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Teaching and Assessing Problem Solving: An Example of an Incremental Approach to Using IRAC in Legal Education

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Abstract
Legal reasoning is a type of problem solving, and is situated within thinking skills, one of the six threshold learning outcomes established under the auspices of the Australian Learning and Teaching Council's Bachelor of Laws Learning and Teaching Academic Standards Statement. The threshold learning outcomes define what law graduates are 'expected to know, understand and be able to do as a result of learning' (Kift et al., 2010, p. 9). The assessment of legal reasoning, and thus problem solving, should receive greater attention in legal education discourse (James, 2011, p. 15, James, 2012, p. 88). The dominant approach for problem-based questions in the discipline of law over the last 40 years is IRAC (issue, rule, application and conclusion). The acronym IRAC is not offensive and potentially instils a positive professional legal identity and is a student-centred approach to problem solving. This journal article documents an incremental approach to IRAC in law where first year students answer a problem-based law question using a grid format before preparing a barrister's advice.

Keywords
Problem solving, legal reasoning, thinking skills, IRAC, assessment

Introduction

At the beginning of the 21st century, "problem solving and reasoning" was recognised as a key cognitive skill and one of six necessary law-graduate attributes (Christensen & Kift 2000). The other five were "discipline knowledge", "ethical attitude", "communication", "information literacy" and "interpersonal focus" (Christensen & Kift 2000). "Problem solving and reasoning" was defined as "critical thinking and problem solving skills, to enable effective analysis, evaluation and creative solution of legal problems" (Christensen & Kift 2000). The three central themes in this definition include "critical thinking", "creative solution" and "legal problems".

The demand for law graduates to be able to engage in problem-solving has been well documented in numerous Australian and international standards on legal education. These include the Australian Qualifications Framework Levels 7 and 8; the Council of Australian Law Deans (CALD) Standards; the United Kingdom Quality Assurance Agency Subject Benchmark Statement for Law; the United Kingdom Joint Statement of the Law Society and the General Council of the Bar's requirement; the United States MacCrate Report; the Task Force on the Canadian Common Law Degree; and the Scottish Accreditation Guidelines (Kift et al. 2010, p.17). These documents underscore the importance of problem-solving in legal education.

In 2010, the Australian Learning and Teaching Council's Bachelor of Laws Learning and Teaching Academic Standards Statement identified six threshold learning outcomes (TLOs) for a Bachelor of Laws Program (Kift et al. 2010, p. 10): "knowledge", "ethics and professional responsibility", "thinking skills", "research skills", "communication and collaboration" and "self-management" (Kift et al. 2010, p.10). The six TLOs largely mirror the six law-graduate attributes identified 10 years earlier. In particular, "thinking skills" requires law graduates to:

> (a) identify and articulate legal issues,
> (b) apply legal reasoning and research to generate appropriate responses to legal issues,
> (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
> (d) think creatively in approaching legal issues and generating appropriate responses (Kift et al. 2010, p.17).

In the context of Australian legal education, thinking skills are underpinned by three fundamental concepts: legal reasoning, critical analysis and creative thinking (Kift, Israel & Field 2010, p.17). These concepts resonate with the three central themes of the law-graduate attribute "problem solving and reasoning", endorsed in 2000 and referred to above. Law students engage in problem-solving in the form of legal reasoning in their first year of law study and develop these skills as they progress through their degree. Problem-solving continues to be a cornerstone of legal education today.

Problem-solving primarily requires a student to engage in thinking skills as well as, to a minor extent, research, communication and collaboration skills. It is postulated that problem-solving is not a TLO in its own right because of its overlapping nature and the fact that it has a narrower focus than thinking skills. Thus teaching and assessing problem-solving skills requires a focus on legal reasoning.

Legal reasoning is the quintessential type of problem-solving in the discipline of law. It has been defined as "the practice of identifying the legal rules and processes of relevance to a particular legal issue and applying those rules and processes in order to reach a reasonable conclusion about, or to generate an appropriate response to, the issue" (Kift et al. 2010, p.18). Law students need to be able to discern factual issues, policy issues, relevant issues, irrelevant issues, legal issues and non-legal issues (Kift et al. 2010, p.18).

Generally speaking, legal reasoning corresponds to a traditional idealisation of "thinking like a lawyer", which emerged almost 70 years ago (Pemberton 1948). However, it is conceded that this expression has been interpreted in many ways (James 2012, p.68). Sanson (2006) developed both a narrow and broad perspective of thinking like a lawyer. Sanson's (2006) narrow view is akin to the definition of legal reasoning as espoused by Kift et al. (2010) and reaffirms that thinking like a lawyer involves structured reasoning (Stuckey et al. 2007).

