

Beyond IRAC and
CREAC: Alternative
Models of Legal
Reasoning

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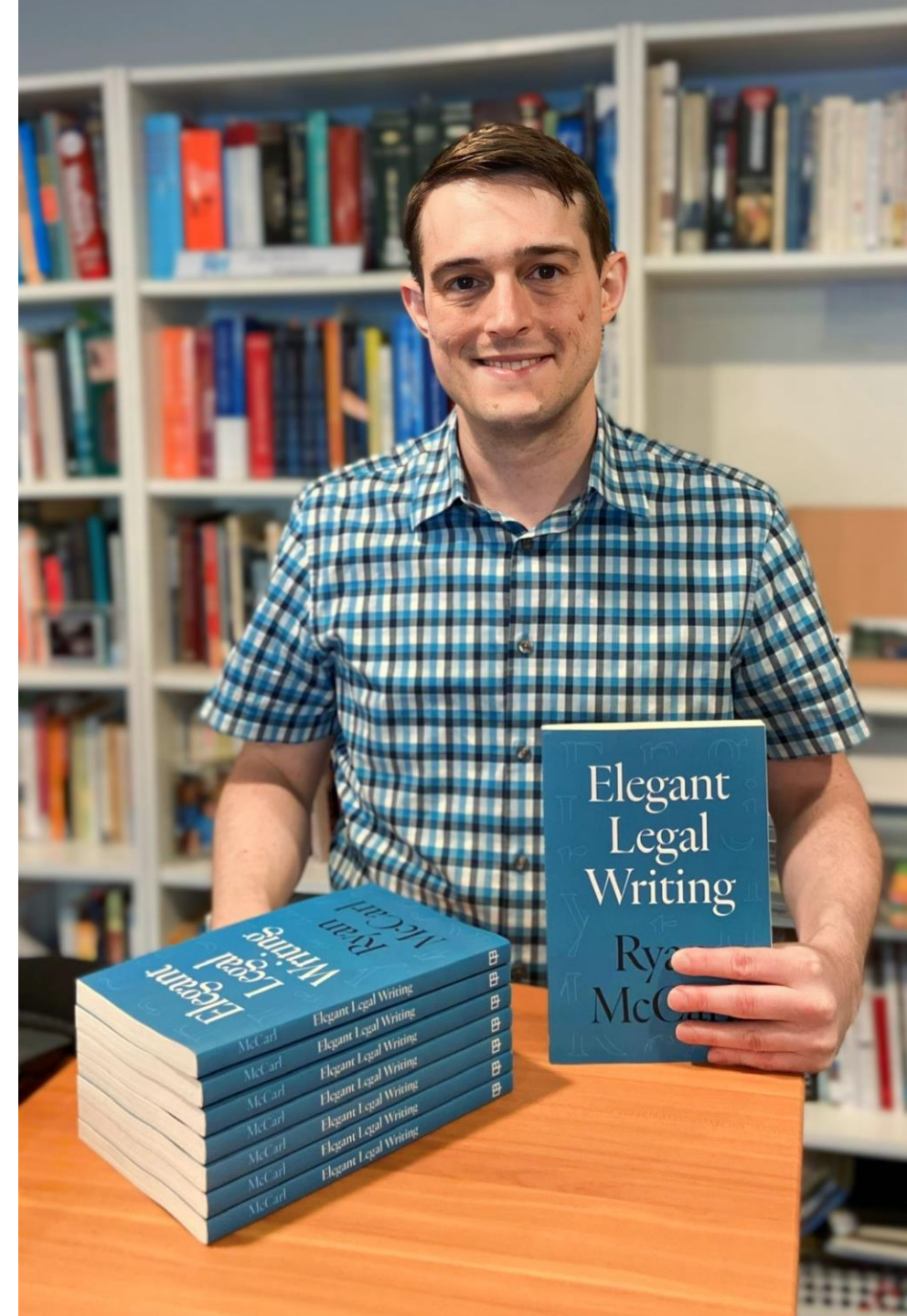
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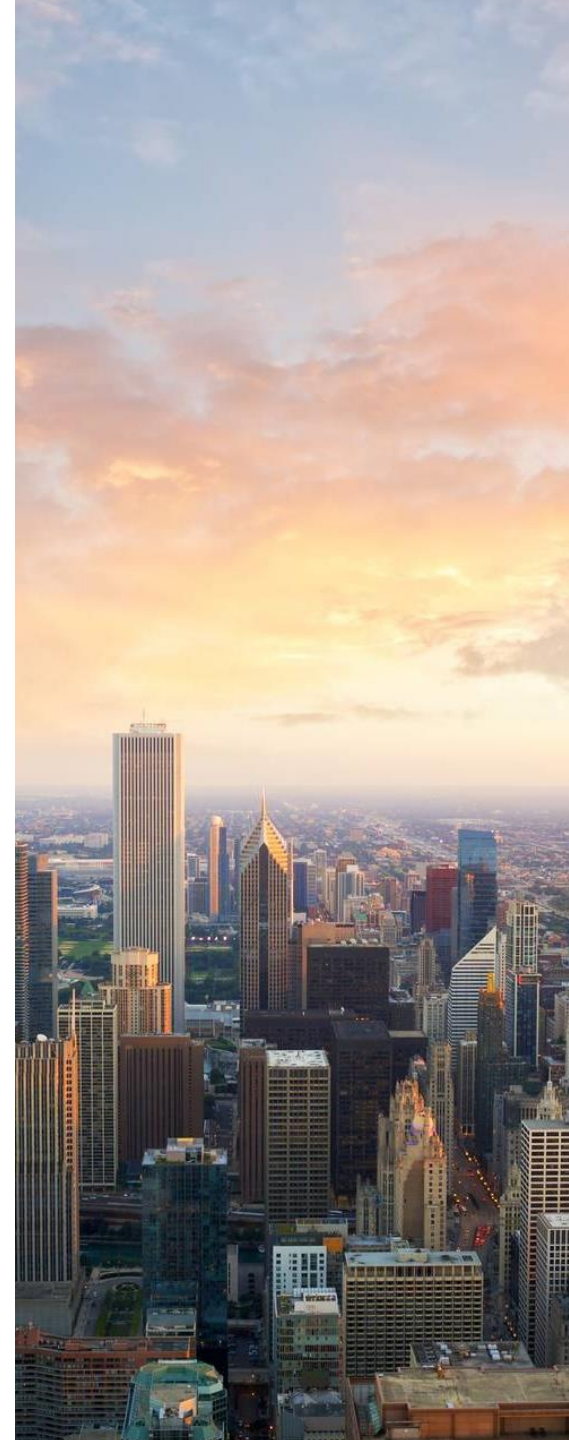
Ryan McCarl is the author of *Elegant Legal Writing* (Univ. Cal. Press 2024) and a founding partner of Rushing McCarl LLP. He has taught advanced legal writing courses at the UCLA School of Law and LMU Loyola Law School and given talks to audiences including the ABA Litigation Section and Texas Office of the Attorney General.

