



HOW TO ARGUE LIKE A MASTER *in Irish Courts*

“Don’t ever wrestle with a pig. You’ll both get dirty,
and the pig will enjoy it.”

-George Barnard Shaw



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for

How to Argue Like a Master in Irish Courts

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The Irish legal system, renowned for its intricate framework and reliance on reasoned argumentation, presents a unique challenge for lay litigants. While natural eloquence can undoubtedly enhance persuasive power, a structured approach grounded in legal principles is essential for achieving success in Irish courts. This little guide will delve into the CRAC formula, a fundamental tool taught by many law schools, and demonstrate its application across diverse legal scenarios. Also, we will explore crucial aspects of Irish law, including statutory interpretation, case law, constitutional rights, and evidence, equipping you with the knowledge and skills needed to construct compelling arguments. Finally, we will delve into the subtle yet powerful art of nonverbal communication, providing practical tips on using body language to enhance your credibility and build trust with judges and gain their ear in the hope of gaining equality in arms..

The CRAC Formula: Not the CRAIC, I can see you giggle from here...!!

CRAC is an anagram that helps anyone in a legal action to argue their point in court.

CRAC stands for:

- Conclusion
- Rule
- Analysis
- Conclusion.

Let's apply this in a really simple scenario.

The Dog

Conclusion

The dog is a cockapoo.

Rule

When a poodle and cocker get together, and have dinner and they start the dirty dance, when they get pregnant, the puppy, it is called a cockapoo.

Analysis

A Cockapoo is not an individual breed of dog, it's a mongrel, it's a mixture of two dog breeds.

Conclusion

Therefore, because the rule states that mixing a poodle and a cocker spaniel creates a cockapoo, and those were the dogs that were mixed, then the dog has to be a cockapoo

Let's look at it from another angle:

Conclusion: State Your Case Clearly

The conclusion acts as the thesis statement of your argument. It succinctly outlines the desired outcome or the main point you wish to convey. It acts as a beacon, guiding the judge or jury towards the destination you have in mind.

- Example 1: Personal Injury Claim: "I am entitled to compensation for the injuries sustained due to the negligence of the defendant."
- Example 2: Contract Dispute: "The contract is voidable because of the misrepresentation made by the defendant, and I am entitled to rescission and damages."
- Example 3: Family Law Case: "The court should grant a divorce decree and determine a fair division of assets and custody arrangements."

Importance: A clear conclusion is the foundation of your argument. It establishes your objective and sets the stage for the rest of your presentation.

Rule: Ground Your Argument in Law

The "Rule" element refers to the legal principle, statute, precedent, or doctrine that underpins your conclusion. It is the bedrock of your argument, providing the legal authority for your claims.

- Example 1: Personal Injury Claim: "Under the Civil Liability Act 1961, a person who suffers injuries due to the negligence of another is entitled to compensation."
- Example 2: Contract Dispute: Sale of Goods and Supply of Services Act, 1980
S45.—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true. A misrepresentation (deliberate, negligent or innocent) generally gives the right to the innocent party to cancel the contract"
- Example 3: Family Law Case: "Family Law (Divorce) Act, 1996" allows for divorce on the grounds of the breakdown of the marriage, where the parties have lived separately for at least two years."

Importance: This element demonstrates your understanding of the relevant law and shows the judge your argument is anchored in legal precedent. A strong rule element builds your credibility as a legal professional.

Analysis: Connect the Law to the Facts

This is where you bring your argument to life by meticulously connecting the legal rule to the specific facts of your case. This requires careful analysis, strategic reasoning, and a clear articulation of how the law applies to the situation at hand.

- Example 1: Personal Injury Claim: "The evidence shows that I was injured when a defective product manufactured by the defendant malfunctioned, leading to a fall. The defendant had a duty to ensure the product was safe for use, and their failure to do so constitutes negligence, making them liable for my injuries."
- Example 2: Contract Dispute: "The defendant, in the course of negotiating the contract, made a specific representation about the quality of the goods being sold. This representation was false and material to my decision to enter into the contract. As a result of the misrepresentation, I suffered financial loss and am entitled to rescission of the contract and damages."
- Example 3: Family Law Case: "Myself and the defendant have been living separately for five years, and our marriage has irretrievably broken down. We have reached an agreement on the division of assets and custody arrangements for our children, which is in the best interests of all parties involved."

Importance: This is where you truly build your case, providing persuasive arguments supported by evidence. This section requires a deep understanding of the case facts and the ability to logically connect them to the legal framework.