James (2011, p.15; 2012, p.88), a leading scholar on thinking skills in the discipline of law, noted that some efforts had been aimed squarely at teaching these skills to law students and that future research in legal education could focus on how to assess them. Accordingly, this journal article focuses on

assessing thinking skills in the form of problem-solving skills, and more specifically legal reasoning, which is integral to future lawyers' professional success. This article collates numerous approaches to problem-solving in the discipline of law; considers how the approaches meet the needs of the profession, clients and students; and makes recommendations for supporting first-year law students as they incrementally develop problem-solving skills using one approach in a grid format before attempting a more complex format, such as a barrister's advice.

Problem-solving approaches in the discipline of law

There are a myriad of problem-solving approaches in the discipline of law to break down problem-based questions. A survey of the pertinent legal-education literature identified over 40 acronyms used in law schools to teach legal reasoning as a type of problem-solving (Bentley 1994, p.132; Field et al. 2014, p.205; Hart et al. 2011, p.114; James 2012, pp.75-76; Kift et al. 2010, p.18; Turner 2012, p.358; Wade 1990; Ward 2000; Martin 2003, p.78). Table 1 details many of these acronyms and the linear steps involved in each problem-solving approach. Law schools could select one of these approaches to promote a "whole-of-curriculum approach (Huggins 2015, p.283) to problem-solving across a degree or program for problem-based assignments and examinations.

The problem-solving approach a law school selects must meet the needs of three key stakeholders, each with its own approach: the profession, clients and students. Notably, teachers have not been identified as a key stakeholder, as their needs in terms of a problem-solving approach commonly echo the needs of students; as a result, teachers' needs have been assimilated into the student-centred approach.

Profession-centred approach

A problem-solving approach that inculcates a positive professional identity in the minds of first year students and a positive perspective on the popular expression "thinking like a lawyer" should be adopted. Cultivating a positive professional legal identity is a current theme in the context of Australian legal education, and is gaining momentum (Field et al. 2014; Galloway & Jones 2014). Some examples of problem solving approaches include CRAC, CRAAP, CRAAAP, AFGAN (application, facts, grounds, answer, negotiation) and KUWAIT ("konclusion", utility, wording, answer, initiation, thoughts) (Turner 2012). These approaches offer the benefits of linear problem-solving, which helps law students to view thinking like a lawyer and look at their professional identity in a positive light. Some of these acronyms commence with the conclusion, which (as will be noted below) is useful to some audiences such as clients, who are vital to the legal profession. At the outset, the problem-solving approaches identified in the literature with offensive acronyms have been eliminated from Table 1. Adopting a problem-solving approach that requires structured legal reasoning and does not have an offensive acronym instils a positive professional legal identity in law students and preserves the formality of the legal profession as a whole.

Client-centred approach

A client wants to know the conclusion upfront (Field et al. 2014, p.205); thus a client-centred approach to problem-solving equates to beginning with a conclusion. In practice, a barrister's advice is an authentic legal document prepared by a barrister that provides advice to a solicitor on the prospects of success for a client, and outlines the conclusion at the inception. Some examples of problem-solving approaches beginning with a conclusion and detailed in Table 1 include CI/REXAC, CRARC, CREAC, CREXAC and CRuPAC. However, these approaches have the shortcoming of being repetitive, inefficient and therefore expensive for clients, because the conclusion is reiterated at the end of the problem-solving approach. The repetitive nature of the conclusions in these approaches is not student-centred, particularly where an assessment task has a maximum word limit or needs to be completed under a tight timeframe, such as an examination. Ideally, law schools would choose a problem-solving approach that contains the conclusion only once for the benefit of both clients and students.

Student-centred approach

Student feedback suggests that a template helps them to complete problem-based assessment tasks (Hart et al. 2011, p.114); thus a student-centred, template-based approach to problem-solving is proposed as a simple and structured educational support mechanism. All of the acronyms in Table 1 facilitate structured problem-solving. Plausibly, those approaches composed of fewer linear steps are simpler for students to apply, and equally, cheaper for clients. The shortest problem-solving

approaches in Table 1 are CLEO, IDAR, ILAC and IRAC. The substance of all four approaches is the same; moreover, ILAC and IRAC are identical except for a slight labelling difference of the second step in the linear process. IRAC has received greater attention in scholarly legal education discourse than CLEO, IDAR and ILAC.

