

Lawyering Skills I
Section A—Professor David E. Sorkin
Fall 2001

MEMORANDUM FORMAT

OVERVIEW

The writing assignments that you will complete in Lawyering Skills I will be in the form of legal memoranda. A general description of this form of writing can be found in chapter 7 of *Writing and Analysis in the Law*. To the extent that the following guidelines differ from those in that text, however, you should comply with these instructions.

SUBSTANTIVE SECTIONS

Each memorandum you submit for this class should include the following substantive sections, in the following order:

QUESTION PRESENTED
SHORT ANSWER
STATEMENT OF FACTS
APPLICABLE STATUTES (optional)
DISCUSSION
CONCLUSION

Question Presented

The QUESTION PRESENTED section should contain one or more questions which ask the broad legal question or questions addressed in the memorandum. A typical question presented begins by stating the legal question and ends by describing the factual situation—for example, “Is the owner of an automobile liable if someone borrows the automobile and subsequently causes an accident?” Note that it is rarely possible to include all of the relevant facts in the question presented, though you should try to include the most important ones. Thus, for example, one might add “and the owner knew that the driver was intoxicated” at the end of the previous example.

If you have just one question, label this section QUESTION PRESENTED, and do not put a number before the question. If you have more than one question, label the section QUESTIONS PRESENTED, and use a separate paragraph for each question, numbering them sequentially. (The same applies to the SHORT ANSWER section.) If there are two or three major issues, you can generally use a separate question for each; it may also be possible (and often is more effective) to combine all of them into a single question.

Do not include sub-issues or legal rules in your questions. Avoid including language from a legal rule or statute. (The question merely identifies the issue that needs to be resolved. If you already knew the law, you probably wouldn't be asking the question.)

Write each question as a grammatically complete sentence in the form of a question, not merely a dependent clause. Do not begin with "whether." End each question with a question mark. (You may see plenty of examples of questions presented that do begin with the word "whether." For this class, however, don't use questions that begin with "whether.")

Each question should be phrased generically—in other words, it should not refer specifically to any of the parties involved in the case by name, and should normally introduce people and things using indefinite articles (e.g., "a person" or "an employee" rather than "the plaintiff" or "Mr. Jones"). If the same legal issue could be presented by a similar fact situation involving other people, your question should be broad enough to cover that problem. On the other hand, your questions should be specific enough to communicate to the reader the precise legal issues raised by the problem. In other words, don't use a question like this: "Is a person who injures another person liable?"

Avoid "begging the question"—don't incorporate a conclusion as to a major issue into your questions. Consider this example: "Can a person who commits robbery using a toy gun be convicted of armed robbery?" This is a good question if the fact that there was a robbery is undisputed, and the memorandum discusses only whether it was an armed robbery. Otherwise, the question ought to be broadened to remove the conclusion that a robbery occurred. Alternatively, two questions could be used, with the threshold question (whether a robbery occurred at all) first.

Short Answer

The SHORT ANSWER section states, very briefly, the conclusion that you reach in the memorandum. The paragraph (or paragraphs) in this section should correspond to those in the QUESTION PRESENTED section. Each SHORT ANSWER paragraph should be very brief, and should begin, if possible, with a one-word answer ("Yes." or "No."), followed by a brief explanation—one or two sentences outlining or applying the relevant legal rule.

Make sure your answers include your conclusions, not merely the applicable legal rules. Don't make your reader turn to the back of the memorandum to learn what conclusion you have reached. Like the QUESTION PRESENTED, the SHORT ANSWER should be generic. It should state legal conclusions, not factual ones, and should not refer to the parties by name. Normally the SHORT ANSWER section should not cite to any authorities.

Statement of Facts

The STATEMENT OF FACTS should present the facts relevant to the issues along with those background facts necessary to establish context (such as names, dates, and places). It should be organized logically, and should not include irrelevant information. However, it must include all of the facts that you use in the DISCUSSION. The STATEMENT OF

FACTS generally should not contain passages transcribed verbatim from the assignment—try to use your own words, unless the exact language used by a person or in a document is particularly important. The STATEMENT OF FACTS should conclude with a statement of the purpose of the memorandum—for example, a statement identifying the information sought by the client.