Conclusion: Reiterate and Emphasise

The final conclusion reinforces your main point, emphasising the logical link between the rule, analysis, and your desired outcome. It acts as a powerful closing statement, leaving a lasting impression on the judge.

- Example 1: Personal Injury Claim: "Based on the evidence presented, the law clearly establishes that I am entitled to compensation for my injuries. The defendant's negligence in producing a defective product led directly to the accident. Therefore, I respectfully request that the court award me the necessary compensation to cover medical expenses, lost wages, and pain and suffering."
- Example 2: Contract Dispute: "The defendant's misrepresentation constituted a breach of contract, entitling me to rescission and damages. We request that the court order the defendant to return all payments made by me and award appropriate damages for the financial losses sustained."
- Example 3: Family Law Case: "Considering the evidence of the marriage's irretrievable breakdown and the parties' agreement on asset division and custody arrangements, we respectfully request that the court grant a divorce decree, reflecting the terms agreed upon by the parties."

Importance: A strong conclusion serves as a reminder of your primary argument and emphasises the key points you want the judge or jury to remember. It should leave the audience with a clear sense of the logic and strength of your argument.

Navigating the Nuances of Irish Law

Mastering the CRAC formula is only the first step. To truly excel in Irish courts, lay litigants must be well-versed in specific aspects of the Irish legal system:

Statutory Interpretation: Decoding the Language of Law

Irish law relies heavily on statutes, which are written laws passed by the Oireachtas (Everyone in all parties in the Dail). Statutory interpretation involves understanding the intended meaning of the legislature, considering the context of the legislation, and applying it to specific situations. It is a complex art, requiring deep knowledge of legal principles and meticulous attention to detail.

What are the first considerations?

Legislative Intent: What was the purpose of the legislation? This involves researching oireachtas debates, committee reports, and any other relevant documentation to understand the legislators' intentions. This task requires delving into the legislative history, considering the social and political climate at the time of enactment, and analysing the relevant legal materials to uncover the original purpose behind the statute (I would look in the www.oireachtas.ie/debates/).

Plain Meaning Rule: What is the ordinary meaning of the words used in the statute? This involves consulting dictionaries and considering the common usage of the terms within the context of the legislation. This requires a careful consideration of the words used, taking into account their common usage and any technical or legal definitions.

Contextual Analysis: How does the provision fit within the overall scheme of the statute? This involves considering the relationship between the provision in question and other sections of the law, as well as the overall purpose of the act. This task requires a thorough understanding of the structure and purpose of the entire statute, analysing how the provision in question interacts with other provisions and contributes to the statute's overall scheme.

Case Law: How have previous courts interpreted this provision? Searching legal databases for previous judgments that have dealt with the same provision can provide valuable insights into how courts have interpreted the law in similar contexts. This involves understanding the principles established in previous cases and applying those principles to the current legal problem.

Case Law: Building on the Foundations of Legal Precedent

The principle of stare decisis, meaning "to stand by things decided" or "on all fours (the same as)" is central to the Irish legal system. This principle requires courts to follow the precedents set by previous rulings on similar legal issues. It provides stability and predictability in the legal system, ensuring that similar cases are treated similarly.

Key Considerations:

Identifying Relevant Precedents: Searching legal databases like www.courts.ie, Bailli.org, Westlaw or LexisNexis for cases involving similar facts or legal issues. This requires a thorough understanding of the legal principles involved in the current case and the ability to search for keywords and relevant legal concepts.

Distinguishing Cases: Explaining how the current case differs from past precedents, justifying a different outcome. This requires analysing the similarities and differences between the present case and the precedents, identifying any unique factors that might warrant a different outcome. Carefully articulating these distinctions is crucial to ensuring that the precedent does not bind the current case.

Applying Precedents: Demonstrating how past rulings support your arguments. This involves showing how the legal principles established in past cases apply to the current situation and how those rulings strengthen your position. Careful selection of precedents, and clear application of their principles, can bolster your arguments and enhance your persuasive power.

Constitutional Rights: Protecting Fundamental Liberties

The Irish Constitution is the supreme law of the land, guaranteeing fundamental rights and liberties to all citizens. Solicitors and barristers must be aware of these rights and how they might impact their cases.

Key Considerations:

Freedom of Expression: How does the case affect the right to free speech? This involves assessing whether any legal action or legislation might restrict the right to express themselves freely.

