

Thinking like a lawyer:  
*Writing Legal Problem Question  
Answers*

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# Nature of Legal Problem Question (LPQ)

- Common exercise for training and assessing law students
- Presents student with a set of *facts*  
then asks student to apply the *law* to those *facts* to work out the legal *consequences* of those facts and to *advise* the parties of their legal position
- Involves remedial law under which one party can institute a *cause of action* against another party
  - ➔ task for student is to *advise* parties whether a *cause of action* is available to them or against them.

*Thinking and writing like a lawyer in the real world*

## Nature of Legal Problem Question (LPQ)

- LPQ imitate, although not totally, two tasks in **litigation**  
a *judge delivering a judgment*  
and  
a *lawyer advising a client on their prospects of success*

➔ However, the **lawyer's advice** is really a **prediction** of what the **judgment** will say  
so the **lawyer** and the **judge** really perform two aspects of the same function

# Use of Legal Problem Questions

- Standard exercise for undergraduate law students in many **common law** jurisdictions (e.g. UK, US, Australia)



**English** or **American student** is taught to write a *legal problem question answer* by relying on his or her specific ('common law') jurisdiction

However, legal education for graduated lawyers is growing and occurs in a number of areas



e.g. bar examinations, practical legal training, postgraduate study, continuing legal education and study to become accredited specialists in **native** and **non-native** contexts

# Use of Legal Problem Questions



*Answering a problem question* is a technique that is increasingly needed by graduate as well as undergraduate lawyers in **native and non-native English-speaking contexts**

## European Lawyer Directive (Directive 98/5/EC) on *lawyers' freedom of establishment*

spells out that a lawyer practising under his/her home-country professional title may carry on the same professional activities as the **host-country lawyers**, and may equally *give advice* on the law of home and host Member State + Community and international law

Token example



A fully qualified Italian lawyer may *advise* on the law of the **host member states** (e.g. **United Kingdom**) as well as on Community law and international law + preparing deeds and representing or defending a client in legal proceedings in the host member states

## Directive:

- ➔ a good opportunity for use of *legal problem question* in **non-native** academic writing contexts
- ➔ advantages in **English language skills** for studying and practicing the 'basics' of law and by acting both as **advisors** and **advocates**

# Rounding up advantages of Legal Problem Questions

- ➔ Learning to write *answers to hypothetical legal problem questions* in the medium of English provides advantages for the later practice of law in **English or non-English jurisdictions**
- ➔ Imitating a major task in legal practice when a lawyer  
a *solicitor* (UK) or *avvocato* (IT)  
*advises* a client

Typically the **road to litigation** starts when a person

- comes to a lawyer
- tells the lawyer the facts of some dispute, and
- asks for advice

When the lawyer gives advice it may take a number of forms or have a number of components



1stly, personal advice on its own or in conjunction with legal advice



2dly, advice directed to a settlement of the problem without recourse to legal remedies

3dly, advice about the availability of a legal remedy

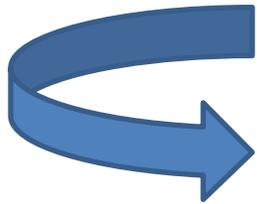
**lawyer** performs a similar task to the task that a student performs when *answering a problem question*, and in so doing they exercise the same skills

**lawyer** has to:

- ➔ organise the relevant legal rule by dividing it into elements and legal consequences
- ➔ apply this rule to the facts

# Answering Legal Problem Questions: METHOD

An effective method for answering legal-problem questions is



**I-R-A-C**

**Issue – Rule – Application - Conclusion**

**Overall rhetorical structure**

- **Step (1) Issue:** involves identifying the legal issues that are raised by the *facts* of the question
- **Step (2) Rule:** student identifies the *legal rule* or *rules* that potentially apply to the facts
- **Step (3) Application:** student applies these *rules* to the *facts* of the case to see if they fit and in the process resolve the issues
- **Step (4) Conclusion:** student indicates the outcome for the parties involved

If, for example, the *facts* fit the *legal rule*, the relevant party has a *cause of action*

# Answering Legal Problem Questions: METHOD

- Explains the process from start to finish in a logical progression
- Each step taken properly and in its proper sequence should lead to a good and well-written answer

*hints and checklist (SLIDE)*



- help you understand how to write an answer to a legal problem question around the IRAC method - *explaining the **Steps** for answering LPQ*
- assists you by identifying some common errors so that you may better avoid them

# IRAC > *hints and checklist*

## Issue

- Identifying the legal issue(s) the *Legal Problem Question* is asking you to answer



the rights and liabilities of the parties

- ▶ The issues are raised by the facts of the *Question (fact scenario)*

- *In this case, the issue is whether John is liable to Susan ...*

- *In this case, the issue is whether John owes Susan a duty of care ...*

- *The question we must answer is whether or not ...*

**DO NOT begin by summarising the facts of the problem: they are already known in the *Question***

## IRAC > *hints and checklist*

### Rule

- Setting out the principles of law that are relevant to the issues identified, including the **legislation** or **case law** from which they are drawn ('direct' or indirect quote)

