandoned. It was decided that IRAC would provide a more suitable approach to analyzing the rhetorical structure of problem questions. The first step in the analysis was to divide each paper into “rhetorical units” (RU). Each RU is a piece of text representing one discreet point, idea, or argument within the structure of the paper. It is not defined or delimited by grammatical structure but rather by ideational content. Most RUs consisted of one sentence. But some RUs were only a fraction of a sentence, while others were two or more sentences. Again, the determining factor for an RU was ideational content, not grammatical structure.

Once the paper had been divided into RUs, each RU was numbered according to its chronological position in the paper. It was then identified as belonging to one of the IRAC categories: Issue, Rule, Analysis, or Conclusion. The RUs were then used to create three types of diagrams. For the first diagram (D1), each RU was placed into one of four IRAC columns in a chart, moving down the page so as to create a visual image of the argument from the top of the chart moving down. This was done for each of the texts analyzed. (For examples from Group A, see Tables 1, 2, & 3; for examples from Group B, see Tables 4, 5, & 6, Appendix A.)

A second type of diagram (D2) was then created, which derived from the first. D2 is the same as D1 but with the text removed. This leaves only a numerical representation of each RU. These numbers are still located within the columns of the IRAC framework, but with the text removed a clearer visual pattern of the rhetorical structure of the paper emerges. Again, this was done for all texts analyzed. (For examples from Group A, see Tables 7, 8, & 9; for examples from Group B, see Tables 10, 11, & 12, Appendix B.) Again, this was done for each of the texts analyzed.
Finally, the D1 diagrams were taken up again and divided according to issues discussed. This was done for all Group B papers. This created a third type of diagram (D3). (See Tables Appendix C.)

Once the rhetorical structure of the papers had been mapped within the IRAC framework, they were then analyzed in various quantifiable ways, as follows.

- Overall word length
- Overall number of rhetorical units
- Number of issues identified and discussed
- Percentage of total rhetorical units in each IRAC category

The results were placed in charts. (See pages 41 & 43.)

The papers were also analyzed in a non-quantifiable, more qualitative way according to degree to which each issue discussed followed the IRAC rhetorical pattern. This was done by analyzing the D3 charts which, as mentioned, divide the papers into issues identified and discussed. The papers were divided into issues and analyzed from this perspective because IRAC is an approach meant to be used for individual legal issues, usually within a larger text. Most problem questions, for instance, contain a number of issues and IRAC must be used in discussing each of them.

In many cases, the issue was not explicitly identified by the student. It was found that, just as Howe concluded (1990:224), sometimes the issue is stated in the form of a tentative opinion, and sometimes it is not stated at all, but can be inferred or assumed from the context and structure of the argument.

3.3. PROBLEMS PLACING UNITS INTO THE IRAC FORMULA

In most cases it was easy to identify in which IRAC category an RU belonged. For example:
• Issue: “Consent: If Daniel has a consent from Peter, either implied or express, it would be a very good defense for Daniel.”

• Rule: “In the case of (Case Cite) Jones J said, the privilege is for the legitimate protection of the defendant’s own interests.”

• Rule: “For the conviction of attempted murder to be established, the first thing that the prosecutor has to prove is that the act of adding poison is more than merely preparatory (Case Cite), as specified in (Ordinance).”

• Application: “Drawing on this principle, Wong could argue that his act was reckless in order to plea manslaughter.”

• Application: “Firstly, Wong added poison to the tea. This act may cause death to the person who drinks that tea.”

• Conclusion: “Conclusion: The defence of fair comment to Daniel has a high possibility to fail.”

• Conclusion: “To conclude, the actus rea and the mens rea are proved.”

However, in some cases it was difficult to decide in which IRAC category an RU belonged. For example:

• Rule or Application?: “Besides, with reference to (Case Cite), for the causation in law to be established, Wong’s conduct needs to be the sole of the result.”

• Rule or Application?: “Besides, he has to prove that there is no external agent trigger his hypoglycemia condition.”

• Application or Conclusion?: “By concluding his lordship’s working, it is submitted that the poisonous tea is most probably an operating and substantial cause of Suzy’s death.”

• Application or Conclusion?: “In other words, Wong set out to kill Betty but accidentally killed Suzy, Wong is still guilty of murder.”