Right to a Fair Trial: Has the right received a fair trial, free from bias? This involves examining the fairness of the procedures used in the trial, the impartiality of the judge, and any potential biases that might have affected the proceedings. This requires a meticulous assessment of the trial process to ensure that the defendant has received a fair opportunity to present their case.

Right to Privacy: Does the case infringe on the right to privacy? This involves considering whether any evidence or legal action might violate the right to privacy, such as accessing personal data or disclosing private information. This demands a keen awareness of the constitutional right to privacy and a thorough understanding of the specific legal context.

Evidence: Presenting Evidence Admissible

The rules of evidence in Irish courts are complex and governed by the Evidence Act, 1851 or the Criminal Evidence Act, 1992. Solicitors and barristers must be well-versed in these rules to ensure that only admissible evidence is presented to the court and its important that you

learn these principle and rules too(I suggest getting the Law Societies Books on contract law and conveyancing law, approx 65.00 euro each).

Key Considerations:

Relevance: Is the evidence relevant to the issues in the case? This involves considering whether the evidence directly relates to the facts in dispute and could potentially influence the outcome of the case.

Admissibility: Does the evidence meet the legal standards for admissibility? This involves considering the various rules of evidence, such as hearsay rules, character evidence, and the best evidence rule, to determine whether the evidence is legally permissible in court.

Weight and Credibility: How persuasive is the evidence, and how credible are the witnesses? This involves evaluating the strength and reliability of the evidence, considering the source of the information, any potential biases, and the overall credibility of the witness providing the testimony.

Beyond Legal Arguments: The Power of Nonverbal Communication

While the CRAC formula and a thorough understanding of Irish law are crucial, nonverbal communication plays a significant role in persuading judges, juries, and clients. Your body language can convey confidence, trustworthiness, and empathy, enhancing your arguments and building rapport.

Courtroom Attire: Projecting Professionalism

Your attire should project professionalism and respect for the court. Avoid flashy colours, distracting patterns, and excessive jewellery. A well-tailored suit, whether for men or women, conveys a sense of preparedness and respect for the court.

Recommended: Dark suits, neutral colours like navy or grey, simple jewellery.

Avoid: Bright colours, animal prints, overly revealing attire. These can distract from your argument and undermine your authority.

Posture and Body Language: Communicating Confidence

Stand tall, maintain eye contact, and use hand gestures sparingly. Avoid fidgeting, slouching, or crossing your arms, which can convey defensiveness or disinterest.

Recommended:

Standing: Maintain a confident stance, keeping your shoulders relaxed and your back straight. This demonstrates composure and self-assurance.

Sitting: Sit upright, leaning slightly forward to convey engagement. This shows that you are actively listening and participating in the proceedings.

Hand Gestures: Use gestures to emphasise points but avoid excessive or distracting movements. Use hand gestures sparingly and purposefully to reinforce your points, but avoid overly dramatic or distracting motions.

Facial Expressions: Projecting Trust and Empathy (yes even for the pig)

Your facial expressions play a crucial role in conveying emotions and building trust. Maintain a neutral expression while listening intently, and use genuine smiles when appropriate. Avoid expressions of disdain, anger, or boredom.

Recommended:

Attentiveness: Maintain eye contact and nod subtly to show you are listening. This shows respect for the speaker and demonstrates that you are actively engaging with their arguments.

Engagement: Use facial expressions to show you are interested and understand what is being said. Slight smiles, raised eyebrows, and nods can convey your engagement with the proceedings and build trust with the audience.

Empathy: Express genuine concern and understanding when appropriate. If the client is sharing personal information or expressing distress, a compassionate expression can build trust and show that you are invested in their case.

Vocal Delivery: Projecting Clarity and Confidence

Speak clearly, enunciate your words, and vary your pace and volume to maintain the audience's attention. Avoid mumbling or speaking too quickly.

Recommended:

Clear Pronunciation: Speak slowly and clearly, enunciating your words. This ensures that your arguments are easily understood and reinforces your professionalism.

Varying Tone: Use inflection to emphasise key points and keep your voice engaging. Varying your tone and volume can help to maintain the audience's attention and convey the importance of specific points.

Confidence: Project a voice that conveys confidence and authority. A firm, clear voice demonstrates your conviction in your arguments and builds trust with the judge.

Navigating Difficult Arguments: The Art of Disengagement

The courtroom can be a pressure cooker. You may encounter difficult arguments, uncooperative clients, or even opposing counsel who employ tactics aimed at throwing you off your game. This is where the "pig" metaphor comes into play.