- *In Adam v Smith it was argued that ... held that ... ruled that ... established that ... proved that ...*
- *Section of **Employment Act 2012** provides, so far as relevant, that ...: "direct quote"*
- *Authority for this issue is found in the case **Lynon v Heasman**, where it was held that ...*
- *Adam may raise a defence of duress if ...*

# IRAC > *hints and checklist*

## Application

Applying, by analysis, the law to the material facts of the Question

You should apply the law, element by element, to each set of facts and assess whether each element is satisfied (*yes, no, or maybe*) in the facts scenario

▶ Cite the **legislation** or **case law** in support of your application to the law

▪ *Applying the law to the facts in issue ... / Applying the current case to ...*

▪ *On these facts, / In this case, we understand that ... / the question arises: on what ...?*

▪ *The fact that a person must / may / can / should raise a defence depends on whether ...*

▪ *It is plain from the observation made that ...*

# IRAC > *hints and checklist*

## Conclusion

Indicating the outcome for the parties involved



- if, for example, the facts fit the law and the relevant legal remedy will be available if the claimant's claim can fit a particular cause of action such as a *negligence* (tort law), *defamation* (tort law), or *breach of contract* (contract law)



## IRAC > *hints and checklist*

### Conclusion

You should conclude your analysis by stating whether, on the facts in issue, you think one party has a *strong, medium or weak cause of action against* another party

**DO NOT make a definite conclusion**

- *Therefore, it is clear that Adam is liable for damages ... / can sue John in negligence action ... / cannot escape liability for damage caused to ...*
- *Clearly, the present case attracts Adam' liability to John ...*
- *It is possible that ... / It is possible to conclude that Adam will be found liable ... / is guilty to ...*
- *I do not think that Adam has any good prospects of establishing liability in this case, but there is enough evidence to justify a claim for damage to the other side ...*

More about IRAC  
*quicktips*



Legal content:  
reading thoroughly by weighting and emphasizing

- Read the *Question* carefully in order to understand what it asks you to *Answer*

**Who** has a claim **against whom**

Claimant (C) v Defendant (D)?

In advising one party, you may also ascertain the **possible permutations of the parties**

e.g. John v Susan, John v Tom

by establishing **who** has a ***cause of action against whom***

Legal content:  
reading thoroughly by weighting and emphasizing

- Weighting and Emphasis

once you have broken the problem down into issues, try to work out, on the facts, which of the issues are **relevant** (or **contentious**) and which are **less relevant** (or **irrelevant**)

# Structure /organisation

- **Headings and sub-headings:** organisation is important
- Use **I-R-A-C** headings without repeating the facts scenario
- Raise all the legal issues presented in the Question and cite *cases* and *legislation* for propositions of law when they are crucial to resolving the issues
  - Analogies > uses cases as analogies where relevant ('live')
- Use *headings and sub-headings for different parties, causes of action and issues*. This will save a lot of words of explanation and assist the reader to follow your arguments

# Legal content + structure /organisation

Organise your framework for legal analysis by considering issues of fact and law in the *problem scenario (Question)*

## Issues of fact and law

Claim for personal injury ( <i>negligence</i> )	Claim for damages ( <i>breach of contract</i> )
▪ Did D owe a duty of care under ...?	▪ Was there a contract?
▪ Was D in breach of that duty?	▪ What were the terms of the contract?
▪ What are C's injuries and losses?	▪ Did D act in breach of the contract?
▪ What are the defences available?	▪ What damage did C suffer?
▪ What is the quantum of damage?	▪ How much is damage in financial terms?

# Legal content + structure /organisation

- Consideration of these issues  
e.g. *duty of care – breach of duty – defences - damage*

helps you identify the possible *causes of action* and adopt a logical approach by considering first the *elements* that create *liability* >>> those which show a required fact that must be satisfied for the rule to apply

and then

the *consequences* >> those that apply to the parties involved when each element is satisfied by the fact in the case – *yes, no, maybe*



# Legal content + structure/organisation

Negligence <i>Smith v Heasman</i>	Defamation <i>Karja v Lewisham</i>
<i>Elements</i>	<i>Elements</i>
(a) Adam owes Smith a duty of care.	(a) Roy communicates something to a third party.
(b) Adam breaches this duty of care.	(b) Content communicated is derogatory to Karja's reputation.
(c) The breach of the duty of care causes damage to Smith.	(c) There is not a defence available to Roy.
(d) There is not a defence available to Adam.	<i>Consequences</i>
<i>Consequences</i>	a) Damages
(a) Damages	(b) Injunction

## Conventions: use of English language

In using IRAC, your aim should be to write clearly, directly and succinctly (**Plain English**). In particular, you should:

Avoid **redundant words and expressions**

*Even assuming that the fog caused injury to Susan, John had no duty to prevent that injury because it was idiosyncratic and John could not have been expected to foresee such injury.*

**BAD**

**By omitting unnecessary words, the sentence becomes easier to read and the meaning clearer**

*Even assuming causation, John should not be found negligent for the injury to Susan from the fog, as this injury was unforeseeable.*

