



Problem Question Solving

Presented by Patrick O'Connell - 15 August 2016

Organised by Miles Ma for the UNSW Law Society
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A. General Problem Solving

I. A problem question emulates client 'advice'



The answer is directed towards a client

- You will be asked to look at the legal consequence
- However, write in the 3rd person and no need to set it out as a letter to the client



You should arrive at tentative conclusions

- Give an answer – do not just sit on the fence
- However, the conclusions should be tentative

II. The MIRAT Method of Problem Solving



M

Material Facts – extracting the information for the issue.

I

Issue – The questions a court would ask to decide the case.

R

Rule – statement of the position at law (case law or statute).

A

Application to the Facts – apply the rule to this case.

T

Tentative conclusion – come to a view on the application.

Brian is working at a Yeggles samples store in Hyde Park. Yeggles gives Brian instructions on how to cook the chicken nuggets, including leaving them in the fast-cook oven for “at least 5 minutes per batch.”

It is 1pm on Friday and there are a lot of people stopping at the stall. Brian is overwhelmed by a large crowd and so only cooks each batch for 3. He then serves a sample to George, who later becomes sick with salmonella food poisoning.

<i>Legal Issue</i>	<i>Rule (relevant legislation and case law)</i>	<i>Material Facts</i>	<i>Applying the law</i>	<i>Tentative Conclusion</i>
(a) Should Brian have taken precautions against the risk of food poisoning?				
1. What is the probability of harm?	Consider: the probability that the harm would occur if care were not taken (<i>Civil Liability Act 2002</i> (NSW) s 5B(2)(a))	<ul style="list-style-type: none"> Chicken is a food that can make you very ill if you do not cook it properly The instructions state he must cook the nuggets for at least 5 minutes – they were only cooked for 3 minutes Hyde Park is a high-traffic area, especially at lunch (1pm Friday) The crowds overwhelm Brian Brian does not check whether each batch has been cooked 	(a) Due to the high number of people, combined with the chicken being undercooked at almost half the required time would led to there being a <i>high probability of harm</i> .	On balancing the other competing factors of the high probability of harm, low seriousness and the low burden of taking precautions, Brian should likely have taken further precautions to prevent against the risk of harm.
2. What is the likely seriousness of harm?	Consider: the likely seriousness of the harm (s 5B(2)(b))		(b) The chicken is cooked for almost half the required time; however, each person only eats a small amount of chicken – the likely <i>seriousness of harm is low</i> .	
3. What is the burden of taking precautions?	Consider: the burden of taking precautions to avoid the risk of harm (s 5B(2)(c))		(c) The large crowds, the heat of the freshly-cooked nuggets, and the fact he'd have to cut open each nugget to check if it is cooked properly would be a high burden. However, there is a very low burden of simply cooking for a total of 5 minutes.	

III. Flexibly Apply MIRAT



Integrate material facts into the other parts of IRAT

- State the issue as it turns on the facts and apply the rule



You can assume the examiner knows the facts

- Do not simply paste in the facts – show insight



Often, you will have to consider multiple ‘branches’

- One set of facts may have multiple issues
- Or, an issue could turn on ambiguous facts



For non-contentious issues, do all the steps in one sentence



B. Take-Home Assignments

I. Read the question and take notes



Read the question multiple times

- Take notes under the headings 'who', 'where' and 'when'



Note what you have been asked to do

- Who have you been asked to advise?
- Are there any limitations on what you can discuss?



Ask why you have been given a piece of information

- Most of the time, it is there for a reason
- However, some facts will simply be included as red herrings

II. Structuring your answer



Macro-structure will be individual to a problem question

- Individuals: step through each person you have been asked to advise
- Events: move chronologically through key points in the narrative
- Offences or Laws: group individual acts by the law that applies to them

For each issue, break down sub-issues logically

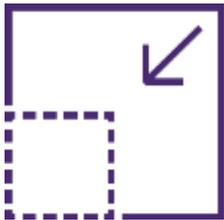
- For example, in negligence, it makes sense to go:
 - Was a duty of care owed?
 - What was the scope of the duty of care?
 - Was the duty of care breached?
 - Did the breach cause the damage alleged?
 - What is the quantum of damages?

III. Focus on what is contentious



Write out your first draft in full

- Do not overlook any issues on your first draft, no matter how trivial
- Use MIRAT as a guide to ensure each issue is fleshed out



Reduce non-contentious issues to a sentence

- For a number of issues you have written, the conclusion will be very obvious, with limited controversy
- You are unlikely to be given many marks for answering these issues, so you should reduce them

IV. Use alternative arguments



- Where an issue is more contentious, present alternative arguments
- Alternative arguments essentially consider what would happen if a judge concluded differently to you either on:
 - A different interpretation of the relevant law
 - Facts are clarified which throw a different light on the situation
- Introduce alternative arguments with phrases such as:
 - In the alternative, ...
 - However, if a Court decides _____, ...
 - If instead, <X fact emerges>, ...

V. Then cut back on words



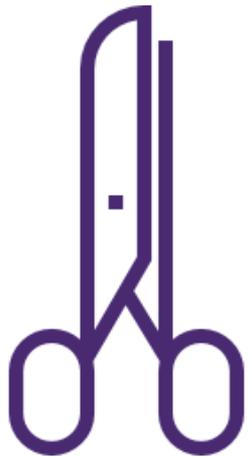
1. Flexibly apply MIRAT

2. State the law succinctly, incorporating the facts

3. Do not go into dissents or academic discussions of law

4. Cut out unlikely alternative options

Focus on the application of law to the facts and on the most contentious issues





Proofread your work (and ask someone else to read it)



Check the assignment instructions for formatting

If there are no instructions, use size 12 Times New Roman with double spacing, and number each page.



Use Clean Headings

In general, lecturers will not require you to use AGLC headings



Read over the AGLC

It involves more than just footnotes – please read Part 1 as well



C. Exam Preparation

I. The question format is similar



The question will be similar, albeit shorter

- Take note of what you have been asked - the scope is usually more limited



Take note of the time allowed to write the problem question

- Planning time is well spent: avoid writing too much on non-contentious issues

II. Organise your notes to focus on facts



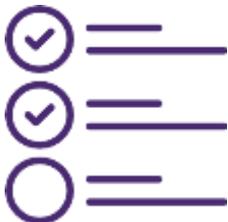
Set out the law so you only need to think of the facts

- Write your notes as established propositions of the current law, rather than worrying about differing judgments



Keep separate notes from your essay notes

- In particular, do not confuse yourself with the development of the law



Structure your notes so it follows the order of your answer

- The goal should be that you can blindly turn your notes page by page and just be thinking of the facts



Test for False Imprisonment

For an action to be considered false imprisonment:

- 1. Confinement is such that there are no reasonable means of escape** (as per Zelling J in *Campbell v Samuels* at 393)
- 2. An intention exists where there is intention to prevent egress** (per James J in *Fagan v Commissioner of Metropolitan Police* at 445)

1. Confinement means there are no reasonable means of escape

- A partial interference with freedom of travel is not enough, so long as there is “egress available” and that egress is not “unreasonably arduous” (as per Ashley J in *McFadzean v Construction, Forestry, Mining and Energy Union* at 2232-2243)
- The route granted must not be “by direct route”: any reasonable alternative exit can be considered (as per Ashley J in *McFadzean v Construction, Forestry, Mining and Energy Union* at 2052)

III. Writing Succinctly in an Exam



Organised, short notes are your best friend

- Write them out in sentences you would use in an exam



You may be able to abbreviate

- Ask your lecturer if they are OK with this



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