

LEGAL PROBLEM-SOLVING QUESTIONS

A problem question involves a set of hypothetical facts which raises at least one issue that needs to be answered by reference to the law. In other words, it is a short story about events that give rise to potential legal responsibility about which you are expected to **offer advice** to one or more of the parties, or to **comment on** the legal position that arises from the facts. Problem questions often end with a question or instruction such as:

- **Does John have a claim in negligence?**
 - **Advise Mary as to the extent of her liability in the contract.**
- The facts of the problem will be constructed in such a way that the answer to the question is not obvious and straightforward.
 - Each fact of a situation (scenario) will indicate an issue of potential legal responsibility which needs to be discussed with reference to the law. In answering the question you need to consider all the different possibilities and outcomes with reasons, and you need to speculate about the outcomes before you give your own opinion as to the most likely conclusion. At the same time, in your answer you will show your ability to apply the law.

Problem-solving v Essay questions

Problem-based questions are different from essay questions in several ways.

	Problem-solving questions	Essays
Length	under 2000 words	over 2000 words
Introduction	identify the main issues in the problem/situation no details, no law can be only a few sentences	background description / summary definitions position statement can be more than one paragraph
Main body	follow IRAC framework for each issue	exploration and analysis of a topic
Conclusion	overall conclusion to the problem question which outlines the liability of the parties for each issue	recap of main points evaluation of ideas recommendations

SKILLS for problem-solving

A range of skills is required in providing an effective answer to a problem question:

- the ability to identify relevant facts in the situation
- knowledge of the area of law to identify the basis for legal action
- research skills to locate statutory provisions and cases
- writing skills to structure a clear and logical answer
- the ability to apply the law to the facts of the question in order to determine the extent of the parties' legal liability.

TECHNIQUE for problem-solving

The key to success in writing legal problem-solving essays is to use an effective technique in dealing with each issue

- When there are several issues in a question, you should deal with each issue in chronological order as it appears in the question.
- The table below provides a summary of this approach. It can be remembered using the mnemonic **IRAC**.

Issues	<ul style="list-style-type: none">▪ <i>Identify each issue.</i>
Rules	<ul style="list-style-type: none">▪ <i>State the rules of law and the different sources of law relating to the facts.</i>▪ <i>Give clear, concise, accurate explanations of the law.</i>
Apply	<ul style="list-style-type: none">▪ <i>Apply the law to the issues and explain why.</i>
Conclude	<ul style="list-style-type: none">▪ <i>Well-argued conclusion looking at a range of possible outcomes.</i>

HOW TO ANSWER a problem-solving question

STEP 1

Skim read the problem situation to get a general impression of the situation. Identify the **two parts** in the problem question.

- 1 the **problem situation**.
- 2 the **focus question** at the end of the problem question i.e. what you are asked to do in order to solve the legal problem.

STEP 2

Read the problem situation again – this time more closely and with the focus question in mind. Identify the **material facts** (the facts or events which specifically create a legal issue). Then, identify the main issues (problems) and sub-issues which are created by the situation.

Use the **IRAC** technique to organise your answer.

- **Make notes on each issue using the four-stage procedure outlined in the table below:**

IRAC

I ssue	Identify the issue
R ules	State the rules of law and the different sources of law relating to the facts. Give clear, concise, accurate explanations of the law.
A pply	Apply the law to the issues and explain why.
C onclude	Well-argued conclusion looking at a range of possible outcomes.

the INTRODUCTION

The introduction to your problem essay should state the charges/actions from which legal issues will be identified and discussed in the essay.

When writing an introduction it is important that you do NOT:

- X** restate the facts of the problem question
- X** start writing a legal analysis of the situation. In the introduction you need to indicate those charges/actions arising in the problem question which will require analysis. Legal analysis belongs in the body of your essay

the CONCLUSION

The conclusion is a very important part of your problem essay. As you use **IRAC** to discuss each legal issue identified in the problem question, you will come to many tentative conclusions. By the end of your essay, you will need to draw all the conclusions you have made for each legal issue into one general 'end of essay' conclusion.