Table 1: Examples of problem-solving approaches

Acronym	Linear steps in the approach
BaRAC	**B**old **a**ssertion, **r**ule, **a**pplication, **c**onclusion
CAGONARM	**C**urrent situation, **a**lleged problems, **g**oals of a good system, **o**ptions, **n**ecessary action to achieve options, **a**dvantages and disadvantages of each option, **r**ecommending the least detrimental alternative, **m**onitoring and measuring the effects of the reform
CIRAC	**C**onclusion, **i**ssue, **r**ule, **a**pplication, **c**onclusion
CI/REXAC	**C**onclusion, **i**ntroductory/**r**oadmap (issue and rule), **ex**planation, **a**pplication, **c**onclusion
CLEO	**C**laim, **l**aw, **e**valuation, **o**utcome
CRARC	**C**onclusion, **r**ule, **a**pplication, **r**ebuttal and refutation, **c**onclusion
CREAC	**C**onclusion, **r**ule, **e**xplanation of rule, **a**pplication of rule, **c**onclusion
CREXAC	**C**onclusion, **r**ule, **e**xplanation, **a**pplication, **c**onclusion
CRuPAC	**C**onclusion, **ru**le, **p**roof or explanation of rule, **a**pplication, **c**onclusion
FIRAC	**F**acts, **i**ssues, **r**ules, **a**pplication, **c**onclusion
HIRAC	**H**eading, **i**ssue, **r**ule, **a**pplication, **c**onclusion
IDAR	**I**ssue, **d**octrine, **a**pplication, **r**esult
IGPAC	**I**ssue, **g**eneral rule, **p**recedent, **a**pplication, **c**onclusion
ILAC	**I**ssue, **l**aw, **a**pplication, **c**onclusion
IPAAC	**I**ssue, **p**rinciple, **a**uthority, **a**pplication, **c**onclusion
IRAAC(P)	**I**ssue, **r**ule, **a**pply, **a**pply, **c**onclusion, **p**olicy
IRAAAPC	**I**ssue, **r**ule, **a**uthority, **a**pplication, alternative analysis, policy, **c**onclusion
IRAAPC	**I**ssue, **r**ule, **a**uthority, **a**pplication, **p**olicy, **c**onclusion
IRAC	**I**ssue, **r**ule, **a**pplication, **c**onclusion
IRACDD	**I**ssue, **r**ule, **a**nalysis, **c**onclusion, **d**efence, **d**amages
IRACEIP	**I**ssue, **r**ule, **a**pplication, **c**onclusion, **e**xplanation, **i**llustration and **p**olicy
IRAFT	**I**ssues, **r**ules, **a**pplication of rules to the **f**acts, **t**entative conclusion
IREAC	**I**ssue, **r**ule, **e**xplanation of rule, **a**pplication, **c**onclusion
IREXAC	**I**ssue, **r**ule, **e**xplanation, **a**pplication, **c**onclusion
IRRAC	**I**ssue, **r**ule, **r**easoning, **a**pplication, **c**onclusion

IRREAC	**I**ssue, **r**ule, **r**ule, **a**pplication, **c**onclusion
IRRAAC	**I**ssue, **r**ule, **r**easoning, **a**pplication, **a**lternative analysis, **c**onclusion
ISAACS	**I**dentify a legal issue from the facts, **s**tate the relevant law and **a**uthority for it, **a**pply the law to the facts, **c**ome to a conclusion and repeat the steps above to the next issue, **s**ynthesise the conclusion
MIRAC	**M**aterial facts, **i**ssues, **r**ules, **a**rguments, **c**onclusion
MIRAT	**M**aterial facts, **i**ssues, **r**ules, **a**rguments, **t**entative conclusion
RAFADC	**R**ule, **a**uthorities, **f**acts, **a**nalogising and **d**istinguishing, **c**onclusion
TREAC	**T**opic sentence with a conclusion, **r**ule, **e**xplanation, **a**pplication, **c**onclusion
TREACC	**T**opic, **r**ule, **e**xplanation, **a**nalysis, **c**ounterarguments, **c**onclusion
TREAT	**T**hesis, **r**ule, **e**xplanation, **a**pplication, **t**hesis
TRIAccC	**T**opic, **r**ule, **i**ssues, **a**nalysis (**c**ases, **c**onclusion), **c**onclusion
TRRAC	**T**hesis, **r**ule, **r**ule, **a**pplication, **c**onclusion

From a historical perspective, IRAC has been traced back to 1976, when Brand and White (1976) used it in legal writing in the United States (Maclean 2010). While IRAC has been characterised as a traditional approach to legal reasoning, and thus problem-solving, it continues to thrive in law schools almost 40 years later and is commonly discussed and debated in current legal research and writing discourse (Turner 2012). The use of IRAC is promoted in leading contemporary Australian legal texts for first-year law students and law-school survival guides; for example, Field et al. (2014) and Sanson and Anthony (2014).

