

Cite as: Keith A. McCrickard, *Shakespeare on CR(E)AC: Turning Reluctant First-Year Law Students Into Addicts*, 23 Perspectives: Teaching Legal Res. & Writing 41 (2014).

# Shakespeare on CR(E)AC: Turning Reluctant First-Year Law Students Into Addicts

By Keith A. McCrickard

*Keith A. McCrickard is a Clinical Visiting Assistant Professor at the University of North Carolina School of Law in Chapel Hill, N.C.*

*“So that, as clear as is the summer’s sun.”<sup>1</sup>*

First-year law students are often reluctant to conform to the CR(E)AC organizational format.<sup>2</sup> Liberal arts majors are particularly prone to complain because they have written extensively during their undergraduate, and sometimes graduate or professional, careers and feel confident about their writing skills. Throughout the year, legal writing professors hear a steady drumbeat of students bemoaning the perceived loss of creativity, objecting to the formulaic style, and deriding the organizational format as akin to coloring by number.<sup>3</sup>

<sup>1</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 2, l. 86, reprinted in William Shakespeare: *The Complete Works* 599 (Stanley Wells et al. eds., 2d ed. 2005) [hereinafter *The Complete Works*].

<sup>2</sup> For the sake of brevity and convenience, this article uses the acronym CR(E)AC for the Conclusion-Rule-Explanation-Application-Conclusion organizational format. However, the proposed in-class exercise works equally well for CiREAC, CEAC, CRRPAP, CRuPAC, TREAT, and myriad similar variations. Although the exercise is not a perfect match for IRAC, IRAAC, or TREACC, legal writing professors can adapt the exercise to fit those formats as well.

<sup>3</sup> Experts have reported anecdotal evidence of this phenomenon. E.g., Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing* 12 (6th ed. 2014) (“Early in the course, English majors may resist what they consider the formulaic and restrictive nature of legal writing. They complain that it ‘stifles their creativity,’ and they are frustrated because they cannot show off their vocabularies and sophisticated writing style.”); Jessica L. Clark, *Peer Review: Using Time, Place, and Manner Constraints to Maximize Learning*, 22 Perspectives: Teaching Legal Res. & Writing 20, 23 (2013) (noting that a student “complained that [TREAT] did not let him write creatively”) (footnote omitted). A recent empirical study appears to confirm this anecdotal evidence and indicates that many students regard legal writing as requiring little creativity and being highly structured. Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of*

To persuade reluctant students to adopt the CR(E)AC organizational format, legal writing professors may appeal to students’ respect for William Shakespeare. The law permeates Shakespeare’s works. Although everyone remembers the famous line, “[t]he first thing we do[,] let’s kill all the lawyers,”<sup>4</sup> fewer know that more than twenty of Shakespeare’s plays feature trial scenes. Even more plays and poems contain references to lawyers or legal issues, including contracts, property, family law, criminal law, constitutional law, international law, and natural law.

In light of these ubiquitous legal references, readers should not be surprised that Shakespeare offers valuable lessons on legal writing. As an initial matter, and in response to student complaints, legal writing professors may remind students that Shakespeare exemplifies how writers can express themselves creatively within the confines of a highly formulaic style, such as iambic pentameter. But Shakespeare also provides legal writing professors with the opportunity to teach CR(E)AC through an in-class exercise.

## I. In-Class Exercise: *The Life of Henry the Fifth*

This in-class exercise is based on a sixty-odd line excerpt from a Shakespearean play entitled *The Life of Henry the Fifth*. As a prelude to this excerpt, King Henry V seeks legal counsel as to whether the

*Legal Writing Are So Tough and What We Can Do About It*, 16 Legal Writing: J. Legal Writing Inst. 223, 263, 297–98 (2010).