McCarl's work has appeared in the *Cincinnati Law Review*, *Stanford Journal of International Law*, and elsewhere. Before cofounding Rushing McCarl LLP, he clerked for the Hon. David M. Ebel at the United States Court of Appeals for the Tenth Circuit, worked as a litigator at WilmerHale and Hueston Hennigan, and served as an AI Law and Policy research fellow at the UCLA School of Law.



Overview

1. Limitations of IRAC and CREAC
2. Other approaches to legal reasoning



Why not IRAC and CREAC?

Both frameworks:

- Ignore **procedural constraints and burdens**.
- Overemphasize **rule statements**.
- Treat **rules** as a given (providing no guidance when a rule's applicability or nuances are disputed).
- Treat **facts** as a given (providing no guidance on how rules and facts interact, or on how to select material facts).
- Promote strained, verbose, and formulaic **prose**.
- **Oversimplify**, suggesting that legal reasoning and argumentation can be captured in one formula.
- Struggle to accommodate **complex arguments** involving multiple rules.

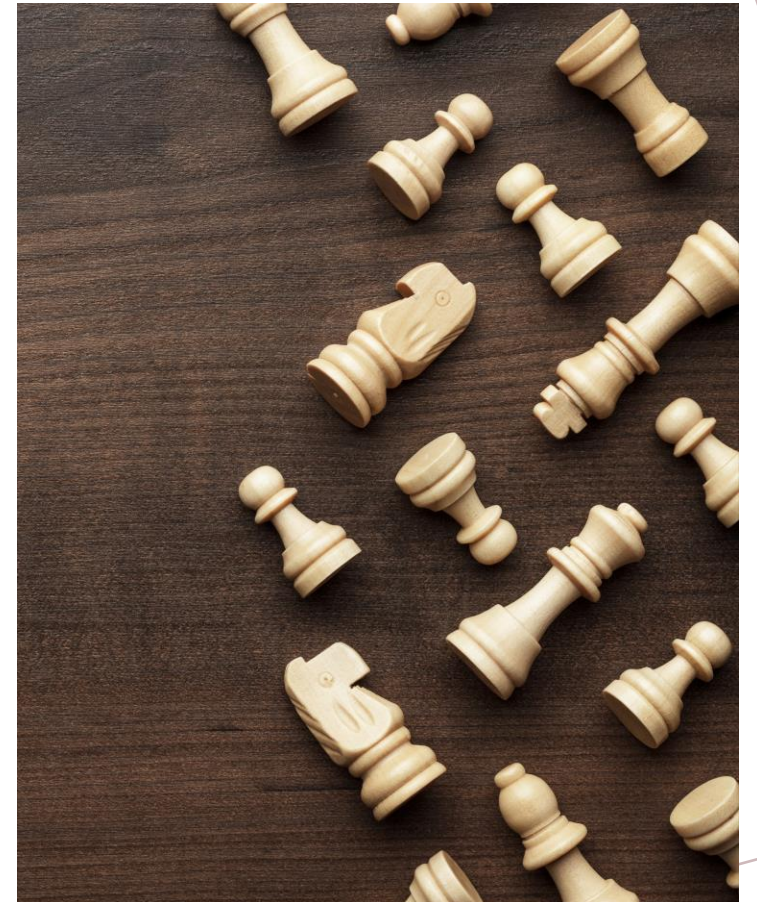
Legal reasoning is multifaceted.

IRAC and CREAC shed no light on these tasks:

- Selecting and synthesizing rules
- Interpreting statutes or contracts
- Making and parrying argument moves
- Selecting and characterizing material facts
- Weaving rules and facts together, mutually adjusting each to tell a coherent legal story
- Selecting and characterizing strong authorities
- Distinguishing holdings from dicta
- Integrating policy and values arguments

Some questions R-A-C frameworks can't answer

- **Classification and vagueness:** Does an arbitration clause that excludes “fraud claims” also exclude fiduciary-duty causes of action based on allegations of fraud?
- **Statutory interpretation:** Are costs incurred in investigating a hacking incident recoverable in a CFAA (Computer Fraud and Abuse Act) action?
- **Conflicting legal paradigms:** Can the act of filing a lawsuit constitute an anticipatory repudiation of a contract? [Contract law vs. litigation privilege]



Procedure is at the core of practical legal reasoning.



Litigation arguments are shaped by their procedural contexts:

- Default rules
- Burdens of proof and standards of review
- Evidentiary constraints
- Legal constraints

Legal syllogisms

Legal syllogisms are too high-level to be of much use in contested cases, which usually involve disputes about:

- the selection and content of the applicable **rule**;
- the selection, import, and admissibility of the relevant **facts**; and
- the way the law and facts interact to produce a conclusion.

Major premise (legal proposition)

- The speed limit is 55 MPH.

Minor premise (fact proposition)

- Defendant was traveling 70 MPH (which is faster than 55 MPH).

Legal conclusion

- Defendant violated the speed limit.