IRAC is a rational approach to thinking and problem-solving; it has been described as a "logical linear pattern" and "an orderly and structured method of legal reasoning"; Field et al. (2014, pp.203-206) have asserted that it "conceptually it makes sense". Further, "IRAC is much more than an organizational structure[,]…it is an important mental exercise that forces an author to a deeper understanding of the legal issues at stake" (Metzler, 2002-2003, p. 501). IRAC is a student-centred approach to problem-solving because it supports students as they engage in deep learning (Taylor 2013, p.1). While these remarks may be applicable to other approaches in Table 1, law students should be encouraged to adopt a deeper approach to learning rather than a surface-learning approach (Heath 2011).

Even though IRAC encourages law students to engage in deep learning, it is vital to be aware of its limitations. It has been described as "formalistic" and an "unnatural way…of interrogating a legal problem", and as "oversimplifying legal reasoning and distorting the complex nature of legal problems" (Field et al. 2014, p.204). Taylor (2006) expresses similar concerns. Additional drawbacks include inaccurate or unrealistic answers (Bentley 1994); inability to determine how multiple issues should be prioritised (Wolff 2003, p.24); and an inability to cope with diverse student learning styles. One of the themes implicit in these drawbacks is the need to contextualise the four steps in IRAC to support student learning.

To overcome the inadequacies associated with IRAC, some law teachers have simply opted for another problem-solving approach, primarily "to supplement the simplicity of IRAC, and aim to offer a method that is more congruent with authentic legal problem solving" (Field et al. 2014, p.205). Whether such an alternative approach is in fact superior remains debatable. Rather than discarding IRAC for another approach that possibly has the same defects, it is preferable, as noted above, to contextualise the four steps in IRAC to support student learning. The contextualisation process may reveal occasions when IRAC should change its shape to reflect the necessary thinking and communication skills. The first step in identifying issues is challenging without initially appreciating the rules; thus the RIAC approach may better reflect the order of the thinking skills. Further, IRAC may not truly be client-centred,

because the conclusion is not the initial thinking step and not communicated upfront. Accordingly, CIRA would better suit the needs of clients. Students could achieve CIRA in a typewritten format, but but they would likely experience difficulty using it under examination conditions, because the conclusion represents the confluence of IRA. It is conceded that the order of IRAC may need to be determined flexibly depending on whether a student-centred or client-centred approach is preferred; and that the overarching, non-negotiable criterion is resonance with a positive professional legal identity in the sense of simple, structured reasoning, and the use of an inoffensive acronym.

Over time, the major competitor to IRAC has been MIRAT, which was particularly popular in 1990s (Bentley 1994; Martin 2003; Wade 1990; Ward 2000; Wolff 2003). A quarter of a century ago, the primary benefits of MIRAT were elucidated: it is "easy to remember; able to be used at different levels of sophistication; capable of use in every area of law; useful to define a personal or group educational goal; a reasonably precise method for a student to measure higher performance in any written/spoken exercise; a helpful method for teachers to model in chunks; a satisfying method for marking written or spoken analytical exercises as strengths and weaknesses of each stage can be so precisely identified" (Wade 1990, p.283). These benefits apply equally to many, if not all, the problem-solving approaches presented in Table 1. IRAC may be marginally easier to apply than MIRAT because it contains four instead of five steps in its linear process; this could contribute to making IRAC a more student-centred approach than MIRAT. The fundamental difference between IRAC and MIRAT is that the latter requires the material facts to be specified upfront. The usefulness of repeating the facts of a problem-based question is dubious. Today, IRAC is commonly used in Australian law schools to tackle problem-based questions and is more often singled out in the literature than MIRAT (Field et al. 2014; James 2011; Sanson & Anthony 2014).

Supporting IRAC by designing relevant teaching and assessment resources

Relevant resources could be designed to support the assessment of IRAC. Examples of such resources developed for a first-year course, *LAW103 Criminal Law and Procedure B*, at the University of the Sunshine Coast include formative tutorial tasks based on understanding and applying the four steps in IRAC to problem-based questions and an IRAC grid, which provides introductory checklists on what to do at each step in IRAC. These resources enable students to gain a deeper understanding of the elements of IRAC before applying it to formal written legal advice, such as a barrister's advice (as noted above).

