



A Guide to Planning a Construction Claim

Introduction

1. The purpose of this guide is to explain and discuss an approach and format that can be used to clearly and coherently draft contractual claims. The method on which this guide is based is the IRAC method of answering legal problems which stands for 'Issue', 'Rule', 'Application', 'Conclusion' and I have adopted the basis of this method in the drafting of claims and defence with great success helping clients both in and out of Adjudication in the resolution of a very wide variety of construction claims and I hope you can benefit from it too.
2. This guide will be provided under the following headings:
 - a. Planning Tables
 - b. The Subject Matter
 - c. The Material Facts
 - d. The Issues
 - e. The Rules
 - f. Application
 - g. Conclusion

Planning Tables

3. For some, maybe exceptions, in my experience generally, getting straight into drafting the submission without planning can usually be a mistake and can lead to missing perhaps important points or facts, or can lead to problems with the structure of an answer especially if the submission is of significant complexity and/or substantial volume. A planning table can help plan the structure of the essential elements of a submission before the final draft is started. One basic format for a Planning Table based on the IRAC method will be discussed and outlined below, but the specific format is not rigid, and you may wish to adapt it or insert particular elements that work for your specific task.
4. Word or Excel format would be advisable as the basis for the planning table, I find excel is better for me because it provides functions which can be helpful for easily inserting, formatting, or freezing part of the page. The basic format of the table discussed here would be for it to be split into columns and elements as follows:
 1. The Subject Matter
 2. The Material Facts
 3. The Problem
 4. The Issues
 5. The Rules
 6. Application

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7. Conclusion

5. An example of the foregoing Planning Table is at **APPENDIX 1** below.

The Subject Matter

6. The subject matter can be viewed as the basic problem. The problem is the high level matter to be addressed, but consideration should still be given to reducing a problem into potential multiple problems to be addressed specifically. For example, if the problem is delay then the specific separate subject matters to be addressed may include Extension of Time, Loss and Expense and/or Damages. These would each be a separate subject matter to be addressed from which subsequent issues would arise.

The Material Facts

7. The material facts are the facts relevant to the subject matters. Only the pertinent facts are the material facts. Including all the facts for good measure in a bid not to miss anything can backfire by creating a lack of relevance and subsequently a lack of coherency.
8. As an aside, it is important to realise that generally this process is not linear so that it is restricted to only one element being addressed before moving onto the next. The process is circular so that during the assessment and planning it may become apparent that one element informs another. For example, the initial material facts may be established in relation to a subject matter but during the process it may become apparent that a previously unknown matter has arisen from the material facts that is considered to be relevant to the main problem. Similar considerations arise between the Issues and the Rules as will be discussed below.

The Problem

9. The Problem is the problem arising from the material facts, for example the problem may be is Party A entitled to extension of time, and the issues, as will be discussed below, will be the contractual issues to be addressed in answering the problem.

The Issues

10. In the context of a contractual claim, the issues to be addressed are the contractual issues. The contractual issues are not to be established subjectively, which can lead to the writer addressing contractually irrelevant issues that do not properly arise at contractual entitlement. Also, subjective issues may be a result of the writer knowingly, or unknowingly, looking to change the question to one which is either in line with a preconceived outcome, or simply to one that is easier to answer but may not necessarily be the right question.

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11. The issues to be addressed are derived from the rules. So, for example, the contract may set out a procedure for certain events to be notified that give rise to entitlement to extension of time if it is considered that those events are, or likely will, cause a delay to the progress of the Works. Such clause would give rise to multiple issues to be addressed including, but not limited to, the following (by way of example):
- Are the events identified, provided by the contract as an event for which the other party is liable?
 - Was the notification procedure adhered to?
 - Was the Contract Works delayed by the event claimed?
12. Then multiple sub-issues may also arise from the foregoing issues including, but not limited to, the following:
- What are the stages of the notification procedure and was each stage adhered to?
 - What is the rate of progress from which delay should be measured against?
 - What is the delay caused by the events claimed?
13. Multiple further issues may also arise from each of the sub-issues, for example in making a case for causation relevant legal principles appropriate to the circumstances would be researched and identified giving rise to further issues to be addressed in making the case for causation and arriving at quantum for the lost time.
14. In this way the relevant issues to be addressed would be systematically identified and established objectively according to the requirements of the contractual terms and relevant legal principles.

The Rules

15. In respect of each issue to be addressed, the applicable rule is then stated. It is better to state the actual rule word for word, rather than trying to shorten it or explain it in your own words. This is to avoid changing the meaning, which could lead to inaccuracies on the outcome, and also result in reduced coherency. Where the rule is derived from case law, then the specific words would be extracted with the case law source referenced in the appropriate manner.

Application

16. Immediately after the stating of the applicable clause or legal principle, the rule is then applied to the material facts in an analysis.

Conclusion

17. The conclusion is the probable outcome of the application of the rule to the material facts.

For a Planning Table example see **APPENDIX 1** below.

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APPENDIX 1 – Planning Table Example

(excel preferred for more space)

Subject Matter	Material Facts	The Problem	The Contractual Issue	The Contractual Rule	Application	Outcome

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