McCarl's "conclusion + reasons" paradigm

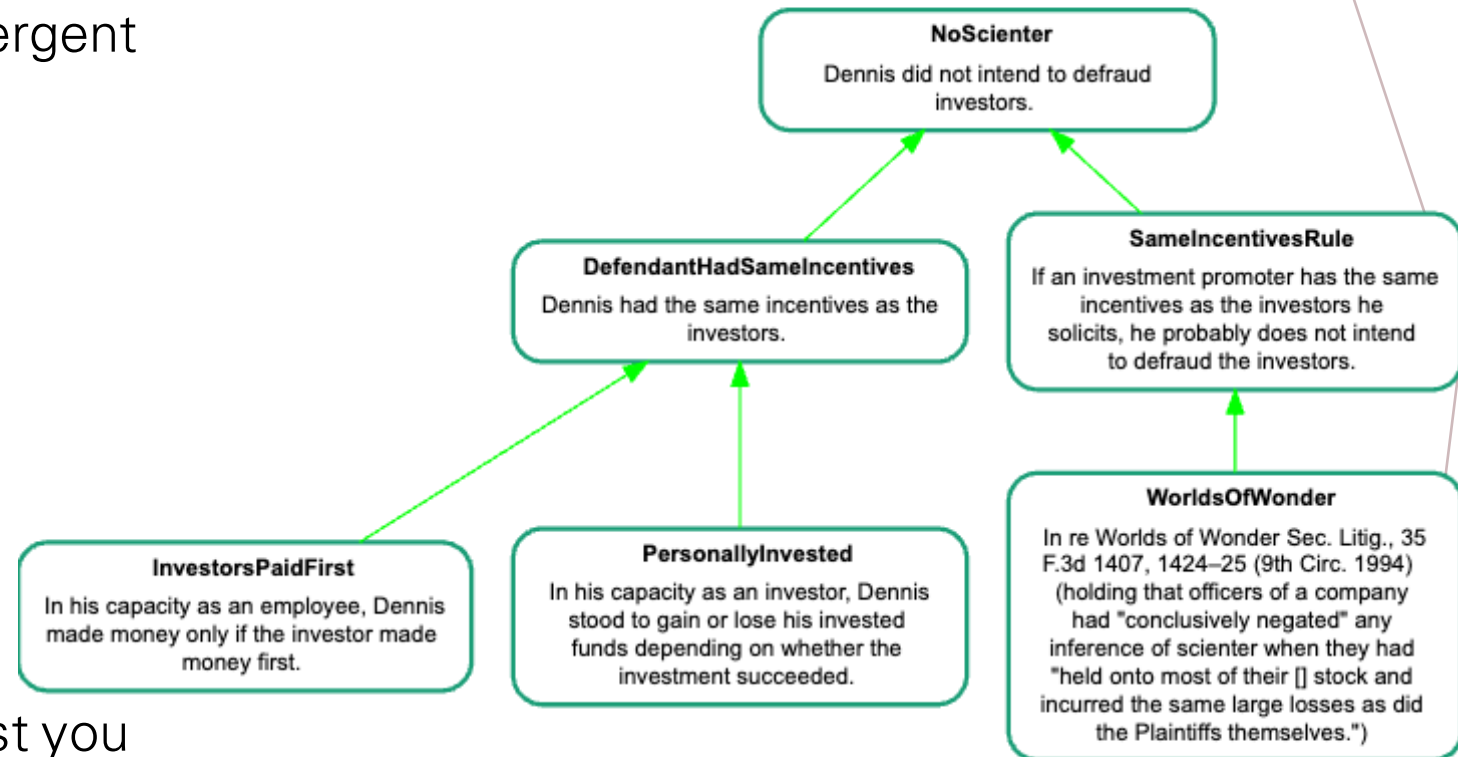
The most common problem in legal writing is **conclusory reasoning**.

Solutions:

1. Identify conclusory statements (*Elegant Legal Writing* § 7.4)
2. Add "because" statements when stating a legal conclusion.
3. Use the paradigm "**conclusion + reasons**." A "reason" is a premise (or set of linked premises) that supports a conclusion.
4. Identify legal reasons, rank them by strength, support them with apt authority, and structure them into a coherent and easy-to-follow argument.