By contrast, science majors appear to adapt more quickly to CR(E)AC. Perhaps this adaptability reflects their experience with technical writing. See Karen L. Koch, *A Multidisciplinary Comparison of Rules-Driven Writing: Similarities in Legal Writing, Biology Research Articles, and Computer Programming*, 55 J. Legal Educ. 234, 234 (2005) (observing that “the writing in [biology and computer programming] closely mirrors the logic and structure of legal writing because they are all rules-driven writing”).

<sup>4</sup> William Shakespeare, *The Second Part of Henry VI* act 4, sc. 2, l. 78, reprinted in *The Complete Works*, *supra* note 1, at 79.

“[L]egal writing professors hear a steady drumbeat of students bemoaning the perceived loss of creativity, objecting to the formulaic style, and deriding the organizational format as akin to coloring by number.”

Salic Law bars his claim to the crown of France.<sup>5</sup> The Salic Law purportedly prohibited women and the female line from succeeding to the French crown.<sup>6</sup> Because Henry derives his claim from the mother of his great-grandfather, Edward III,<sup>7</sup> the application of the Salic Law would nullify his claim.

Henry charges the Archbishop of Canterbury to provide him with an objective legal analysis of his claim to the French crown.<sup>8</sup> Specifically, Henry instructs Canterbury to “justly and religiously unfold/Why the law Salic that they have in France/ Or should or should not bar us in our claim.”<sup>9</sup> Henry cautions Canterbury not to “fashion, wrest, or bow [his] reading ... For God doth know how many now in health/Shall drop their blood in approbation/Of what your reverence shall incite

us to.”<sup>10</sup> When delivering his legal analysis to Henry, who is a statesman, and perhaps a lawyer,<sup>11</sup> Canterbury follows an organizational format that closely resembles the modern-day CR(E)AC.<sup>12</sup>

Even though Canterbury presents his legal analysis as an oration, legal writing professors may use it to create a multi-step, in-class CR(E)AC exercise. In this exercise, students must (1) reverse engineer the legal analysis to correspond to the CR(E)AC organizational format, and (2) improve upon the legal analysis through a form of peer review. As an optional third step, students may discuss the honor code implications associated with the rampant plagiarism in the legal analysis. Once the students have completed these steps, the professor may reward the students by displaying a film adaptation of the legal analysis to make the scene come alive.

#### A. Step One: Reverse Engineer the Legal Analysis

In Step One, students must reverse engineer the legal analysis to correspond to the CR(E)AC organizational format. In small groups or individually, students should use a different colored highlighter or pen to identify each line of the analysis as Conclusion, Rule, Explanation, or Application. Once students have completed the color coding, they should label the different highlighted sections with a “C,” “R,” “E,” or “A.”

For your convenience, the Appendix contains a color-coded version of the reverse-engineered

<sup>5</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 2, ll. 9–12, reprinted in *The Complete Works*, *supra* note 1, at 598.

<sup>6</sup> The Salic Law was a statutory code compiled during the reign of Frankish King Clovis in the late 5th century or early 6th century. *The Laws of the Salian Franks* 52 (Katherine Fischer Drew trans. 1991); Craig Taylor, *The Salic Law, French Queenship, and the Defense of Women in the Late Middle Ages*, 29 *French Hist. Stud.* 543, 543 (2006). Although scholars have identified several versions of the code, the earliest version appears to have consisted of sixty-five titles and governed a wide range of legal issues. *The Laws of the Salian Franks*, *supra*, at 53, 59–61. These issues included theft, rape, murder, contracts, and torts, e.g., *id.* at 65–73, 80, 92–94, 104–08, 113–15, as well as “cast[ing] ... magic spell[s],” “claim[ing] that someone else is covered in dung,” and “cut[ting] the hair of a long-haired free boy without the consent of his relatives,” *id.* at 83–84, 86, 94. The Salic Law also contained a title disqualifying women from inheriting land. *Id.* at 122. However, some scholars doubt whether it applied to questions of succession. E.g., O. Hood Phillips, *Shakespeare and the Lawyers* 56 (1972); George W. Keeton, *Shakespeare and His Legal Problems* 220–22 (1930).