• Application or Conclusion?: “As a result, causation link is not broken and there is no defence.”

• Issue or Conclusion?: “Betty is the one Wong try to kill, so Wong can be charged with the attempted murder.”
Most ambiguity about where to place an RU involved the “Rule” and the
“Application” categories. This is because often, and for obvious reasons, while
applying the rule(s) to the facts of the problem question the actual rule had to be
referred to and possibly discussed.

When ambiguity exists, placing an RU into an IRAC category is ultimately a
somewhat subjective decision. Nevertheless, every effort was made to place each RU
in the appropriate IRAC category in light of the overall structure of the paper. The RU
in question was always considered in light of the surrounding text and the structure of
the argument up to that point in the paper. Also, the author tried to refrain from
placing an RU into one of the IRAC categories simply because the language in that
unit seemed to conform to the typical language of that category.

As stated earlier, one other problem arose with regard to the “Issue” category
of IRAC. In many cases it had to be inferred from the overall context of the argument
when an issue was being discussed and when the paper moved on to a new issue. The
case was rare when an RU baldly stated something like “the next issue to be
considered is...” In most cases, the issue was either implied by the writer or only
cryptically indicated through means of a heading or a brief statement, such as “Fair
Comment”, or “Consent”, or “There are several defences to consider.”
IV. FINDINGS 1: RESULTS OF STAFF INTERVIEWS

As mentioned above, part of the methodology for this paper was interviewing staff. Those interviewed were two tutors from the Hong Kong University English Enhancement for Law course, two tutors from the City University of Hong Kong English for Legal Purposes course, and five tutors from the City University of Hong Kong law school.

The interviews were undertaken in order to find out what type of help or instruction the students get from their tutors in answering problem questions, and at what point in their legal education they get it. This included how important the IRAC method, or another method, is to these tutors. The interviews also attempted to discover to what degree the rhetorical structure of a paper influences the grade awarded to the paper. The following issues were discussed.

- Whether students are required to answer problem questions as part of the course assessments
- Whether and to what degree students receive instruction from that tutor on legal analysis and reasoning, especially regarding how to answer problem questions
- Whether tutors subscribe to the IRAC approach, or another similar approach, to legal analysis and reasoning
- If they do subscribe to IRAC or a similar approach, whether they teach this approach to their students
- Whether they know of other courses where students receive instruction in legal analysis and reasoning generally, and approaches to problem questions specifically
- How tutors go about marking student answers to problem questions; in other words, what they consider to be criterial when marking problem questions
4.1. ANALYSIS OF INTERVIEWS

The following are the main points derived from the interviews.

**English for Legal Purposes (ELP) (Year 1)**

- This course suffers somewhat from a lack of strong support from the law school and a lack of a clear mandate as to what it should and should not be teaching. This leads to some confusion over whether it should be teaching general legal skills or more specific academic legal reading and writing skills.

- In Semester B, students are introduced to the IRAC method. They are given substantial materials, including examples and exercises, on IRAC and using it to answer problem questions. They go through these in class.

- In Semester B, students are asked to analyze a case in terms of its language, organization, and rhetorical structure. This often leads to discussions of IRAC. They are asked to prepare a case note from the case. Most students use IRAC for this.

- In Semester B, students are asked to write and present a legal brief (from a solicitor to a barrister) based on that year’s moot court question. Moot court questions from previous years are analyzed in-class, including for IRAC structure. Many students use IRAC to some degree in preparing their legal brief.

- In Semester B, students are required to read and briefly discuss the previously mentioned article by Howe (1990) on problem questions.

**Legal Systems & Method (Year 1; LLB)**

- Answering problems questions is not part of the course work or exam.

- Approaches to answering problem questions are not discussed.

- Students are given the following types of assignments:
  - Reading, analyzing, and identifying the parts of a case
  - Preparing a legal memorandum (from a solicitor to a barrister – summary of facts and law)
  - Preparing a case note and headnote (i.e., a case summary)
  - Writing an essay-type paper

**Law of Torts (Year 1; LLB)**

- The exam is based exclusively on answering problem questions.

- No written instruction is given to the students regarding approaches to legal analysis or answering problem questions.
• There is some discussion, usually after exams have been passed back, on how to answer problem questions. This is usually limited to specific issues and problems from the actual exams.