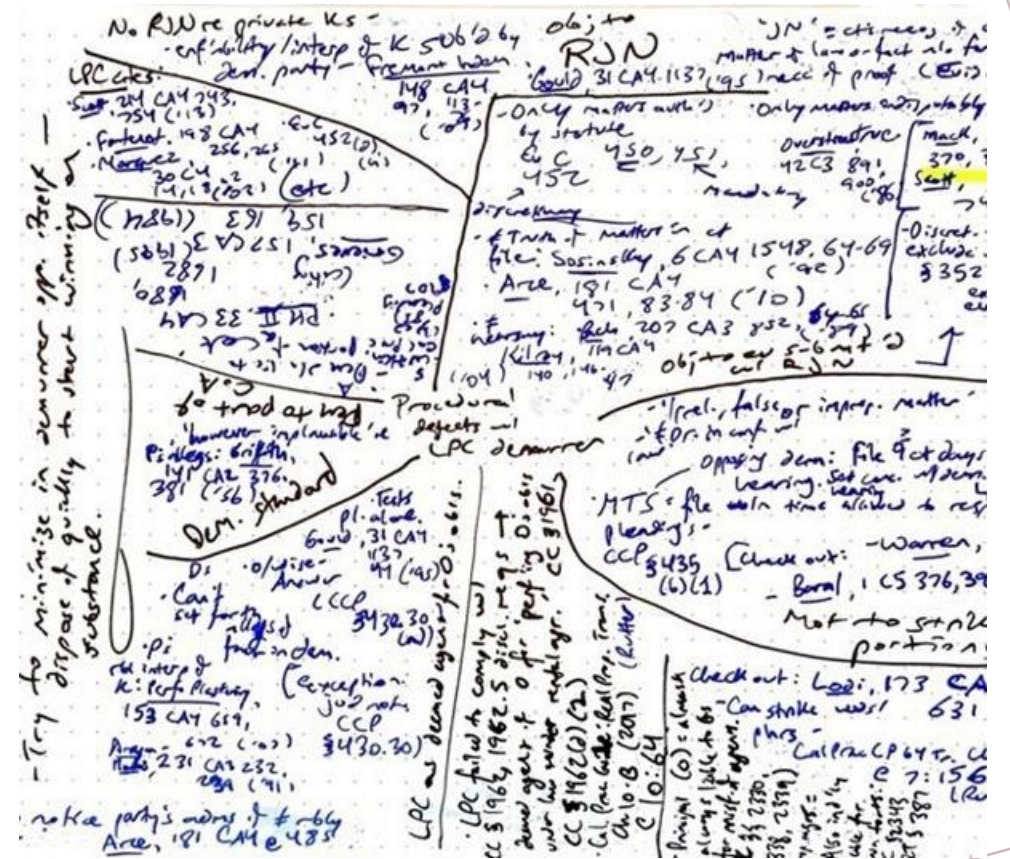
Structuring reasons into a coherent argument

- **Argument maps** (e.g., linked and convergent premises, serial conclusions, etc.)
- **Toulmin model of argumentation**
 1. backing → warrant → grounds₁, therefore conclusion
 2. backing → warrant → grounds₂, therefore conclusion
- **Legal syllogisms** (what arguments must you make to establish the premises?)



Identifying reasons and making arguments

- Finding and formulating rules. Synthesizing rules from cases, distinguishing holdings from dicta, understanding the hierarchy of authority, etc.
- Argument schemes (Walton, *Argumentation Schemes*)
- Argument moves (Guberman, *Point Made*; Messing, *The Art of Advocacy*; Schlag/Skover, *Tactics of Legal Reasoning*)
- Interpretation principles (Garner/Scalia, *Reading Law*)
- Policy and values-based arguments (Farnsworth, *The Legal Analyst*)
- Other: Classification principles, concepts relating to vagueness, logical fallacies, concepts from rhetoric and persuasion, cognitive biases, etc.



Let's continue the conversation.