Tutorial tasks based on IRAC

Best practice documented in legal education suggests that law schools should make greater efforts to facilitate formative assessment, which provides feedback on learning, before law students embark on summative assessment, which is graded (Stuckey et al. 2007, p.190). Further, assessment and design are two of the six First Year Curriculum Principles, which, amongst other things, endorse the use of formative assessment to assist "students to make a successful transition to assessment in higher education", and support the sequential development of skills (Kift 2009, p.41). Designing formative assessments is one way to support first-year law students.

In 2015, a first-year law course, *LAW103 Criminal Law and Procedure B* tutorial program, was renewed to scaffold the four steps in IRAC. The renewal process included the development of formative assessment, and aimed at assisting law students to make the transition into the discipline of law; the new approach could be applied to problem-based questions across the law program. The first tutorial on IRAC was devoted to developing the rule and issue, the second focused on application and the third concentrated on conclusions. The incremental tutorial tasks were formative assessments, thereby providing the first-year law students with formative feedback on their work. After these initial tutorials, the students were expected to apply all four steps in IRAC to problem-based questions.

IRAC grid

In the context of Australian legal education, using a grid format to answer problem-based questions before preparing formal written legal advice has recently been advocated (Steel & Fitzsimmons 2013). A grid enables law students to develop problem-solving skills without getting embroiled in challenges associated with written communication skills, helps them see what the final output will resemble and guides them through the process necessary to achieve that output (Steel & Fitzsimmons 2013, p.80). In addition to being student-centred, an IRAC grid benefits law teachers because it results in efficient marking practices (Steel & Fitzsimmons 2013, p.84).

Contemporary Australian legal-education literature offers two sample legal-reasoning grids, which largely follow MIRAT, the main competitor to IRAC (Steel & Fitzsimmons 2013, p.82). The first grid pertains to tort law and contains the following columns: legal issues; relevant sub-section; material/relevant facts; rule (relevant case law); analogy with previous case law; and apply law to material facts (reasons for decision) (Steel & Fitzsimmons 2013, p.87). The second grid pertains to criminal law and contains the following columns: elements of offence; relevant facts; legal facts; relevant case law/section on element scope; do the facts prove the element (yes/no/unclear)?; and reasons for decision (Steel & Fitzsimmons 2013, p.89). While both grids are based on MIRAT, they have been tailored to deal with specific fields of law.

This journal article builds onto the current literature in Australian legal education by contributing an IRAC problem-solving grid, which is an alternative to the MIRAT grids offered by Steel and Fitzsimmons (2013, pp. 87, 89). The IRAC problem-solving grid is exhibited in Table 2. Each of the four linear steps in IRAC – issue, rule, application and conclusion – are supplemented with an introductory checklist, which is grounded in more than 10 years' experience of designing problem-based questions and answers and applying IRAC (Burton & Cuffe 2005).

As the law students progress through the *LAW103 Criminal Law and Procedure B*, the scaffolding in the form of introductory checklists is gradually removed, and the students complete a 30% IRAC grid, with the benefit of the headings only (issue, rule, application, conclusion), to answer a problem-based question in a 45-minute open book examination. An example of a problem-based question and a completed answer grid are provided in Appendices 1 and 2, respectively. It should be noted that the problem-based questions used for a barrister's advice are usually more complex and contain a number of criminal offences. Student engagement is enhanced by summative assessment (Johnstone et al. 1998) and problem-based assessment (Le Brun & Johnstone 1994; Steel & Fitzsimmons 2013, p.79). "[E]mpty outlines", "categorising grids" and a "defining features matrix" are effective techniques for assessing students in a classroom environment (Stuckey et al. 2007, pp.257-258).

The IRAC grid has a generic nature, enabling it to be applied to other fields of law. Its additional benefits include giving direction to the conversations between the tutor and students; guiding students through self-assessment and peer-assessment processes undertaken in their tutorials; and providing a framework on which to base marking instructions, personal feedback and generic feedback.

