

QUESTION(S) PRESENTED

The most important part of any written legal analysis is the statement and framing of the issues to be addressed. In legal memoranda, trial motions, and appellate briefs, this role is filled by the question presented.¹ The question presented (or, in some cases, the questions presented) is a crucial part of any legal analysis because it informs the reader of the issues before he or she begins reading your analysis or argument. In trial motions and appellate briefs, the question presented has an additional role: it encourages your reader to accept your position early on. Because of its importance, the question presented is often one of the most difficult sections to write. This tip sheet provides advice on formulating a clear, concise, and, in some cases, persuasive question presented.

Placement of the QP

In most legal memoranda, the QP will appear at the beginning of the document. In trial motions and appellate briefs, court rules will typically dictate the QP's position, although it is usually at or near the beginning of the document.

Contents of the QP

As previously discussed, the QP informs your reader of the issues at the outset of your writing. In doing so, the QP should not only pose the question; a good QP also succinctly identifies the governing law and sets forth the "legally significant facts"² of the case. In persuasive writing where the QP is filling the additional function of convincing your reader, a good QP will both lay out the party's theory of the case and suggest the ultimate answer to the question. Importantly, although this type of QP should be persuasive, it should not be argumentative. Persuasiveness, in this context, should result from your choice of legally significant facts and your presentation of the law, not from the excessive use of adverbs and adjectives. In any event, the QP should never contain legal conclusions or "beg the question." For example:

- ▶ Conclusory QP: *Under Michigan law, can Mr. Smith be convicted of armed robbery when he displayed a toy gun during the course of a robbery?* [This QP concludes that a robbery was, in fact, committed.]
- ▶ Neutral QP: *Under Michigan law, can Mr. Smith be convicted of armed robbery when he displayed a toy gun while taking items from a store without paying for them?* [This QP does not presume the existence of a robbery.]

¹ The terms "question presented" and "issue presented" are often used interchangeably. For purposes of clarity, this tip sheet uses "question presented" throughout.

² "Legally significant facts" are facts that affect the outcome of a case. A good example is the age of a criminal defendant charged with the unlawful possession of alcohol. In this case, the defendant's age would be a legally significant fact because criminal liability is predicated on his being under a certain age, namely 21 years of age. If the defendant were under the age of 21 and possessed alcohol, he would be guilty; conversely, if he was 21 or older, his actions would be legal. The age of the defendant changes the outcome of the case in this example.

QP Formulas

Because an effective QP is crucial to a good piece of legal writing, there are several easy and common formulas you can use to ensure your QP includes the required elements. These models will help to ensure that you identify the relevant law, as well as state the legally significant facts. Despite its name, the QP can take the form of either a question or a declarative statement.³ Consequently, this section provides examples in both formats.⁴

	Under/Can/When Model	Whether/Under/When Model
Formula	Under [insert law] + Can [insert question] + When [insert legally significant facts]	Whether [insert question] + Under [insert law] + When [insert legally significant facts]
Example	<i>Under the Family and Medical Leave Act (“FMLA”), can Ms. Owens establish that her former employer E.V.E. International (“E.V.E.”) interfered with her right to take leave when it discharged her after she missed work for five consecutive days, having flu-like symptoms she believed to be those of the West Nile virus, and informed her employer that she would be out of the office as soon as she decided to take leave and followed up by phone message and e-mail within four days of deciding to take leave?</i>	<i>Whether Ms. Owens can establish that her former employer E.V.E. International (“E.V.E.”) interfered with her right to take leave under the Family and Medical Leave Act (“FMLA”) when it discharged her after she missed work for five consecutive days, having flu-like symptoms she believed to be those of the West Nile virus, and informed her employer that she would be out of the office as soon as she decided to take leave and followed up by phone message and e-mail within four days of deciding to take leave.</i>

Additional Drafting Tips:

- ▶ Be consistent in how you identify parties throughout the QP. For example, if you choose to identify one party by her full name, you should also identify the other party by her full name.
- ▶ Try to keep your QP as brief as possible. A short QP is easier for the reader to comprehend. However, do not be afraid to lengthen your QP when necessary. For example, a longer QP may be appropriate if you find that you have a number of legally significant facts to incorporate.
- ▶ Continually ask yourself if each fact included in the QP affects your overall prediction and how. If you find that it does not affect your conclusion, you can probably delete it. Similarly, if you find an additional fact that affects your conclusion, you should probably include it in your QP.
- ▶ Phrase your QP in a way such that it has a definite yes/no answer. Even in a predictive assignment, “it depends” is not appropriate.⁵
- ▶ Regardless of how you decide to formulate your QP, make sure your brief answer sufficiently addresses the question posed in your QP and vice versa.

³ Always construct your QP in the form preferred by your professor, supervisor, or assigning attorney.

⁴ Although these examples present two ways of constructing the QP, they are by no means the only ways.

⁵ Even with a yes/no answer, you will have to clarify your answer and point out the weak points in your conclusion.