• IRAC is never specifically discussed with the students.

• The tutor considers IRAC to be a generally valid approach to answering problem questions as long as it is not too rigidly or mechanically applied.

Constitutional & Administrative Law (Year 1; LLB)

• There is no problem question component to the course; the major assignment is a critical/analytical essay question.

• Students receive no instruction on legal analysis or the IRAC method.

• The tutor considers IRAC to be a generally valid approach to answering problem questions.

Criminal Law (Year 2; LLB)

• Course assignments and exams are based on answering problem questions.

• Approaches to legal analysis and reasoning are taught in tutorial sessions. Cases are discussed in-class and students are encouraged to analyze the issues presented in the case and apply the relevant rules to these issues to reach conclusions. In other words, a form of IRAC analysis is used, although the tutor does not call it IRAC but rather “building blocks”.

• After correcting and returning the assignment or exam, the tutor presents the students with a sample or model answer. The typical approach used in the model answer is to discuss (1) whether criminal liability exists, (2) what the proofs are, and (3) what the defenses are.

• In terms of what the tutor considers criterial when marking problem questions, although it depends on the specific question, the following factors are important: understanding the question(s) and answering it/them as instructed, spotting the relevant issues, knowing the relevant law, applying the law to the facts of the problem in a non-mechanical way, using clear and logical organization, clearly expressing ideas (i.e., effective use of language).

Conveyancing/Landlord & Tenant/Wills & Probate (PCLL)

• Much of the assessment in this course is based on answers to problem questions, which are part of the in-class exams.

• Compared with most of the problem questions in the LLB courses, these problem questions tend to be much shorter and more focused on specific and very practical aspects of the course content.
Although the tutor subscribes to the IRAC approach and considers it appropriate and valid for the LLB, she feels that by the time students get to the PCLL they should have “internalized” the approach and moved on to more sophisticated legal analytical approaches.

Neither IRAC nor other approaches to legal analysis are specifically discussed with the students. It is assumed they know it by now.

Important factors when grading exam papers are: Identification of the relevant issues, knowledge of the relevant law, competent and comprehensive application of the law to the facts, and clear and effective organization. Also, and quite importantly, correct use of language (especially tone) and of generic conventions takes on much more importance at the PCLL level. This is because the texts produced by students must be more practically oriented than those in the LLB as they are designed to help students with the transition from study to practice.

**English Enhancement for Law (EEL) (Year 1; LLB; Hong Kong University)**

A quote from one of the EEL tutors will perhaps be most effective in portraying the general situation at Hong Kong University:

No, interestingly they (the students) get very little guidance on answering problem questions from the law teachers. I honestly don’t think that the law teachers have thought about it that much. The students get a double sided A4 handout towards the end of the year that contains advice about “arguing in the alternative”, “citing cases”, “addressing only relevant issues”, etc., but no mention of IRAC or IPCAC.

The students do, however, get quite a bit of help from the EEL course.

- EEL receives strong support from the law school and has a clear mandate to teach legal reading and writing skills to Year 1 students.

- EEL works together with the Law of Torts course. It uses the legal content from this course as a vehicle for teaching reading and writing.

- As mentioned previously, the approach used in EEL is very similar to IRAC, known by the pneumonic IPCAC (Issue, Principle, Case, Application, Conclusion).

- IPCAC is first used in Semester A when the focus is on teaching reading. It is used as a cognitive tool to help students read more effectively and understand legal cases better.

- IPCAC is used in Semester B to help the students with their legal writing, particular writing answers to problem questions.
In Semester B, an entire unit is devoted to problem solving questions. The general IPCAC structure is discussed as well as useful language for expressing the IPCAC points.

4.2. GENERAL CONCLUSIONS FROM THE INTERVIEWS

A number of important insights can be drawn from the results of the interviews.

1. At both City University and Hong Kong University problem questions are part of the course assignments and exams for a very significant number of LLB and PCLL courses.

2. At City University, students receive some instruction on general approaches to legal reasoning and analysis from their LLM courses, in particular from Legal Systems & Method and ELP in Year 1 and from Criminal Law in Year 2.

3. At City University, with the exception of ELP, students get little instruction on IRAC and approaches to answering problem questions. Starting in Semester B, Year 1 students receive instruction from the ELP course on IRAC and answers to problem questions.