Table 2: IRAC grid

ISSUE	RULE	APPLICATION	CONCLUSION
☐ Identify the legal issues based on the relevant rules of law ☐ Frame the relevant legal issues in the factual problem as questions using material facts, party names and elements of the relevant rules of law	☐ Identify the relevant rules of law ☐ Break down the relevant rules of law into elements ☐ Include definitions from statute and case law ☐ Include the facts of cases that are similar to factual problem	☐ Make a linkage between the elements of the law and the factual problem ☐ Make analogies between the factual problem and the case law ☐ Distinguish the factual problem from the case law ☐ Make assumptions clear ☐ Identify additional facts required	☐ Reach a convincing conclusion on all of the legal issues in the factual problem, based on strong support from statute and case law ☐ Justify why alternative conclusions were not reached

IRAC is functional for first-year students, and is sufficiently generic to be applied in a legal research and writing course, a thinking-skills course, a substantive law course or a course in another discipline. A student-centred approach to IRAC in a first-year experience requires innovative resources and contextualising, which should diminish in later courses "in favour of a greater emphasis upon 'flow' in the student's reasoning and consequent improvements in subtlety and persuasiveness" (James 2011, pp.11-12).

Conclusion

For almost 40 years, IRAC has proven to be a useful framework for developing and assessing law students' problem-solving skills. IRAC inculcates a positive professional legal identity by promoting structured reasoning and by having an inoffensive acronym. IRAC is a student-centred approach to problem-solving because it is simple and structured, and facilitates deep learning. Even though IRAC includes the conclusion as the last step, while a client-centred approach prefers the conclusion as the first step, the pertinent thinking skills remain the same, and the difference is the order of the communication.

An IRAC grid, as shown in Table 2, is an introductory learning tool containing checklists for students to progress through the four steps in IRAC, thereby supporting first-year law students as they apply IRAC to complex, problem-based questions. Offering first-year law students an opportunity to learn IRAC through a grid is a worthwhile stepping-stone before they tackle problem-based questions in a more complex format, such as a barrister's advice.

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Appendix 1: Example of a problem-based question for first year law

Assume you are a solicitor working for a law firm and you jotted down the following points during an initial consultation with a client, Ms Fox.

- Ms Fox is in her late 20s and has operated a flying fox tourist business in the Sunshine Coast hinterland for two years.
- Ms Fox picks up tourists from their hotel accommodation in a bus and takes them to her property, where the tourists ride a flying fox over a rainforest canopy.
- The flying-fox ride has two platforms that are built around two large tree trunks with two steel cables running in between the two large trees.
- Ms Fox's job includes supplying a safety harness to each rider before they climb up to the flying fox platform, as well as securing each safety harness to two steel cables before the rider leaves the flying-fox platform.
- Ms Fox admitted that she had a threatening quarrel with Ryder on the flying-fox platform about the environmental impact of the flying-fox ride and Ryder, who had not been supplied with a safety harness, jumped from the flying-fox platform.
- Ryder sustained brain damage, internal injuries, broken ribs and a broken pelvis.
- Soon after, a forecast seasonal storm hit the Sunshine Coast hinterland, producing severe wind gusts and a nearby foxtail palm tree to fall on Ryder, exacerbating the injuries
- Flash flooding from the storm hampered rescue efforts for 24 hours, and when Ryder finally arrived at the local hospital, he was put on a life-support system.
- Dr Theresa Green made the decision not to operate on Ryder.
- A couple of days later, Ryder's family made the decision to turn off the life-support system.
- Ms Fox has been charged with manslaughter and confessed that she is guilty, but wants to argue that Ryder was supplied with a safety harness but he took it off while he was on the flying-fox platform, and that there was no threatening quarrel between Ms Fox and Ryder on the flying-fox platform.
- Ms Fox wants to plead not guilty and insists that you continue to act for her.

Use the IRAC grid to determine whether Ms Fox has committed manslaughter. You may assume that murder cannot be established on the facts. DO NOT discuss any defences or excuses.

Appendix 2: Example of a completed IRAC grid for first year law

Issue	**Rule**	**Application**	**Conclusion**
Is Ms Fox guilty of the manslaughter of Ryder?	Manslaughter is a type of **homicide** and a crime: ***Criminal Code (Qld) (Code)*** **s 300**. **Manslaughter is defined in *Code* s 303**. Elements = Unlawfully kills, Another, Not murder.	Need to apply each element of manslaughter to the facts below.	Too early to conclude.
Did Ms Fox unlawfully kill Ryder?	**Element = Unlawfully kills** **s 291** – It is unlawful to **kill** any person unless such killing is authorised or justified or excused by law. **Kill: s 293** – any person who **causes** the **death** of another, directly or indirectly, by any means whatever, is deemed to have killed that other person. **Death:** No definition of "death" in the *Code.* Use definition from *Transplantation and Anatomy Act 1979* (Qld) s 45(1).	Ms Fox is not authorised, justified or excused by law to kill Ryder. If Ms Fox caused Ryder's death, she is deemed to have killed Ryder. Ryder died.	Need to determine whether Ms Fox caused Ryder's death before concluding that Ms Fox unlawfully killed Ryder.
Did Ms Fox cause the death of Ryder by not supplying him with a safety harness and having a	**Causes** Question of law for the Judge – Whether the acts or omissions of the accused are capable of constituting causation. Question of fact for the Jury – Whether the		Ms Fox caused the death of Ryder by not supplying him with a safety harness and

