

Lawyering Skills I
Professor David E. Sorkin
Fall 2009

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
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 the questions 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.")

Since the QUESTION PRESENTED section appears at the very beginning of the memorandum, it should make sense to someone who knows nothing about the facts of your case. 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, except perhaps a general statute that provides the overall legal rule that governs the case.

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.

If there is no material that needs to be included in this section, leave it out entirely.

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 that describes the scope of the memorandum and maps out the issues that the DISCUSSION

section will address. If there is one overall issue addressed in the memorandum, the thesis paragraph should identify that issue and then state the applicable legal rule; the components of the rule will represent the subissues addressed in the remainder of the DISCUSSION. If there are multiple independent issues, then the thesis paragraph should list them, and each subsequent issue analysis should begin with a mini-thesis paragraph.

State the issues, legal rules, and your analysis in objective terms, rather than framing them as arguments. For example, instead of prefacing a point with something like “Smith may argue that . . .,” just state the point directly, using qualifying or conditional language only if necessary. Similarly, try to focus as much as possible on the substantive facts and law, rather than on procedural aspects of the case (unless, of course, the procedural aspects are themselves at issue) or on your own writing process. Avoid referring to a court, jury, or finder of fact—you should be describing what the law actually says about the facts of your case, not speculating what a particular judge or jury might do. Try not to refer to “the court” when discussing precedent cases, either; as much as possible, the subjects and verbs of your sentences should correspond to the substantive facts and law that you are writing about.

If some or all your issue analyses are longer than a page or so, you may want to place a brief descriptive subheading above each issue analysis. Try to make the subheadings logically parallel (as on an outline), and don’t use them as a replacement for topic sentences that identify each issue as you begin addressing it.

If a paragraph is much longer than half a page, you may be able improve its clarity and effectiveness by breaking it apart into two or more shorter paragraphs. Sometimes this requires dividing an issue into subissues (and mapping them out first, then addressing each one separately). Other times it requires merely identifying a logical point at which to stop and begin a new paragraph (for example, after you have set forth the legal rule and are about to apply it to your case).

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 (stated in terms of the parties, not generically), 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 prepare for this class should be submitted as a Microsoft Word document (preferably in Word 2007 “.docx” or Word 97-2003 “.doc” format), unless you have made alternative arrangements with me at least one week before the assignment is due. In the caption, include my name, your name, the date that the memorandum is submitted or due, and a subject line identifying the case or the client. The body of the memorandum should be double spaced, except for indented block quotations. A standard serif typeface such as 12-point Times New Roman is preferred; use italics when necessary rather than underlining. Put page numbers at the bottom center of each page (optional on page 1). Citations should conform to the *ALWD Citation Manual* (3d ed.).