4. The ELP course is hampered by the lack of a clear mandate from the law school and a resultant confusion about exactly what type of skills should be taught in the ELP course.

5. The situation appears to be somewhat better at Hong Kong University. This is because the EEL course has stronger support from the law school and a clearer mandate to teach legal reading and writing. Outside the EEL course, students get very little instruction on legal analysis from their legal content tutors. The EEL course uses IPCAC, which is similar to IRAC, to teach legal reading and writing. The course is taught in conjunction with the Law of Torts course.
6. IRAC, or something similar, is considered by all the tutors interviewed to be a valid and effective approach to answering problem questions. Some of the tutors also view IRAC is an effective cognitive tool for teaching legal reading, especially reading cases.

7. The problem questions in the PCLL tend to be shorter and more focused on specific and practical aspects of the course content. This is probably because the texts produced by PCLL students must be more practically oriented than those in the LLB as they are designed to help students with the transition from study to practice.

8. When marking answers to problem questions, tutors take many factors into account. Which of these are considered most important depends on the tutor and the type of question. These factors include:
   - Understanding the question(s) and answering it/them as instructed
   - Identifying and discussing the relevant issues
   - Knowing the relevant law
   - Applying the law to the facts of the problem in a real, non-mechanical way
   - Reaching well-reasoned, legally justifiable conclusions
   - Using clear, logical organization
   - Expressing ideas clearly (i.e., using language effectively)
V. FINDINGS 2: RESULTS OF ANALYSIS OF ANSWERS TO PROBLEM QUESTIONS – QUANTITATIVE FINDINGS

This section and Section VI attempt to identify and establish relationships between the rhetorical techniques used in the sample papers and the grade awarded to the papers. It is hypothesized that the more closely the rhetorical structure follows IRAC, the higher the grade awarded to the paper. However, two points must be emphasized at the outset. First, the rhetorical structure of a problem question answer may be influenced by many factors, such as:

- The nature of the problem question(s).
- The instructions provided with the problem question for answering the question. (E.g., “Peter is now suing Daniel. Advise Daniel as to the possible defenses he could plead and the chances of his success.” [Group A] Or, “Discuss the liability of Wong and Mary.” [Group B])
- Prior instructions for answering problem questions given to the students by the tutor.
- The conditions under which the paper was written. (E.g., exam conditions, take-home assignment, etc.)
- Other limitations placed on the paper. (E.g., word limit.)

Second, as discussed in the previous section, rhetorical structure is only one of many factors that will influence the grade. An analysis of rhetorical structure can therefore give us only one “piece of the puzzle” as it were as we try to understand problem questions. But it is an important piece and well worth analyzing.
8.1. THE ANALYSIS

As mentioned in the Methodology section, for each paper three types of charts were created based on IRAC. These charts were analyzed from a quantitative and a qualitative perspective. This section discusses the quantitative findings.

The papers were analyzed according to the following criteria:

- Grade received
- Total word length
- Total number of rhetorical units
- Number of issues identified and discussed (Group B only)
- Percentage of total RUs in each of the IRAC categories

The analysis attempted to determine if it is possible to establish a quantifiable link or relationship between the grade awarded to a paper and the above categories. The results of this analysis were mixed.

**Group A**

It is important to bear in mind that the answers from Group A were written under exam conditions. Also, the answer analyzed was only one of a total of four answers the students had to answer within a three hour period of time. So the pressures of time and working under exam conditions will have significantly affected the answers.

<table>
<thead>
<tr>
<th>Paper</th>
<th>Grade/Score</th>
<th>Word Length</th>
<th># of Rhetorical Units</th>
<th>% Breakdown of Rhetorical Units According to IRAC Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>87</td>
<td>809</td>
<td>56</td>
<td>I: 4 R: 61 A: 23 C: 13</td>
</tr>
<tr>
<td>A2</td>
<td>85</td>
<td>874</td>
<td>48</td>
<td>I: 4 R: 31 A: 54 C: 10</td>
</tr>
</tbody>
</table>
Looking at the chart, there is a rather strong correlation between word length and grade received. The highest grade paper (A1) was 809 words long, whereas the three lowest grade papers (A4, A5, and A6) were 304, 288, and 324 words respectively. In a paper written under exam conditions with a time limit, it is to be expected that, generally speaking, longer answers will receive higher marks.