threatening quarrel with him on the flying-fox platform?	acts or omissions of the accused did constitute causation. ***Krakouer v Western Australia*** "**Factual causation** involves an enquiry whether there is in fact a connection between a person's conduct and the event alleged to constitute the offence". Apply the "but for" test: *R v Smith*. Common sense principles. "**Legal causation** raises more difficult questions of criminal responsibility – whether the factual connection between the conduct in question and the event is sufficient to justify the attribution of moral culpability and, hence, legal responsibility" Legal causation is determined by applying one of the four tests outlined in *Royall v R* and is important where: 1. Accused's act would not have brought about the event without the intervention of a subsequent act from the victim or another person; and 2. Event could have been prevented if the victim or another person had taken action to avoid the consequences. **1. Operating and substantial cause test**	The "but for" test is unsatisfactory in Ms Fox's situation because it is not the sole cause of Ryder's death. Ryder jumped off the flying-fox platform, and so	having a threatening quarrel with him on the flying-fox platform.

	Adopted in Queensland: *R v Sherrington.* Not a scientific or philosophical question. It is a question of common sense. Need to appreciate that the "purpose of the inquiry is to attribute legal responsibility in a criminal matter". The accused's wrongful act or omission need not be the sole or main cause. **2. Natural consequence test** *R v Hallett.* Apply the natural consequence test where the victim acts on the spur of the moment irrationally: *Royall v R*. The wrongful act must induce a well-founded apprehension (of physical harm from the accused) in the victim. As a result of that apprehension a natural consequence will be that the victim seeks to escape. In escaping the victim dies – the fatal injury caused by the act of escaping. If the reaction was reasonable and proportionate to the wrongful act, the chain of causation is not broken. If the reaction was foreseen or intended by the accused, the chain of causation is not broken. If the reaction was unreasonable but was foreseeable or intended by the accused, the chain of causation is not broken.	legal causation is critical on these facts. Ms Fox's failure to provide a safety harness to Ryder and the threatening quarrel on the flying-fox platform were the operating and substantial causes of Ryder's death. An **analogy** could be made between the tree	

	***Code* s 295** – Causing deaths by threats. **3. Reasonable foresight of the consequences test** **4. *Novus actus interviens* test** Actions by third parties may break the chain of causation: *R v Padgett.* Accused's act or omission need not be sole or main cause of death, provided that it contributed significantly. Third parties may break the chain of causation if what they do constitutes a *novus actus interveniens* – i.e. an act so independent of the accused's act that it should be regarded as the sole cause of death. In order for the act to be independent, it must be a voluntary act of the third party, and not a reasonable act of self-preservation or an act done in performance of a legal duty.	falling down during a forecast seasonal storm in Ms Fox's situation with the ordinary tides in *Hallett.* There is no supervening cause on the facts to break the chain of causation. In *Hallet,* an example of a supervening cause was a tidal wave caused by an earthquake. It appears that Ryder acted irrationally on the spur of the moment by jumping off the flying-fox platform. **Additional facts** are required about whether Ms Fox's threatening quarrel induced a well-founded apprehension of physical harm from Ms Fox in Ryder. Did any of the other tourist hear or see the threatening quarrel between Ms Fox and Ryder? Was Ryder's reaction reasonable or unreasonable? **Additional facts** are required to determine if Ms Fox intended or foresaw Ryder's reaction of jumping off the flying-fox platform. Ms Fox is deemed to have killed Ryder if her threats caused Ryder to jump off the flying-fox platform.	

		Ryder dying from the fall from the flying-fox platform is reasonably foreseeable. There is no act by a third party so independent from Ms Fox's conduct that it should be regarded as the sole cause of Ryder's death.	
Did the forecast seasonal storm break the chain of causation by hampering rescue efforts for 24 hours?	***Code* s 297** – When injury or death might be prevented by proper precaution. When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that the injured person's death from that injury might have been prevented by proper care or treatment.	It is immaterial whether Ryder's death could have been prevented if he had received proper care or treatment 24 hours earlier.	The storm did not break the chain of causation and did not cause Ryder's death.
Did Theresa Green break the chain of causation by making the decision not to operate on Ryder?	***Code* s 298** Injuries causing death in consequence of subsequent treatment.	This provision does not apply to the facts because the immediate cause of Ryder's death is not surgery or medical treatment. Dr Theresa Green made the decision not to operate on Ryder.	Dr Theresa Green's decision not to operate did not break the chain of causation and did not cause Ryder's death.