Recognising the "Pig":

The "pig" represents an opponent who uses tactics that are unproductive, disrespectful, and aimed at derailing the argument. This could be a client who is unreasonable, a witness who is deliberately evasive, or opposing counsel who resorts to personal attacks. The pig's tactics are designed to sow chaos and confusion, and to divert the focus away from the relevant legal issues.

Understanding the "Wrestle":

Engaging with such tactics lowers the level of the argument and risks undermining your professionalism and credibility. It can lead to emotional responses, which can damage your case. If you engage in a "wrestle" with the pig, you are likely to end up covered in mud, while the pig enjoys the chaos.

The "Enjoyment" Factor:

The "pig" often thrives in chaos and enjoys the discomfort of those around them. By engaging in a "wrestle," you are playing into their game.

Choosing Your Battles:

Is this the hill you want to die on? Not every point needs to be contested. Focus on the strongest arguments that will ultimately decide the case. This requires prioritising your arguments and strategically choosing which points to emphasise and which to concede.

Maintain Professionalism:

Even if your opponent is being disrespectful, maintain your composure and professionalism. This demonstrates your strength and integrity. Avoid personal attacks and engage in respectful dialogue, even if your opponent is not doing the same.

Redirect the Focus:

If the argument veers into unproductive territory, politely but firmly redirect the conversation back to the relevant legal issues. This can be done by calmly restating the key points of your argument, reminding the opponent of the relevant legal principles, or asking for a clarification to bring the discussion back on track.

Disengage When Necessary:

If the opponent is relentless in their unconstructive tactics, consider disengaging from the argument. This might mean:

- Asking for a break: To gather your thoughts and reset the tone. This provides an opportunity to regroup and strategise your next move.

- Referring to the court's rules: To point out that the behaviour is inappropriate. This establishes clear boundaries and demonstrates your commitment to maintaining professional decorum.
- Focusing on the evidence: Emphasise the objective facts of the case to steer the conversation back to a productive track. This shifts the focus back to the evidence and reinforces the logic of your argument.

Stop Fidgeting: the art of looking busy

Remember back to when you saw a child, or you might even just consider your own children, and when they were caught in a lie or caught doing something they knew they weren't supposed to be doing. How did they look? They would sheepishly look at the ground, not make eye contact, and weren't generally engaged in the conversation. That's the body language that you're trying to avoid displaying.

The easiest way to stay engaged is to take notes. Honestly, it doesn't matter what you write, just keep writing. My personal recommendation is to quickly summarise the argument of the other side. It will help you to remember what was said later on if you have to refer back.

But you're not limited to writing down who said what, as you should also write down questions that you think that you should still ask. Before I finish with an argument, I will always take a moment to ask myself, if there was anything else that I may have missed.

Pass and take notes to your mckenzie friend or advocate

I can tell you from experience that it is impossible to listen to the other side give their answer while also remembering everything. Not only do you have to listen to the other side's answer, but you also have to process that information and develop your next question.

The best practice is to get your McKenzie to keep notes and write as much as they can down instead of trying to speak with them during the proceedings.

So, if you lean over to ask your McKenzie Friend if you've missed anything, then this is where they can slide over the list of questions that they've been writing as the proceedings went on.

Practise good posture

Imagine with the Plaintiff and Defendant sitting in Court. One of them is sitting up straight while the other one is slouched down in their chair. Which one of them is displaying confidence in their case with their body language, and which one is displaying defeat?

You might not think that your posture in Court is important, but if you want to use body language to win in court, then your posture is the easiest thing that you can immediately correct. Improve your posture and you'll exhibit confidence, strength, and honesty.

Win in Court by being Proactive, not Reactive

When you're in Court and under the microscope, the judge will be watching to see how you react to testimony and evidence. You can use body language to your advantage and avoid accidentally telling them more than you intend to.

When you're in Court, you're going to hear people lie on affidavits or on the stand. They may be intentionally lying or simply telling a different side of the same story that you know to be the truth. Either way, your natural reaction to hearing them lie will be noticeable to anyone

watching you. It is usually a gasp, vigorous headshaking, or just a look of disgust on your face.

In order to use body language to win in Court, you need to expect the unexpected. Prior to each party giving evidence, imagine them saying three of the worst things that would be the most damaging to your case. Taking this approach will mentally prepare you for any negative testimony so you do not physically react.

This is where your note taking will really come in handy. When you hear the witness say something false, there's no benefit to you writing in your notes, "she's lying!" Having a whole page of that line is of no benefit to you.