The large discrepancy in terms of overall length between papers A1 or A2 and papers A3, A4, A5, and A6 could be due to a number of factors. It is most likely a function of time management. That is to say, the students who wrote longer answers probably chose to spend relatively more time on this answer and relatively less time on the other three answers in the exam. It is also possible that the writers of the high grade papers had an overall better command of English, or were simply better organized, which enabled them to write more in the same period of time.

There is also a fairly strong correlation between number of rhetorical units and grade received. A1 and A2 have 56 and 48 rhetorical units respectively, whereas A3, A4, A5, and A6 have only 16, 15, 14, and 14 respectively. This is to be expected given the discrepancy between high and low grade papers in terms of overall length, discussed above. The implication is that the higher grade papers were not only longer but also included more actual points, be they arguments, rules, comparisons, etc. as compared to lower grade papers.
The next comparison was percentage breakdown of rhetorical units according to IRAC category. This proved to be less fruitful. As can be seen from the table, no consistent pattern or correlation can be noted between the grade a paper received and the percentage breakdown of rhetorical units.

**Group B**

Group B papers were written under very different conditions from those in Group A. They were not written as part of an exam but as a take-home assignment. The students were given an 1800 word limit. Also, the problem question itself was much more complex, involving a number of issues and parties. All of these factors significantly influenced the results of the analysis of Group B.

Because Group B papers were written out of class and with no time limitation, and because the assignment itself required a more complex organization, analysis, and discussion of the problem question, analysis of this group proved to be more rewarding. The length and complexity of the papers allowed for clearer rhetorical patterns to emerge, and to thus be analyzed. Consequently, more of these papers were chosen for analysis (10) than those in Group A (6).

<table>
<thead>
<tr>
<th>Paper</th>
<th>Grade/Score</th>
<th>Word Length</th>
<th># of Rhetorical Units</th>
<th># of Issues (Identified &amp; Discussed)</th>
<th>% Breakdown of Rhetorical Units According to IRAC Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1</td>
<td>A-</td>
<td>1553</td>
<td>71</td>
<td>11</td>
<td>I: 14 R: 36 A: 37 C: 12</td>
</tr>
<tr>
<td>B2</td>
<td>B++</td>
<td>2355</td>
<td>102</td>
<td>10</td>
<td>I: 10 R: 39 A: 41 C: 10</td>
</tr>
<tr>
<td>B3</td>
<td>B+</td>
<td>1677</td>
<td>75</td>
<td>11</td>
<td>I: 16 R: 28 A: 49 C: 7</td>
</tr>
<tr>
<td>B4</td>
<td>B+</td>
<td>1603</td>
<td>89</td>
<td>10</td>
<td>I: 19 R: 29 A: 38 C: 13</td>
</tr>
<tr>
<td>B5</td>
<td>B+</td>
<td>1964</td>
<td>92</td>
<td>10</td>
<td>I: 15 R: 26 A: 47 C: 12</td>
</tr>
<tr>
<td>B6</td>
<td>C-</td>
<td>1189</td>
<td>56</td>
<td>2</td>
<td>I: 5 R: 43 A: 52 C: 0</td>
</tr>
</tbody>
</table>
Looking at the chart, because of the imposition of a word limit, analysis of total number of words does not yield many significant results. The only real conclusion that can be drawn is that a very short paper, well under the 1800 word limit, is likely to receive a low grade. This was the case with two of the lower grade papers. B6 had a total of 1189 words and received a grade of “C-“. B10 had a total of 1035 words and received a grade of “D”. The insufficiency of coverage in B10 is reflected in the tutor’s comments at the end of the paper: “You miss a considerable amount – see model answer. You refer to cases that are not relevant to the law you refer to. Should be an F.”

On the other hand, however, not using the entire 1800 words allotted does not necessarily lead to a low score. Paper B1 was the highest grade paper, with a grade of “A-“, but is only 1553 words, shorter than all the rest except B6 and B10.

Analysis of the total number or rhetorical units was equally unfruitful. Again, this is certainly a function of the fact that the papers were given an 1800 word limit. Fewer words equals fewer rhetorical units.