Applicable Statutes

If your analysis involves the interpretation or in-depth application of one or more statutes, you should include an APPLICABLE STATUTES section, in which you set forth the text of those statutes. For each statute that you include, set forth the statute in a block quotation (indented and single spaced), then place a complete citation on the following line (not indented), followed by a period. Ordinarily you should include the complete text of relevant statutes; if a statute is very long, you may include only the relevant portions or subdivisions, provided you indicate omissions with ellipses (three spaced periods). Alternatively, you can add an APPENDIX section at the end of the memorandum, and put a cross-reference to it in the APPLICABLE STATUTES section.)

This section does not need to contain every statute to which your memorandum cites; merely include statutes that establish the broad rules that govern the problem, and those whose language must be construed in order to resolve the major issues. (Don't include statutes from other jurisdictions; just quote them in your DISCUSSION if necessary.) Do not include anything other than the statutes and their citations in this section. Don't include a statutory title or heading unless it is part of the official text of the statute.

Adjust the heading of this section depending upon what is included. For example, if only one statute is included, call it APPLICABLE STATUTE. If the section includes constitutional provisions, court rules, or regulations, modify the heading accordingly. Do *not* put legal rules, case summaries, or other nonstatutory material in the APPLICABLE STATUTES section.

Discussion

The DISCUSSION section is the heart of the legal memorandum. In this section you identify the legal issues; set forth the legal rules that govern them; apply the rules to the relevant facts, drawing analogies to other cases where appropriate; and reach conclusions based upon this analysis. Normally the DISCUSSION section should begin with a thesis paragraph in which you identify the broad issue or issues and state the broad legal rule or rules that govern them. Depending on how complex the issues are, you may also include in the thesis paragraph a brief description of how the rules apply to the major facts of the case. See chapter 6 of *Writing and Analysis in the Law* for more information on thesis paragraphs.

If your DISCUSSION section includes more than one major issue, consider placing a subheading above each issue. Your DISCUSSION would start with an overall thesis paragraph identifying all of the issues, which would be followed by two or more sections

with subheadings. (Although subheadings help the reader figure out when you are addressing a new issue, they are not a replacement for topic sentences.)

Avoid quoting directly from authorities in your DISCUSSION unless absolutely necessary; paraphrase instead. If the precise language used in the source isn't important (especially for a case or secondary authority), you should be able to express the same thought more clearly and concisely in your own words.

Conclusion

In the CONCLUSION section, you should state the conclusions you reach as to each issue based upon your analysis, and explain how the relevant legal rules, applied to the facts of the case, support those conclusions. The CONCLUSION section usually begins by restating the overall issue addressed by the memorandum, along with the general legal rule. (In this regard it is similar to the thesis paragraph at the beginning of the DISCUSSION section, but bear in mind that the reader may skip directly to the CONCLUSION.) Depending on the nature of the problem, you may also include your own recommendations based upon the conclusions you have reached. These recommendations are the only part of the entire memorandum in which the use of first person is appropriate. Citations to legal authorities are normally unnecessary in the CONCLUSION, since you have stated the same rules in greater detail in the DISCUSSION section, and given appropriate citations there.

TECHNICAL SPECIFICATIONS

Each memorandum that you submit for this class should be typed on 8½x11" paper, double spaced (except for indented block quotations), with page numbers at the bottom of each page. It should be stapled in the upper left-hand corner, not folded or paper clipped. Do not use a cover sheet or report cover. You may use either underlining or italicization, but not both, and do not use boldface type. Citations should conform to the *ALWD Citation Manual*, although this requirement will not be strictly enforced on the first memorandum.

In case the preceding paragraph was unclear: Staple your memorandum; number the pages; and don't use both underlining and italics within the same paper.