<sup>7</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 1, ll. 85–90, reprinted in *The Complete Works*, *supra* note 1, at 598; see Keeton, *supra* note 6, at 220–26.

<sup>8</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 1, ll. 9–32, reprinted in *The Complete Works*, *supra* note 1, at 598. The context of the play raises questions about the sincerity of Henry’s request for an objective interpretation of the Salic Law. In the prior scene, Canterbury confides to another clergyman that he has offered to help finance Henry’s war against France in exchange for the abatement of a proposed confiscation of church wealth. *Id.* act 1, sc. 1, ll. 1–21, reprinted in *The Complete Works*, *supra*, note 1, at 597; *id.* act 1, sc. 1, ll. 76–82, reprinted in *The Complete Works*, *supra*, note 1, at 598 (“I have made an offer to his majesty ... As touching France, to give a greater sum/Than ever at one time the clergy yet/Did to his predecessors part withal.”). Canterbury also proposes to provide a justification for the war. *Id.* act 1, sc. 1, ll. 85–90.

<sup>9</sup> *Id.* act 1, sc. 2, ll. 10–12.

<sup>10</sup> *Id.* act 1, sc. 2, l. 14–20.

<sup>11</sup> Shakespeare elsewhere suggested that Prince Hal, subsequently King Henry V, had formal legal training. In *The History of Henry the Fourth (The First Part of King Henry IV)*, Prince Hal instructs Falstaff to “meet me tomorrow in the Temple Hall.” William Shakespeare, *The History of Henry the Fourth* act 3, sc. 3, ll. 201–02, reprinted in *The Complete Works*, *supra* note 1, at 501. Because Temple Hall was a gathering place for lawyers, Dunbar Plunket Barton, Shakespeare and the Law 20–21 (1929), the inference is that Prince Hal was a lawyer.

<sup>12</sup> No contemporaneous historical record exists of the organization or language of Canterbury’s oration. According to the historical sources available to Shakespeare, however, Canterbury made these very points in this very order. E.g., 4 *Narrative and Dramatic Sources of Shakespeare* 356, 378 (Geoffrey Bullough ed. 1962) (demonstrating that Shakespeare relied heavily on the 1587 edition of Holinshed’s *Chronicles* for Canterbury’s legal analysis).

analysis. The following paragraphs cover a few basic points about each section of the CR(E)AC.

- C:** In the yellow highlighted text, Canterbury opens his legal analysis with a one-sentence **conclusion**—“There is no bar/To make against your highness’ claim to France.”<sup>13</sup> The conclusion is concise, contains a predicted outcome on the exact legal issue, and reflects Canterbury’s high degree of certainty in that predicted outcome. By starting with the conclusion, Canterbury also alerts the audience to the relevance of the subsequent information and shows respect for his busy audience’s time.
- R:** In the green highlighted text, Canterbury recites the relevant legal **rule** from the Salic Law. He quotes the statutory text, identifies the source, and presents a straightforward statement of the overarching legal rule.
- E:** In the blue highlighted text, Canterbury embarks upon an **explanation** of the legal rule. He starts the explanation section with a topic sentence indicating that the Salic land does not include France—“Which ‘Salic land’ the French unjustly gloss/To be the realm of France.”<sup>14</sup> The explanation section continues with a discussion of legal authorities to support this narrow interpretation of the Salic Law. Canterbury notes that “their own authors faithfully affirm” that the term “Salic land” refers to a limited geographic area within Germany and that the Salic land became a French possession 421 years after the death of Pharamond, the alleged author of this legal rule.<sup>15</sup>

Canterbury next introduces other legal authorities to indicate that French kings themselves have disregarded the Salic Law.<sup>16</sup> In particular, he observes that “their writers say”

that a long list of French kings have inherited the crown through “the right and title of the female” in flagrant violation of the Salic Law against succession through the female line.<sup>17</sup> Canterbury concludes the explanation section with a brief statement that this descent through female members of the royal family continues “unto this day.”<sup>18</sup>

In this explanation section, Canterbury describes the prior application of the legal rule. He discusses the relevant authorities, shows that these authorities prove the inapplicability of the legal rule either to France or to the succession of French kings, and otherwise uses these authorities to establish the parameters of the legal rule. Canterbury also focuses on explaining the rule and never mentions the facts of Henry’s situation.