Analysis of the number of issues identified and discussed was more revealing. There seems to be a fairly strong correlation between the grade and the number of issues identified and discussed. Looking at the chart, the number of issues identified and discussed in the top five papers is 11, 10, 11, 10, and 10 respectively. The number of issues identified and discussed in the bottom five papers is 2, 7, 8, (impossible to
identify), and 4. (The “impossible to identify” paper, paper B9, was so convoluted and disorganized that it was virtually impossible to identify when and what issues were being discussed.) So the more issues identified and discussed seems to mean a better score for the paper.

The final section is the percentage breakdown of RUs according to IRAC category. As with the analysis of Group A, this did not yield very significant results. One small but interesting point is that all of the high grade papers have a relatively high percentage of RUs in the Application section. The top six papers have the following percentage of RUs in the Application section: 37, 41, 49, 38, 47, and 52. Two of the bottom four papers have percentages of only 21 and 30 in the Application section. But, to be fair, the other two of the bottom four papers have percentages of 49 and 44 in the Application section. This seems to indicate that not having a high enough percentage of rhetorical units in the Application section leads to a lower grade; however, having a high percentage of rhetorical units in the Application section does not guarantee a high grade.

8.2. GENERAL CONCLUSIONS FROM THE ANALYSIS

The results of the quantitative data analysis support a number of significant conclusions. Generally speaking, the following hold true for answers to problem questions:

1. For papers with no word limit, longer answers receive a higher grade.
2. For papers with no word limit, more rhetorical units bring a higher grade.
3. For papers with a word limit, very short papers, well under the word limit, receive a lower grade.
4. For papers with a word limit, not using most of the number of words allotted does not necessarily bring a lower grade.
5. There is a correlation between the number of issues identified and discussed and the grade received whereby the more issues identified and discussed, the higher the grade.

6. Having relatively low percentage of rhetorical units in the Application section seems to lead to a lower grade; however, having a relatively high percentage of rhetorical units in the Application section does not guarantee a high grade.
VI. FINDINGS 3: RESULTS OF ANALYSIS OF ANSWERS TO PROBLEM QUESTIONS – QUALITATIVE FINDINGS

The above quantitative analysis of answers to problem questions provides valuable insights but only goes part of the way toward understanding the rhetorical structure of the papers analyzed. To round out the picture, a qualitative analysis was also needed. This section discusses the qualitative analysis undertaken.

Only the papers in Group B were used for this analysis. This is because, as mentioned previously, the Group B papers were written out of class, with no time limitation, and because the assignment itself required a more complex organization, analysis, and discussion of the problem question. This made analysis of this group more rewarding as the length and complexity of the papers allowed for clearer rhetorical patterns to emerge and to thus be analyzed.

6.1. THE ANALYSIS

All of the papers were analyzed in terms of how closely their rhetorical structure conformed to IRAC for each issue identified and discussed. It was hypothesized that the rhetorical structure of the higher grade papers would follow IRAC more closely and more clearly for each issue discussed. This turned out to be the case.

Paper B1: A-

This paper received the highest grade in Group B. As can be seen from the chart in Appendix C, Table 13, when discussing each issue or sub-issue, the rhetorical structure of the paper follows IRAC very closely. Also, the paper identifies and
discusses a large number of issues and sub-issues. The number of rhetorical units devoted to discussing each issue is remarkably similar. There is also great balance between the number of rhetorical units used to discuss “Rule” and “Analysis”.

Overall, the structure of the paper gives the impression of a balanced and thorough handling of the problem question generally as well as the individual issues within the problem question.

**Paper B2: B++**

This paper received the second highest grade of the papers analyzed. Again, the rhetorical structure of the paper follows IRAC when discussing each issue. The rhetorical structure does not, however, follow IRAC as cleanly or consistently as B1, as can be seen from the chart in Appendix C, Table 14. For example, there is a tendency to move back and forth between “Rule” and “Analysis” when discussing a single issue. But this is not necessarily “wrong” or a “violation” of the IRAC approach. Just as the name implies, the IRAC approach is meant to serve only as an “approach”, a guideline, a need not (indeed, should not) be followed slavishly.

Especially with the “Rule” and “Application” sections this bending of the IRAC structure is allowable. The “Rule” and “Application” sections are intimately connected and it is natural to refer back to rules while applying them to the facts.