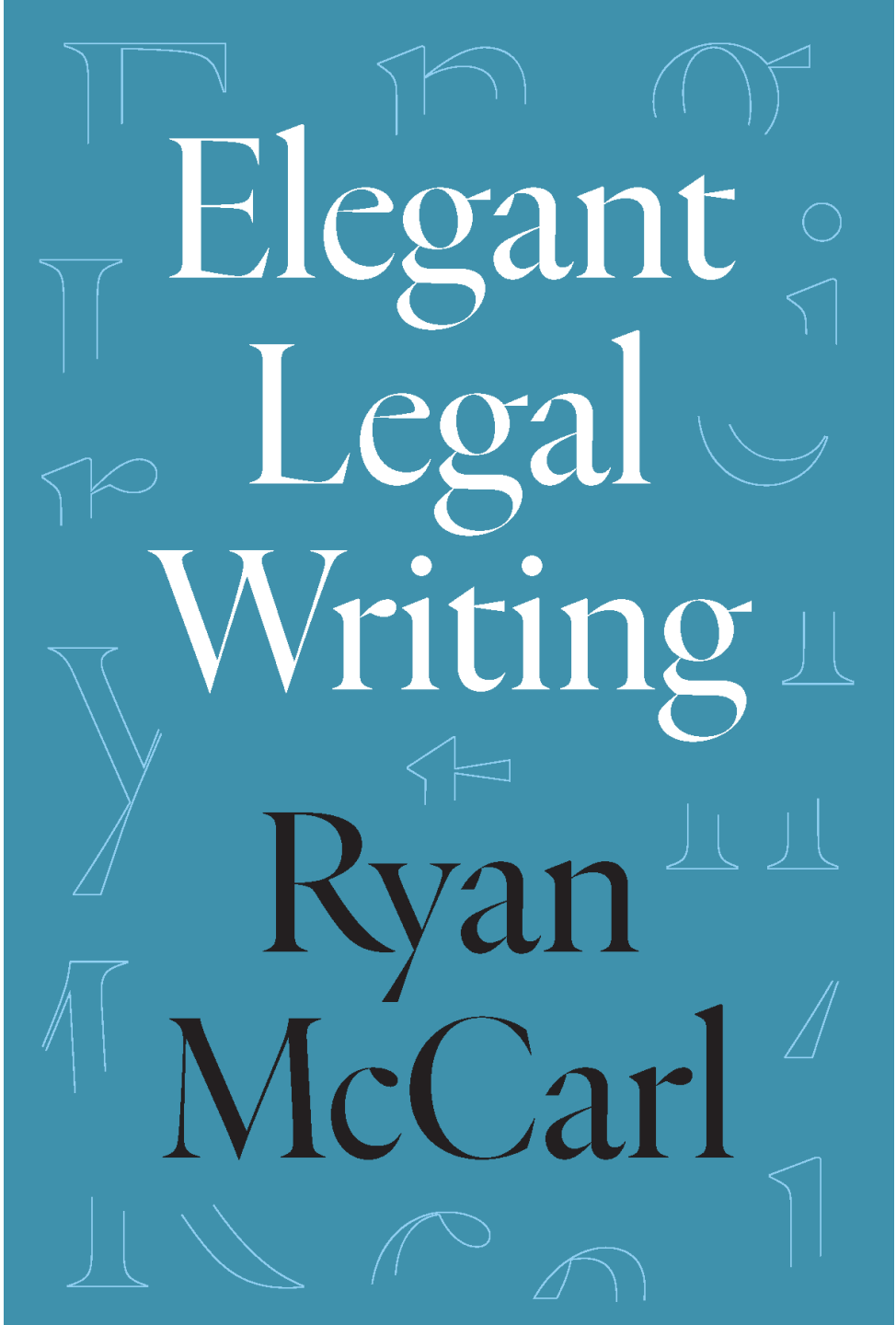
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The background is a solid teal color. It is decorated with various white geometric shapes and icons, including squares, circles, triangles, and lines, some of which are stylized to resemble legal symbols or architectural elements. The text is centered on this background.

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