- A:** In the pink highlighted text, Canterbury includes a brief **application** section to show that the French are estopped from invoking the Salic Law against Henry.<sup>19</sup> Canterbury arguably applies the main legal points from the explanation section in a single, consolidated sentence to show the accuracy of the predicted outcome. He also refrains from raising any new law in the application section.
- C:** Finally, in the second occurrence of the yellow highlighted text, Canterbury reiterates his **conclusion** in response to a question from Henry. Perhaps weary of the seemingly interminable legal analysis, Henry interjects to ask whether he may “with right and conscience make this claim” to the French crown.<sup>20</sup> Although the substance of the initial and final conclusions is identical, Canterbury uses different language to avoid explicitly repeating the initial conclusion.

<sup>13</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 2, ll. 35–36, reprinted in *The Complete Works*, *supra* note 1, at 598.

<sup>14</sup> *Id.* act 1, sc. 2, ll. 40–41.

<sup>15</sup> *Id.* act 1, sc. 2, ll. 43–64.

<sup>16</sup> *Id.* act 1, sc. 2, ll. 64–90, reprinted in *The Complete Works*, *supra* note 1, at 598–99.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* act 1, sc. 2, l. 90, reprinted in *The Complete Works*, *supra* note 1, at 599.

<sup>19</sup> *Id.* act 1, sc. 2, ll. 91–95.

<sup>20</sup> *Id.* act 1, sc. 2, l. 96.

“Students may find the prospect of revising Shakespeare’s work to be a daunting task because of the Bard’s legendary status ...”

### B. Step Two: Improve Upon the Legal Analysis

In Step Two, students must improve upon the legal analysis through a form of peer review. Students may find the prospect of revising Shakespeare’s work to be a daunting task because of the Bard’s legendary status and insightful arguments against the applicability of the Salic Law. However, Step Two helps students realize that they possess the skills to critique legal writing and gives them an opportunity to practice those skills.

Students may recommend several possible revisions. As they will have noticed from reading Canterbury’s legal analysis, it is a long, convoluted, tedious exegesis of the Salic Law and would benefit from substantial improvement. The following bullet points present a non-exhaustive list of such improvements, which range from advanced concepts for students with a firm grasp on the material to low-hanging fruit for students with a more rudimentary understanding.

- **Initial Conclusion.** Students may propose recasting the initial conclusion to forecast the primary reasons for the predicted outcome. In addition, students may suggest briefly identifying the Salic Law as the source of the relevant legal rule.
- **Rule.** Students may discuss whether Canterbury should have included any other rules with his statement of Salic Law. For example, they may ask whether the stated rule governs Henry’s situation or provides the legal principle that requires the conclusion. Students also may derive sub-rules from the explanation section to supplement the overarching legal rule.
- **Explanation.** The explanation section offers substantial opportunity for improvement. At the most general level, students may propose revising the topic sentence to preview the content of the entire section. Students also may recommend that Canterbury address the purpose or policy of the legal rule, include specific citations, and foreshadow the framework of the application section. Finally, students may suggest simply that Canterbury avoid droning on for over twenty lines about the lineage of the French kings.

- **Application.** Students may recommend a more robust application of the law to the facts. Even though the application section is often the longest section of an objective legal analysis, Canterbury devoted a scant five lines (less than 10 percent of the excerpt) to this section.

In addition, students may suggest that Canterbury (1) introduce the application section with a mini-conclusion; (2) divide the application section into two subsections—one for the geographic applicability of the Salic Law and another for the estoppel argument—to ensure that it covers each point from the explanation section; and (3) address counter-analyses.