B2 devotes a relatively even number of RUs to each issue, though slightly less balanced than B1. For example, it uses a disproportionately high number of RUs when discussing Issue 1 and Issue 7. Also, as in B1, for each Issue there is a relatively even number of rhetorical units used to discuss Rule and Analysis. When one looks at the chart, there are no “holes” in the discussion; it is balanced and thorough.
Paper B4: B+

Papers B3 and B4 both received a B+ grade. As can be seen from the chart in Appendix C, Table 16, B4 shows strong evidence of the IRAC structure. As with B1 and B2, B4 also devotes a relatively equal number of RUs to discussion of each issue. Also, as in B1 and B2, for each issue a relatively even number of rhetorical units is used to discuss “Rule” and “Analysis”. Even more so than with B2, when one looks at the chart, the structure is balanced with no “holes” in the discussion. From an IRAC rhetorical perspective, it is an excellent paper.

Turning to the lower grade papers, there is evidence of a significant breakdown of rhetorical structure.

Paper B9: D

Along with B10, this paper received the lowest score of all the papers analyzed. In terms of rhetorical structure, it is a disaster. As can be seen from the chart in Appendix C, Table 21, in B9, the IRAC structure is completely absent. For most of the paper, it is impossible to even identify what issue is being discussed. Further, the number of rhetorical units devoted to each IRAC component is grossly uneven. Instead of an interplay between the IRAC components, there are long strings of RUs devoted to discussing only “Rules”. Then, toward the end of the paper, the strings of RUs switch to “Analysis”. In contrast to papers B1, B2, and B4, the discussion in B9 is unbalanced and there are huge holes in the rhetorical structure.

Papers B6 & B7: C-, C-

Papers B6 and B7 can be discussed together as they both received the same score, C-, and both suffer from the same structural problems. As can be seen from the charts in Appendix C, Tables 18 & 19, although not entirely absent as in B9, the IRAC structure is only vaguely recognizable in these two papers. B6 is especially
lacking in the “Issue” category. Indeed, it is so difficult to determine which issue is being discussed that it was only possible to break the entire paper down into two issues.

As in B9, in discussions of individual issues, the number of rhetorical units devoted to each IRAC component is grossly uneven. Instead of an interplay between the IRAC components, there are long strings of RUs devoted to discussing only “Rule”, which may then switch to “Analysis”, and eventually back to “Rule”. B7 is particularly “Rule” heavy. As with B9, this “stringing approach” creates huge holes and a lack of balance in the rhetorical structure of the paper.

6.2. GENERAL CONCLUSIONS FROM THE ANALYSIS

A number of important conclusions can be drawn from the qualitative analysis of the papers.

1. Higher grade papers demonstrate an ability to recognize, identify, and thoroughly analyze the relevant issues.

2. Higher grade papers tend to devote a relatively even number of rhetorical units to the discussion of each issue.

3. Higher grade papers demonstrate relative balance between the number of rhetorical units used to discuss “Rule” and “Application” for each issue.

4. Lower grade papers have a tendency to clump rhetorical units together in strings within a single IRAC category. This creates holes in the rhetorical structure of the paper.
VII. CONCLUSION

A number of important insights can be gained from the above analysis. The ethnographic survey yielded the following insights:

- Problem questions are part of the course assignments and exams for a very significant number of LLB and PCLL courses.

- At City University, students receive some instruction on general approaches to legal reasoning and analysis from their LLM courses, in particular from Legal Systems & Method and ELP in Year 1 and from Criminal Law in Year 2.

- At City University, with the exception of ELP, students get little instruction on IRAC and approaches to answering problem questions. Starting in Semester B, Year 1 students receive instruction from the ELP course on IRAC and answers to problem questions.

- The ELP course is hampered by the lack of a clear mandate from the law school and a resultant confusion about exactly what type of skills should be taught in the ELP course.

- At Hong Kong University, the EEL course has strong support from the law school and a clearer mandate to teach legal reading and writing. Outside EEL, students receive little instruction on legal analysis from legal content courses. EEL uses IPCAC, which is similar to IRAC, to teach legal reading and writing. EEL is taught in conjunction with the Law of Torts course.

- IRAC, or something similar, is considered by all staff interviewed to be a valid and effective approach to answering problem questions. Some of the tutors also view IRAC is an effective cognitive tool for teaching legal reading, especially reading cases.