Because there is no single correct answer to your problem question, your conclusion should not be too absolute. After giving your opinion as to the stronger argument, you should briefly outline the result if the court accepted the other view. In writing your conclusion, remember to use tentative language. Different lecturers may have different expectations of the degree of certainty required from your answer, so make sure that you understand the lecturer's preferences for this.

When writing a conclusion it is important that you do NOT:

- X** repeat at length what you have already said. In the conclusion, you need to sum up concisely on the main issues
- X** bring in a new argument which has not been discussed before

Organising your answer with IRAC

ISSUES

When you analyse the question, it is important to be methodical and thorough. Start at the beginning and work through each sentence in turn, making note of potentially relevant information.

The actions of the parties have been carefully thought out to give you hints on the issues and to make sure you deal with the areas of law to be assessed.

- a) Note the **instructions** which may ask you to 'advise' one of the parties, indicate the area of law and/or the viewpoint you have to consider.
- b) Identify the **parties**
- c) Identify the **material facts**
- d) Identify the main **legal issues** and **sub-issues** arising from those facts
- e) Look for similarities to **existing cases**

Tip: *organise the parties and issues in a table*

CLAIMANT	EVENT	DEFENDANT

RULES

In order to identify and **state the law** as part of your answer to the issues and sub-issues in the problem question, you need to research the relevant law.

- Use a text book for your initial research and note-taking.
- Make sure that there is some **supporting authority**, statute or case law, for each statement of law made.
- distinguish between: **binding authority** i.e. statutory law and case law; **persuasive authority** i.e. legal commentary from articles, legal documents, law from other jurisdictions.
- Look at both sides of an argument. It may be necessary to search for alternative outcomes.
- Keep note of all references.
- Whenever you make a statement about the law, you must give the relevant legal authority.

APPLY

This is where you have to look at the facts and apply the law to them

- Support your answer by stating the principle of case law.
- **Present a balanced and objective answer by looking at both sides of the argument.**
- Improve the quality of your answer by speculating and creating hypothetical situations to which the law could apply.

Tip: *Use the law only as it relates to the question – avoid detailed description of the law. Ensure that every paragraph includes a mention of the name of one of the parties and at least some mention of specific facts from the problem. In this way, you will avoid irrelevant detail.*

