

HOW TO GUIDE #5

AVOID COMMON PROBLEM SOLVING MISTAKES



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How to:

Avoid Common Problem Solving Mistakes

At first glance, legal problem solving methodologies such as ILAC (Issue, Law, Application, Conclusion)¹ are quite straightforward. However, when it comes to handing in assignments that contain hypothetical fact scenarios, students often struggle to meet the marking criteria relating to structure, issue identification, legal analysis and referencing. This Guide describes the common mistakes that students make when answering problem solving questions, and outlines tips to avoid these errors.

Structural issues

Structuring your paper as an essay, a narrative based on the fact sequence, or as a single ILAC that deals with multiple issues simultaneously, creates many problems. Issues may be missed or dealt with in a cursory manner, and legal analysis tends to lack specificity or alternatively be repetitive. Failing to use appropriate subheadings compounds these issues and turns even an otherwise well-structured paper into a marker's nightmare – papers without subheadings are time-consuming and tedious to mark.

¹ Depending on the university this methodology may be variously described as IRAC – Issue, Rule, Application, and Conclusion, HIRAC – Heading, Issue, Rule, Application, and Conclusion, MIRAT – Material Facts, Issues of law and policy, Rule, Application, Tentative conclusion, or IGPAC – Issue, General rule, Precedent, Application, Conclusion.

Advice: Make your paper easier to mark by structuring it around the party actions and using subheadings. Subheadings such as 'Party A v Party B' are appropriate. It is preferable that you quarantine your discussion of the various legal issues that relate to each action and conduct a separate ILAC for each issue. Separate ILAC's mean that you are more likely to cover the relevant content for each issue.

Recounting facts

Outlining the factual background to the dispute between the parties at the start of your response is not analysis. Summarising is a waste of words as this is not in the marking criteria, and your marker is already familiar with the question.

Advice: Identify the key issue between the parties in your opening sentence. This shows that you are confident in your analysis of the scenario, and frees up words to further develop your legal analysis. If you feel that you must recount the facts in your Issues section, stick to material facts only and limit discussion to one or two sentences.

Generalising the issue

In your Issues section, simply stating that the issue between the parties is whether Party A can sue Party B tells the marker next to nothing. This level of generality will not help you meet the marking criteria and is usually accompanied by discussion of irrelevant law.

Advice: When outlining the issue(s) between the parties, do so with enough specificity that it is clear which legal rules you will be relying upon in your response. For example, if you intend on relying upon the contract laws of communication and revocation of offers in your Law section, the following sentence as a statement of issue would be suitable: "The key issue between the parties is whether Party B communicated acceptance of Party A's offer prior to Party A revoking that offer via email."

Having too much or too little law

Summarising everything you know about an area of law (including comparable jurisdictions) is not necessary in your Law section. At the other end of the scale, simply dot pointing cases without explaining their relevance or jumping straight to an exception without outlining the general rule is also problematic.

Advice: In your Law section, keep your discussion to those statutory provisions or cases that are directly relevant to the narrow issue you have outlined in your Issues section. Identify the key precedents and outline their legal tests using full sentences. If you are dealing with an exception to a rule, make sure you outline the general rule first. If you are using contentious or conflicting precedents, or precedents from outside jurisdictions, make sure you acknowledge this.

Brief or non-existent Applications

Simply stating that a particular test applies or concluding that a case would be decided in favour of one of the parties, is not applying the law to the facts. Where the facts are contentious or could be interpreted to support opposing arguments, responses should not ignore these nuances.

Advice: Make sure you apply each element of the relevant legal test(s) in your Application section. Draw upon the facts from the scenario when discussing how the test's elements would likely be applied. Consider counter arguments and the facts that support these arguments. Acknowledge different potential outcomes.

Assuming that the Conclusion is straightforward

If the law or facts are contentious, concluding that the likely result of applying the law to the facts is clear lacks sophistication. It also means that if your Application section acknowledges the strength of potential counter-arguments but your conclusion states that Party A clearly has a remedy, your ILAC will lack internal consistency.

Advice: If after applying the law you are uncertain about how a court would decide an issue, outline the various potential conclusions. For example, "If a court decided that Factor A carried more weight than Factor B, it is likely that this issue would be decided in Party A's favour. If, however, the court decided to follow the recent enunciation of the test in Case X and consider Factor B more important, then Party B would likely escape liability." Remember: more marks are awarded for legal reasoning than for having the "correct" answer.

Footnoting and citation errors

Leaving your footnotes in rough draft form, failing to provide pinpoint references, misspelling legal authorities, forgetting to provide full case citations, citing the textbook as if it were a primary source, and putting argument in footnotes, are all surprisingly common referencing mistakes that create an impression of laziness.

Advice: Consult the Australian Guide to Legal Citation after you conclude your assignment. Read the General Rules in the Guide as well as the Primary and Secondary Sources citation information, and then correct all footnotes. In addition, make sure your footnotes only contain citations (not argument!) Also remember that when you are drawing upon a legal rule that you have read about in your textbook, you need to cite the primary source; the statutory provision or the case. The textbook should only be cited for its commentary.



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