- The problem questions in the PCLL tend to be shorter and more focused on specific and practical aspects of the course content. This is probably because the texts produced by PCLL students must be more practically oriented than those in the LLB as they are designed to help students with the transition from study to practice.

- When marking answers to problem questions, tutors take many factors into account, including rhetorical structure. Which factors are considered most important depends on the tutor and the type of question.

The quantitative analysis yielded the following insights:
• For papers with no word limit, longer answers receive a higher grade.

• For papers with no word limit, more rhetorical units bring a higher grade.

• For papers with a word limit, very short papers, well under the word limit, receive a lower grade.

• For papers with a word limit, using fewer than the number of words allotted does not necessarily bring a lower grade.

• The more issues identified and discussed, the higher the grade.

• Having a relatively low percentage of rhetorical units in the Application section seems to lead to a lower grade; however, having a relatively high percentage of rhetorical units in the Application section does not guarantee a high grade.

Finally, the qualitative analysis yielded the following insights:

• Higher grade papers demonstrate an ability to recognize, identify, and thoroughly analyze the relevant issues.

• Higher grade papers tend to devote a relatively even number of rhetorical units to the discussion of each issue.

• Higher grade papers demonstrate relative balance in the number of rhetorical units used to discuss “Rule” and “Application”.

• Lower grade papers have a tendency to clump rhetorical units together in strings within a single IRAC category. This creates holes in the rhetorical structure of the paper.

With regard to rhetorical structure, these results more or less confirm what has been found in other analyses of answers to problem questions. As mentioned previously, for answers to problem questions, Howe (1990) identified a generic rhetorical pattern of: Forecast/Overview, Issue, Law, Authority, Application of Law to Facts, Opinion/Advice. This was supported by Beasley’s (1993, 1994) research. This pattern generally conforms with the results of this research, although for this research it was decided that IRAC was a more appropriate structural label since it is the approach most commonly used by common law-based law schools.
Beyond the above insights, it is important to consider the results in terms of their pedagogic significance. These results could be used in any number of ways in the EALP context to improve the teaching and learning of legal reading and writing. The problem question and IRAC are used in law schools to teach basic legal reasoning, which can then in turn be applied in any number of legal situations and genres. In the same way, the problem question and IRAC can be used in the EALP context to teach the fundamentals of legal reasoning from a linguistic perspective, which, again, can then be taken and applied to any number of legal situations and genres. In other words, it can be the basis for a uniform approach to teaching EALP reading and writing skills.

For example, the basic IRAC structure has been identified in legal cases. (See, e.g., Maley (1985)\(^1\) and materials used in the EEL course at Hong Kong University.) This means that instruction on problem questions and IRAC in terms of language and rhetorical structure can later be applied to help NNS law students read cases more effectively.

Similarly, legal letters often deal with problem question type scenarios. Because of this, they can be, and often are, organized according to IRAC. Therefore, as with reading cases, that which has initially been taught and learned about problem questions and IRAC generally could later be applied to legal letters. And so the process continues. This same technique could be used for teaching other legal genres that contain a problem question-type scenario.

It is not the purpose of this paper to go into great detail about using problem questions and IRAC pedagogically in the EALP context, but this is a ripe area for

\(^1\) Maley analyzed the discourse of a judgment of the High Court of Australia and identified five discourse units: the facts of the case, the issues before the court, the reasoning, the conclusion, and the finding. The only difference between this and IRAC is the “facts of the case” unit of discourse. In problem questions, the facts are provided in the problem question itself.
further research and for materials development. An especially fruitful area for further research would be to analyze exactly which legal genres contain a problem question/IRAC element(s) and how closely they conform to the classic problem question/IRAC model.

Another potential fruitful area for further research would be to analyze the linguistic manifestations of the IRAC categories. This has been done to some degree by the developers of the English Enhancement for Law course at Hong Kong University and probably elsewhere.

Hopefully this paper can play a part in improving our understanding of the very important and difficult task faced by both teachers and students of how best to answer problem questions, especially from the perspective or rhetorical structures and strategies used in such answers. And hopefully this improved understanding can lead to the development of an increasingly effective pedagogy for answering problem questions, and for legal writing generally.
BIBLIOGRAPHY


APPENDICES (not included)