

Legal Problem Solving

Problem questions are a common means of assessment. They assess your knowledge and understanding of the law and your ability to identify relevant material and apply to a given situation. Alongside these skills, you will also be required to communicate your answer in a clear and coherent way alongside putting your practical skills of time management, research and planning to good use.

This guide will help you to:

- Understand what a problem question is
- Identify the skills required to be a successful problem-solver
- Plan a strategy for tackling problem questions

1. What is a problem question?

A problem question is a hypothetical scenario upon which you will have to advise the parties as to their legal position. These are usually highly unfortunate tales of misery which focus on several topics of law linked by a common area e.g. a criminal law case study may involve, assault, battery and manslaughter alongside defences.

Problem based assessment is really the true measure of a student's learning because it is the nature of the law and what lawyers and judges do day in day out – they problem-solve. Turner et al¹ recommend that you actually look at the process that a judge engages in when problem-solving by reading an appeal case. The judge will identify the key facts of the case, examine the law which governs those issues, apply the law to the facts and will give a decision on who wins the case.

The important thing to remember is that writing an answer to a problem question is very different to writing an essay; it requires a different approach and planning.

Being a good problem-solver relies on skills which go beyond a mere understanding of the law. Problem-solving will stretch your higher level skills such as application and analysis.

2. Developing A Good Approach to Problem Solving

If you develop a sound approach to problem-solving at the outset, this is a transferable skill which will work effectively across all modules.

• Read the question

A problem question is no place for skim reading. Read it thoroughly three or four times to ensure that you get the full picture. On each read through new factors will become apparent. Do not make any assumptions on what will happen or what the outcome will be as this could tarnish your answer.

Go back to your notes (this is where good preparation is vital) and begin to identify the areas of law in question. This will be easier if you know your subject matter well.

You may spot similarities with decided cases within the problem – do not assume that the outcome will be identical as sometimes there may be some distinguishing factors which may lead the judge to conclude that the cases are different and the decision should not be followed.

¹ Turner et al, *Unlocking Legal Learning*, Hodder Education 2004

- **Identify the key issues**

Begin to underline the key issues and facts. Everything which is in the problem question should be there for a reason and your examiner will leave clues for you as to what these issues are.

Introduce the law and cases that tie in with these issues.

Don't make up or alter the facts to suit yourself.

- **Develop a Strategy**

The first stage here is to read exactly what it is that you are required to do. Are you asked to advise one party or all parties? Are you asked if a crime has been committed or to consider the mens rea/actus reus in isolation. Are you asked to discuss the rights of the parties or the remedies available to them also?

An introduction is not as vital to problem question as to an essay and in any case you should avoid any general "all I know about" introductions as it is a waste of your time and word limit.

Never recite the facts of the question in your introduction.

There is a key strategy to tackling problem questions:

- **Identify the Issue**

Make sure that each issue is dealt with satisfactorily before moving onto the next. This will avoid confusion and overlap.

- **State the rule**

Your explanation of the law needs to be clear and accurate.

- **Apply the law to the facts and support with authority**

Make sure that you apply the law in a logical way, dealing with each issue in turn. Analyse the law, not the facts of the case.

- **Reach a conclusion**

Ensure that your conclusion is based upon the preceding application of the law. Conclude on each incident or submission when you have dealt with them or as you go along – don't save your conclusions for the end of the piece as you would with an essay

Remember there is not necessarily a right answer to a case study it all depends on whether the judge decides to follow one authority or another. Be sure to highlight the potential possibilities and then conclude which one you find to be most likely or suitable. Make sure that you consider the realistic but alternative possibilities and make sure that you have forwarded the strongest points of each. Reach a reasoned and sensible conclusion.