- **Organizational Structure.** Students may propose revamping the entire CR(E)AC to include a mini-cr(e)ac for each of the two distinct legal points: (1) the Salic Law does not apply to France because the term “Salic land” does not encompass France; and (2) the French are estopped from applying the Salic Law to Henry because French kings have succeeded to the crown through the female line.
- **Transitions.** Students may suggest inserting topic sentences, signposts, and other transitions between sections or legal points.
- **Grammar, Diction, and Punctuation.** The legal analysis contains many anachronisms and oddities because of its age, meter, and stage-play format. To update the legal analysis, students may propose to render it in modern grammar and vocabulary. Students also may recommend the insertion of commas, periods, or other punctuation.
- **Audience.** Students may suggest revisions to accommodate the expectations of different audiences.

### C. Step Three (Optional): Discuss Honor Code Implications

In the optional Step Three, students may discuss the honor code implications associated with the rampant plagiarism in the legal analysis. As mentioned earlier, Shakespeare relied heavily

on the 1587 edition of Holinshed's *Chronicles* when writing the legal analysis. In fact, Shakespeare merely converted entire clauses and sentences from Holinshed's *Chronicles* into iambic pentameter. To illustrate the extent of this plagiarism, legal writing professors may show the students a secondary source in which a scholar juxtaposed Holinshed's *Chronicles* and Shakespeare's text in parallel columns.<sup>21</sup> This optional step allows legal writing professors to reiterate various admonitions against plagiarism.

#### D. Reward: Display a Film Adaptation

Once the students have completed these steps, legal writing professors may reward their students by displaying a film adaptation of the legal analysis to make the scene come alive.<sup>22</sup>

For purposes of this exercise, the best film adaptation is the Kenneth Branagh adaptation of 1989.<sup>23</sup> This adaptation is reasonably faithful to the text and likely incorporates a few of the students' recommendations from Step Two.<sup>24</sup> It is superbly acted and carries the air of gravitas befitting a legal analysis, without sacrificing the comic elements of the scene.<sup>25</sup> In addition, this adaptation is readily available in many public and university

libraries.<sup>26</sup> The relevant scene lasts less than five minutes, which delivers the much-appreciated entertainment without disrupting class too much. Even though this adaptation is twenty-five years old, it still features a noticeably higher production value than older adaptations. Finally, younger students are often familiar with Kenneth Branagh's work from other films, especially Harry Potter.

## II. Conclusion

Shakespeare offers an entertaining way to persuade students to adapt to the CR(E)AC organizational format. Through this multi-part, in-class exercise, legal-writing professors can guide students through the deconstruction of a flawed piece of legal writing and let them practice a form of peer review. The exercise also emphasizes the importance of writing for your audience and suggests that the CR(E)AC organizational format has existed in some form for hundreds of years. Even though the subject matter may not appeal to every student, the exercise is an engaging means of discussing organizational format.

© 2014 Keith A. McCrickard

“Through this multi-part, in-class exercise, legal-writing professors can guide students through the deconstruction of a flawed piece of legal writing and let them practice a form of peer review.”

<sup>21</sup> W.G. Boswell-Stone, *Shakespeare's Holinshed: The Chronicle and the Historical Plays Compared* 169–71 (1896), available at Google Books, [http://books.google.com/books?id=PeasJJzafUUC&prints=ec=frontcover&source=gbs\\_ViewAPI#v=onepage&q&f=false](http://books.google.com/books?id=PeasJJzafUUC&prints=ec=frontcover&source=gbs_ViewAPI#v=onepage&q&f=false) (last visited Oct. 20, 2014).

<sup>22</sup> The U.S. copyright law generally prohibits the display of non-public domain movies in a public setting, without the permission of the copyright owner. 17 U.S.C. § 106 (2012). However, the copyright law contains a face-to-face teaching exemption that allows the display of a movie in a classroom setting if the display is for an instructional activity. *Id.* d.110(1). Of course, professors must ensure that they comply with the conditions set forth in the exemption.

