

DEVELOP YOUR LEGAL QUESTION — THE QUESTION PRESENTED

Follow a Common Format

A Question Presented is a formal statement of your specific legal issue and the most relevant facts. Questions Presented are common at the beginning of a legal memorandum because they give the reader an overview of your case.

Writers can frame Questions Presented in several ways. One common format follows a formula known as “under-does-when” or a variation of it. This format is written as a single sentence ending with a question mark. This type of Question Presented has three parts:

1. **Under:** The Question Presented begins with an introductory clause starting with “under,” and it identifies the jurisdiction and the type of law.
2. **Does:** The Question Presented then states the precise legal question using a verb, such as “does,” “did,” “can,” “is,” or “was.” Because the Question Presented gives an overview of the case, it can refer to the parties involved generally or use specific names. Terms, including “buyer” and “seller” or “plaintiff” and “defendant,” are common.
3. **When:** Finally, the Question Presented states two or more legally significant facts that are typically introduced with “when” or “where.” The Question Presented should be precise when stating the facts and should summarize them in a way that does not show bias toward one conclusion. It should use parallel construction to make the facts easy to understand.³

Another common format, known as the multisentence format, uses multiple sentences, including at least one statement and one question, to describe the law, facts, and legal issue. In this format, the law and key facts are presented as statements and the legal issue is presented as a question.

You can decide whether to put the law and fact statements into one sentence together or two separate sentences. You can also decide whether the law or facts should come first. This format is often useful for more complex legal questions, where a single-sentence Question Presented would be awkward.

A third type of issue statement that begins with “whether” has a more informal format. It usually starts with the legal question and then lists some key facts, often incorporating the jurisdiction. Even though it’s a phrase and not a complete sentence, the “whether” issue statement ends with a period.

For the legal issue introduced on page 53 on whether the business owner made a binding offer to sell her business when she placed an ad with a pricing mistake, the following examples show the three options for structuring your Question Presented: the “under-does-when” format, the multisentence format, and the “whether” format. Notice that all three formats introduce the reader to the jurisdiction, the specific legal issue, and key facts.

Under-Does-When Format

Under New York contract law, did the owner of a widget business make a binding offer to sell the business when she placed an ad for her business, but she mistakenly priced the business for a fraction of its worth?

— The first part of the Question Presented provides the jurisdiction and the type of law.

— The second part provides the specific legal question.

— The third part provides the most important legally significant facts. This Question Presented states the facts objectively, and it has facts that support a “yes” answer and a “no” answer to the question.

Multisentence Format

New York law requires a binding offer for a contract to exist. Ms. Lee placed an advertisement to sell her widget business, but mistakenly priced the business at a fraction of its worth. Was Ms. Lee’s advertisement a binding offer?

— This Question Presented starts with a statement describing the relevant law.

— The second sentence is a statement describing the legally significant facts.

— Notice that this Question Presented would also make sense if the order of the first two sentences was reversed.

— The third sentence presents the specific legal issue as a question.

Whether Format

Whether the owner of a widget business in New York made a binding offer to sell her business when she placed an ad to sell her business but mistakenly priced the business for a fraction of its worth.

— This Question Presented starts with the issue, incorporating the jurisdiction — New York.

— It then provides context with two legally significant facts.

Checklist for your Question Presented

Does my Question Presented . . .

- ☒ Identify the jurisdiction for my legal question?
- ☒ State the specific legal issue?
- ☒ State two or more legally significant facts?
- ☒ Describe the issue and facts objectively?

DEVELOP YOUR ANSWER—THE BRIEF ANSWER

The Brief Answer logically follows the Question Presented in a legal memorandum. It provides a formal summary of your conclusion. The Brief Answer typically has three parts, often broken up into three to five sentences.

1. The first sentence of the Brief Answer provides a direct answer to the question asked in the Question Presented—either “yes” or “no.” Your answer will often include a qualifying term, such as “probably,”

because no one can predict with absolute certainty how a court or jury will decide a particular case. The Brief Answer commonly begins with “probably yes” or “probably not.”

2. The next one to two sentences briefly summarize the applicable rules and anchors.
3. The final one to two sentences summarize your analysis and conclusion. Be careful not to repeat the facts from the Question Presented; instead, your Brief Answer should explain how the facts fit with the law and how you reached your conclusion.

The following example contains the answer, two sentences summarizing the relevant law and anchors, and one sentence summarizing the writer’s reasoning and conclusion.

Probably not. An advertisement is not an offer but a mere invitation to enter into a bargain. Even where a binding offer is made, the offeror can withdraw a mistaken offer if (1) she exercised ordinary care, (2) the other party was aware of the mistake, and (3) enforcement of the offer would be unconscionable. Here, a court would likely find that no offer was made because the advertisement merely invited buyers to make an offer to buy the business, and forcing the offeror to accept the low price listed in the advertisement would likely be deemed unconscionable.

— The Brief Answer begins with a direct answer and a qualifying term.

— This part describes the most relevant rules and anchors.

— This summary of the analysis supports the Conclusion, applying the relevant anchors to the specific facts from the Question Presented.

Checklist for your Brief Answer Does my Brief Answer . . .

- ☒ State my answer on the legal issue as “yes” or “no,” using hedging language if necessary to accurately describe my level of certainty?
- ☒ Concisely summarize the most important rules and anchors?
- ☒ Answer the precise legal question with a concise summary of the analysis in support of my answer?