**GOOD**

# Conventions: use of English language

- Use ordinary English words and expressions and use **technical legal terms** when required by the topic of your writing

*duress*

*nervous shock*

*negligent*

*criminal damage*

*nudum pactum (naked agreement)*

*consideration*

*vicariously liable*

*intestacy*

# Conventions: use of English language

- Use verbs in preference to nouns (~~nominalisation~~)

~~*to make an application for defence of intoxication*~~

**BAD**

*to apply for defence of intoxication*

**GOOD**

# Conventions: use of English language

- Use active verbs instead of ~~passive~~, where appropriate

## Why?

- ➔ active voice is **more direct**, and you may need fewer words to convey the same meaning
- ➔ active voice may provide **more information**, as it **identifies the subject**
- ➔ whereas the **passive voice** can be **obscure** or **confusing**

# Conventions: use of English language

Consider the different ideas of **modal auxiliary verbs** when framing legal arguments:

Permission	<i>can, may, could</i>
Possibility	<i>can, could, may, might</i>
Probability / obligation $\Rightarrow$ deduction	<i>should, ought to</i>
Prediction	<i>will</i>
Intention	<i>will, would</i>
Necessity / obligation	<i>have to, must, need</i>
Ability	<i>can, could</i>
Certainty	<i>cannot, must, will</i>

## Conventions: use of English language

- Avoid writing ~~long complex sentences~~

➔ use simple (not elaborate arguments) as well as hypothetical arguments where appropriate

- Avoid sweeping statements

*courts always favour defendants in cases involving Adam or Smith*

- Avoid wasting words by quoting (or even paraphrasing) large chunks of doctrine, or writing out large sections for a statutory provision ➔ 1 or 2 lines are sufficient

➔ • Try to get to the heart of what the legal principle happens to be

## Conventions: use of English language

- The voice often used is the 'third person'

*John will have an action for trespass ...*

*John will have an action in breach of contract if...*

### Why?

 Using the third person allows you to address the issues and problem in a dispassionate manner



avoids the temptation to become an advocate for one party as opposed to another, with a vested interest in one party's legal position

# Writing an Answer to a Legal Problem Question:

## *Clinical Negligence*

### **What is clinical negligence?**

Clinical negligence refers to a medical accident in which a patient has been harmed because a healthcare professional has not given the proper standard of care, such as:

- ➔ failing to provide the patient with the treatment needed
- ➔ failing to warn the patient about the risks involved in a particular treatment
- ➔ failing to make the right diagnosis
- ➔ making a mistake during surgery, etc

As a result, the patient can **claim compensation**

# Writing an Answer to a Legal Problem Question: *Clinical Negligence*

## ***Question:* hypothetical fact patterns**

Chris had a fight after the football match, which resulted in Chris having a broken arm. He was taken to hospital for treatment. Eventually his arm had to be amputated because the hospital team, when setting the limb, had failed to notice a blocked artery.

Chris is now considering suing the hospital for damages in the *tort of negligence*.



# Writing an Answer to a Legal Problem Question: *Clinical Negligence*

## ***Your task***

- ➔ ***You*** should decide whether the hospital owed a *duty of care* to Chris in this circumstance
- ➔ ***You*** should explain it according to the **English** or ***your* (Italian)** system of law
- ➔ Assuming that the hospital owed Chris a *duty of care*, ***you*** should discuss whether or not the hospital had broken that duty
- ➔ ***Your client*** wants to know whether he can institute a *cause of action* by claiming *damages* and, even if liability for damage is denied by the hospital, whether ***your client*** has good chances to succeed at trial

# Writing an Answer to a Legal Problem Question: *Clinical Negligence*

## *Answer tips*

In answering each point of the Clinical Negligence *Question* using IRAC, *you* should:

- ① list the major principles and rules of law by citation to case law or legislation; and
- ② write the *Answer* by applying these principles and rules to the facts raised by the *Question*

# Suggested structure and content

~~• The event occurred when ... . In essence, Chris sustained amputation ...~~



this is not necessary because the facts are already set out in the *Question*

## Issue

<write 1-3 line answer>

This question raises the issue of whether the claimant can seek damages against the defendant, in respect of personal injuries unfortunately suffered by him during hospital treatment. **OR >**

This question raises the issue of the quantum of damages that Claimant can expect to be awarded by the court as a result of personal injuries unfortunately suffered by him during hospital treatment. **OR >**

This problem concerns the potential liability of each party. I will consider whether there is a prima facie case in the law of negligence by establishing a duty of care, breach of duty, actual injuries and likely award of damages.





# Suggested structure and content

## Conclusion

It is clear ... / It seems clear that the present case ...

X is liable / cannot escape liability ...

I do think / I do not think that X has any good prospects ...

**<write 1-4 line answer>**



Solving a legal problem question – for an assessment, in *exam*, for a *client* – is not about fitting the issues into a legal box

Drafting solutions to legal problems is NOT ONLY determined by *your* individual knowledge of law (English or Italian) BUT ALSO your writing style and approach to ENGLISH LANGUAGE