If the other side said, "The light was green" then you should write, "She said the light was green, but the light was actually red." It might be a few minutes (and several questions) to put the statement into context.

When you don't react to negative testimony, and simply remain resolute in taking notes in the face of such evidence, then you can use body language to win in Court.

Challenging the Validity of Repossession Proceedings: A Lay Litigants Argument

This argument challenges the legal standing of a service provider seeking a possession order in a repossession case, arguing that the service provider lacks the necessary legal rights to initiate proceedings. The argument centers on the following points:

The true "owner" of the loan is not the service provider, but rather the investment fund that purchased the loan at a discount.

The service provider's claim to "ownership" may be a breach of the Registration of Title Act.

The identity of the actual beneficial owner is obscured, raising concerns about the legitimacy of the repossession claim.

CRAC Formula Application:

This argument challenges the validity of repossession proceedings brought by a service provider, arguing that they lack the necessary legal standing to initiate such actions. The crux of the argument hinges on the true ownership of the loan and the potential breach of the Registration of Title Act.

CRAC Formula Application:

Conclusion:

The service provider lacks the legal standing to initiate these repossession proceedings, and the court should dismiss the application.

Rule:

Section 119 of the Registration of Title Act 2006: This section clearly states that a person who is not the registered owner of land cannot claim to be the owner for the purpose of transferring or encumbering the land.

General Principles of Standing in Law: In Irish law, a party seeking relief from the court must demonstrate standing. This principle is enshrined in numerous legal cases, including *McKenna v. An Taoiseach* [1993] 1 IR 261, which established that a party must have a "sufficient interest" in the matter to seek relief.

Loan Agreements and Transfer of Rights: Loan agreements typically outline the transfer of rights to the lender upon default. However, the specific right to seek possession orders is usually reserved for the actual lender who owns the debt. Numerous Irish legal decisions on repossession cases support this, including *Irish Nationwide Building Society v. Sherry* [2012] IEHC 331.

Analysis:

Lack of Ownership by Service Provider: The service provider is presenting itself as the owner of the loan, but evidence suggests otherwise. The actual owner of the loan is likely an investment fund that purchased the loan at a discounted price. This investment fund, as the true holder of the debt, possesses the legal right to initiate repossession proceedings.

Possible Breach of the Registration of Title Act: The service provider's assertion of ownership and attempt to obtain a possession order may contravene Section 119 of the Registration of Title Act 2006. This provision clearly states that only the registered owner of the land has the legal authority to transfer or encumber it. Since the service provider is not the registered owner, their actions may constitute a breach of this Act.

Obscured Ownership and the Need for Discovery: The actual beneficial owner, the investment fund, appears to operate as a "shelf" company with obscured ownership. The directors of such companies are often "proxy directors" with minimal ownership, and the true beneficial ownership remains hidden. This raises concerns about the legitimacy of the repossession claim and whether the service provider genuinely has the right to pursue legal action.

Conclusion:

Considering the evidence presented and the relevant legal principles, the service provider's standing to initiate repossession proceedings is questionable. The true owner of the loan, the investment fund, has not been identified and has not been brought before the court. This lack of transparency casts doubt on the validity of the claim. Therefore, we strongly request that the court dismiss the service provider's application for a possession order.

Further Arguments:

Discovery of the True Beneficial Owner: To guarantee a fair and transparent legal process, the court should order discovery to reveal the true identity of the beneficial owner. This will allow for proper cross-examination of the true owner to verify their legal right to bring this case.

Precedent: Citing relevant legal precedents that address standing in repossession cases strengthens this argument. For example, *Irish Nationwide Building Society v. Sherry* [2012] IEHC 331 demonstrates the necessity for the lender to have standing in repossession proceedings.

Authority: Citing relevant legislation, such as the Registration of Title Act 2006, the Occupiers' Liability Act 1995, and relevant sections of the Sale of Goods and Supply of Service Act 1980, adds weight to the argument.

This argument highlights the importance of transparency and fairness in repossession cases. It challenges the practice of using "shelf" companies and concealed ownership structures to obscure the true beneficial owner. It asserts that only the true owner of the debt possesses the right to initiate repossession proceedings.

That's it, for now anyway, we have so many ways to win in court, we just have to hold out tongues when lies are spewed, we can beat them with their own tools, however we must use them exactly the same way they do.

Good Luck and Remember, the journey of self advocacy is a continuous one. Embrace the challenge, never stop learning, and strive to become a champion for justice.