<sup>23</sup> *Henry V* (Renaissance Films PLC et al. 1989).

<sup>24</sup> Every adaptation appears to shorten Canterbury's legal analysis—likely for fear that audiences will doze off during the onslaught of legalistic minutiae. However, the Branagh adaptation merely omits Henry's request for an objective analysis, streamlines the reasoning in the explanation section, and deviates from the text in a few minor respects.

<sup>25</sup> By contrast, Sir Laurence Olivier treats Canterbury's legal analysis as farce in his 1944 adaptation. *The Chronicle History of King Henry the Fifth with His Battell Fought at Agincourt in France* (Henry V) (Two Cities Films 1944).

<sup>26</sup> The DVD is simple to cue up during class. The relevant scene starts at the beginning of Scene 4 (*King Henry V*) and runs from approximately 5:28–9:50. Because the scene continues beyond Canterbury's legal analysis, legal writing professors must be prepared to stop the clip.

## APPENDIX

## CANTERBURY

<p>There is no bar To make against your highness' claim to France But this, which they produce from Pharamond: <i>'In terram Salicam mulieres ne succedant'</i>— 'No woman shall succeed in Salic land'— Which 'Salic land' the French unjustly gloss To be the realm of France, and Pharamond The founder of this law and female bar. Yet their own authors faithfully affirm That the land Salic is in Germany, Between the floods of Saale and of Elbe, Where, Charles the Great having subdued the Saxons, There left behind and settled certain French Who, holding in disdain the German women For some dishonest manners of their life, Established then this law: to wit, no female Should be inheritrix in Salic land— Which Salic, as I said, 'twixt Elbe and Saale, Is at this day in Germany called Meissen. Then doth it well appear the Salic Law Was not devised for the realm of France. Nor did the French possess the Salic land Until four hundred one-and-twenty years After defunction of King Pharamond, Idly supposed the founder of this law, Who died within the year of our redemption Four hundred twenty-six; and Charles the Great Subdued the Saxons, and did seat the French Beyond the river Saale, in the year Eight hundred five. Besides, their writers say, King Pépin, which deposèd Childéric, Did, as heir general—being descended Of Blithild, which was daughter to King Clotaire— Make claim and title to the crown of France. Hugh Capet also—who usurped the crown Of Charles the Duke of Lorraine, sole heir male Of the true line and stock of Charles the Great— To fine his title with some shows of truth, Though in pure truth it was corrupt and naught,</p>	<p>35 40 45 50 55 60 65 70</p>	<p>Conveyed himself as heir to th' Lady Lingard, Daughter to Charlemain, who was the son To Louis the Emperor, and Louis the son Of Charles the Great. Also, King Louis the Ninth, Who was sole heir to the usurper Capet, Could not keep quiet in his conscience, Wearing the crown of France, till satisfied That fair Queen Isabel, his grandmother, Was lineal of the Lady Ermengarde, Daughter to Charles, the foresaid Duke of Lorraine; By the which marriage, the line of Charles the Great Was reunited to the crown of France. So that, as clear as is the summer's sun, King Pépin's title and Hugh Capet's claim, King Louis his satisfaction, all appear To hold in right and title of the female; So do the kings of France unto this day, Howbeit they would hold up this Salic Law To bar your highness claiming from the female, And rather choose to hide them in a net Than amply to embar their crookèd titles, Usurped from you and your progenitors.</p> <p><b>KING HARRY</b> May I with right and conscience make this claim? <b>CANTERBURY</b> The sin upon my head, dread sovereign.<sup>27</sup></p>	<p>75 80 85 90 95</p>
---	--	--	---------------------------------------

<sup>27</sup> William Shakespeare, *The Life of Henry the Fifth* act 1, sc. 2, ll. 35–97, reprinted in *The Complete Works*, *supra* note 1, at 598–99.