CONCLUDE

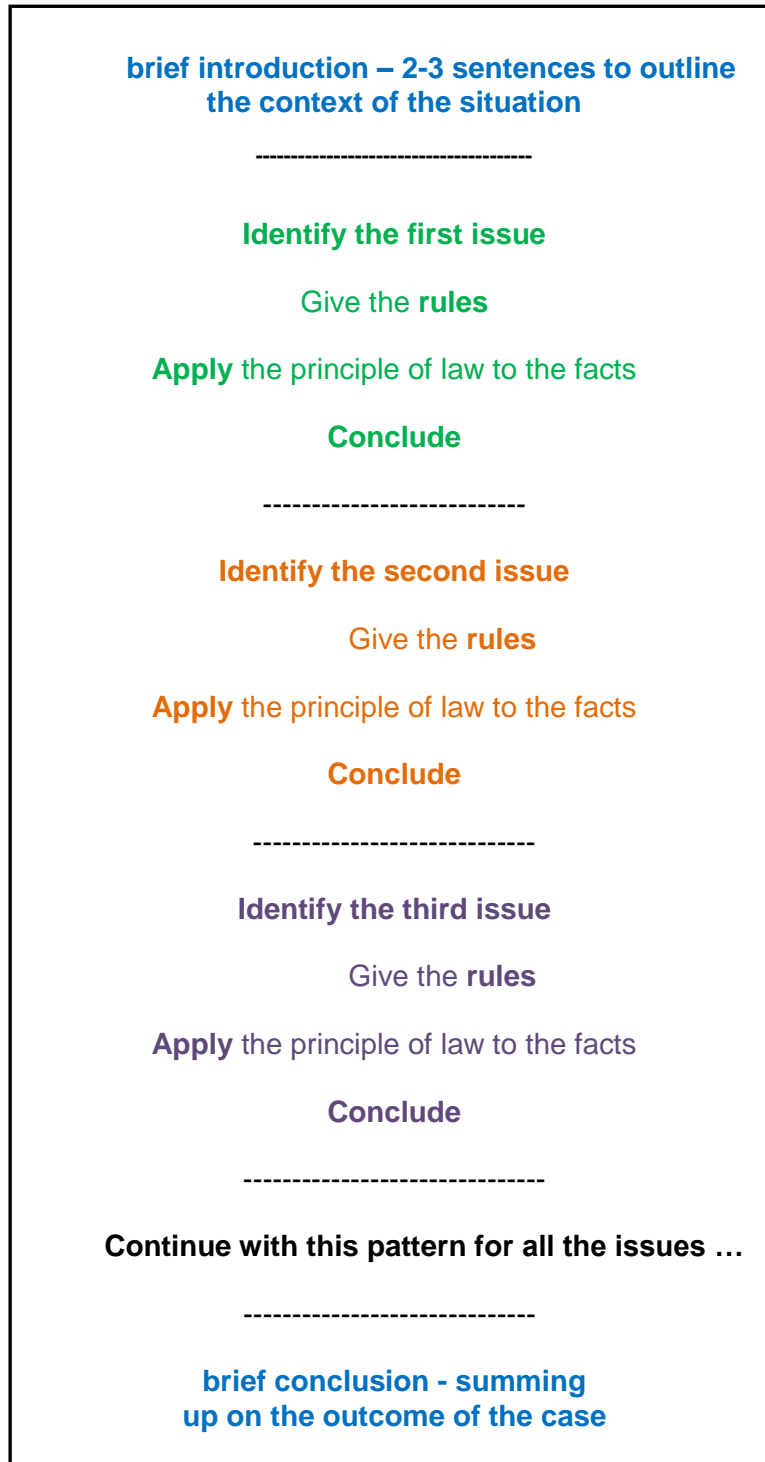
There are three different levels of conclusion:

- a) a conclusion for each sub-issue;
- b) a conclusion for each issue based on the conclusion for each sub-issue
- c) an overall conclusion to the problem question which outlines the liability of the parties for each issue that was raised by the question. Similarly, if the question requires you to **discuss the legal issues arising from the facts**, you should conclude with a short summary of the issues you have been discussing.

❖ Checklist for answering problem-solving questions

- Read the facts of the problem very carefully
- Identify the relevant area of law and the specific legal and factual problems.
- Make a plan and order the issues that you are going to address
- Order each issue according to IRAC
- Keep descriptions of the law and cases as concise as possible
- Always relate the law to the facts
- Consider all possible interpretations of the facts and the law
- Conclude by giving a brief overall summary of findings along with relevant reasoning.

❖ Plan for writing an answer to a problem-solving question



❖ Remember that there will be main issues and sub-issues.

Speculating on a problem situation

A non-legal example

The deadline for the summer job application was 3.00pm. Joe submitted his application at 4.00pm.

The problem is that he submitted his application one hour after the deadline.



In discussing and writing about the legal issues in problem situations, you need to support your ideas: by **evaluating what happened?** and **speculating on what if?** **This is a way of presenting your own ideas and interpretation of the facts.** There are different ways and techniques you can use to do this:

- **modals** – e.g. *might, may, could*

He might have forgotten.

He could have been waiting for a last reference.

- **conditional sentences** – e.g. *if / unless + conditional structures*

If he had been really interested in the job, he would not have missed the deadline.

If he sends an email to explain why his application is late, he might be considered for the job.

- **certain verbs:** e.g. *seem, appear, believe, assume, suggest, tend, think, indicate*

It would appear that he was not serious about the job application.

The fact that he was late in submitting the application would seem to indicate that he was not serious about applying for the job.

- **certain expressions:** e.g. *it is likely; it is possible; there is no evidence to suggest*

It is likely that his application will not be accepted.

There is a strong likelihood that he will not get the job.

It is possible that his application will be considered.

There is no evidence to suggest that he was not aware of the deadline.