Did Ryder's family break the chain of causation by turning off the life-support system?	***R v Kinash*** Turning off the life-support system did not break the chain of causation, but merely delayed the death.	The facts are similar to *Kinash* because a couple of days after the incident, Ryder's family turned off the life-support system.	Ryder's family's decision to turn off the life-support did not break the chain of causation and did not cause Ryder's death.
Is Ryder a person capable of being killed?	**Element = Another**		Ryder is a person.
Was Ms Fox criminally negligent for not supplying Ryder with a safety harness and having a threatening quarrel on the flying-fox platform?	**Element = Not Murder** Murder is defined in *Code* s 302. **Criminal Negligence: *R v Patel*** Criminal responsibility attaches to a higher degree of negligence than in civil law. The standard of negligence must be "criminal" or "gross". The standard of conduct must "show such disregard for the life and safety of others as to amount to a crime and be conduct deserving punishment". **s 289 Duty of persons in charge of dangerous things: *R v Clark***. A duty is not an offence in its own right. If any of the duties are breached, the accused is deemed or held to have caused any consequences to the life or health of any person. A breach of a duty can amount to causation for the	Murder cannot be established (specified in the factual problem). Ms Fox's situation is similar to *R v Clark* where a tour guide failed to take reasonable precautions to avoid a tourist from sustaining brain damage, internal injuries, fractured ribs and fractured pelvis. However, that case is slightly different because the tourist in that case did not die. Ms Fox failed to supply a safety harness to Ryder before he climbed to the flying-fox platform. Ms Fox failed to ensure that Ryder had a safety harness secured to two steel cables on the flying-fox ride. Ms Fox had a threatening quarrel with Ryder on the flying-fox platform. Ms Fox's	Ms Fox is criminally negligent for not supplying Ryder with a safety harness and having a threatening quarrel on the flying-fox platform.

	purposes of unlawful killing. Causation will be **indirect** where it is deemed to have occurred pursuant to the criminal negligence provisions.	conduct shows a disregard for the life and safety of Ryder and deserves to be punished. Ms Fox breached her duty of being in charge of a dangerous thing (flying-fox ride) pursuant to *Code* s 289. Ms Fox is deemed to have caused the consequences to Ryder and her conduct amounts to causation for the purposes of unlawful killing.	
What is the maximum penalty Ms Fox may face for the manslaughter of Ryder?	***Code* s 310** Manslaughter = crime.	Ms Fox has unlawfully killed Ryder, which was not murder. The forecast seasonal storm; Dr Theresa Green's decision not to operate; and Ryder's family's decision to turn off the life-support system did not break the chain of causation. Ryder is a person capable of being killed. Ms Fox was criminally negligent for not supplying Ryder with a safety harness and having a threatening quarrel with him on the flying-fox platform. She is criminally responsible for manslaughter.	Ms Fox's maximum penalty for the manslaughter of Ryder = life imprisonment.
What is an appropriate professional response where Ms Fox wants me, as the solicitor, to set up an affirmative case inconsistent with the	***Australian Solicitors Conduct Rules 2012 r 20.2*** 20.2 A solicitor whose client in criminal proceedings confesses guilt to the solicitor but maintains a plea of not guilty: 20.2.1 may cease to act, if there is enough time for another solicitor to take over the case properly before the hearing, and the client does not insist on	Ms Fox has confessed guilt for the manslaughter of Ryder but wants to plead not guilty. Ms Fox insists that I, as her solicitor, still continue to appear for her. I must act in accordance with ***Australian Solicitors Conduct Rules 2012 r 20.2.2(ii).***	I must act ethically and not set up an affirmative case inconsistent with Ms Fox's confession.

confession?	the solicitor continuing to appear for the client; 20.2.2 in cases where the solicitor continues to act for the client: (ii) must not set up an affirmative case inconsistent with the confession.	As her solicitor, I cannot argue that Ryder was supplied with a safety harness but took it off while he was on the flying-fox platform and that there was no threatening quarrel between Ms Fox and Ryder on the flying-fox platform. Such arguments would make it hard for the prosecution to prove that Ms Fox unlawfully killed Ryder, and to prove causation and criminal negligence.	