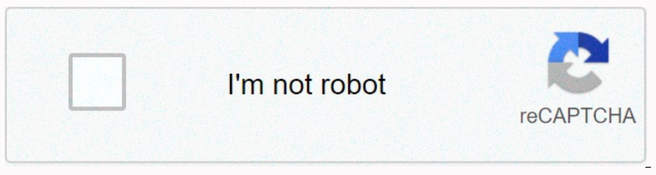

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Sample legal memo discussion section

Your discussion section is the heart of your legal memos. This is where you analyze the legal issue at hand. You must organize your discussion of the law clearly and logically to allow the reader to easily follow his argument. Generally, you should organize your discussion according to the structure of relevant legal rules. If the broad legal issue you are analysing has four main sub-parts, arrange your analysis into four main sub-parts. Ideally, you will address each of these sub-parts in different sections within your discussion section. See the analysis subsections. Before your analysis subsections, you can start your discussion section with an umbrella paragraph that provides an overview of the law. In providing that overview, starting with a comprehensive statement of law, then narrow down to the more finite elements of the law and the issues that you will discuss in the memo. It's like a road map for the reader to understand the law, which will provide helpful references when reading the remainder of your discussion section. You should then proceed to discuss specific elements of the legal rule, preferably in different subsections and in the same order that you identified them within your umbrella paragraph. Although you can use traditional paragraphs and narrative to separate your discussion of each of these sub-issues, I strongly recommend using numbered or written sections to make it easier for your reader to follow your analysis. Thus, each numbered subsection will address one sub-issue and only one sub-issue. While each of these subsections belongs to each other in some capacity, you should clearly treat each subsection. Once you break your discussion into different subdivisions, you have demonstrated to the reader that the relevant rules at hand are made up of different elements. Each subsection addresses one of those elements, and only one. Don't confuse the reader either by discussing one of the other elements you recognize, or by discussing the law in more general terms. Strictly discuss the element identified at the beginning of the subsection and how this element deals with the final determination in terms of satisfying the law. A typical memo includes five sections: (1) Issue, (2) Brief Answers, (3) Facts, (4) Discussion, and (5) Conclusions. This is the best way to approach learning to draft effective legal memos. But be aware that, in practice, lawyers often prefer that memos don't follow this standard format. Below is an example of what your memo will look like, as well as a brief description of each section of your memo. Individual sections of the memo are each discussed elsewhere on this blog. :Date: Re: Memorandum Issue(s) Brief Single Sentence Issue Statement, which defines a properly addressed legal question and contains some relevant facts that go to answer that legal question. The short answer(s) is the short answer to your issue statement that starts with a yes or a no and follows with a brief explanation of your basis for that answer, preferably including facts that support your conclusion. Brief statements of facts that include all the facts that you analyze in your discussion section and any other facts required for relevance. An introductory or umbrella paragraph(s) is a useful way of defining the legal rule(s) that you will analyze. Usually, you will organize your discussion of the legal rule into subsections that conform to the elements of the legal rule. For example, if you are analyzing a tort, you may break your discussion into three sections: (1) whether the defendant owes the plaintiff a duty, (2) whether the defendant is a violation of that duty, and (3) whether the plaintiff suffered any harm. The titles of your sections must conform to the element of the rule that you will analyze within that section. Preferably, the title will be your conclusion to the issue that will be phrased as a full sentence. I. The defendant plaintiff owes a duty to transport him to the school in a reasonably safe manner. ¶ 1 - Your first sentence must state the clearly applicable rule (or sub-rule) (i.e., to prevail over his claim, the plaintiff must first prove that the defendant owes him the duty of care.) Your next sentence should provide an explanation of the(s) rule, which serves as a road map by informing your reader about the topics you are going to address in the remainder of your analysis section. ¶¶- Your first analysis paragraph after your introductory paragraph, where you'll analyze the rule/paragraph. When possible, start each paragraph with a subject sentence. After your subject sentence, analyse the matters that discuss the subject stating relevant facts and holdings from those matters. Next, compare those cases with the facts of your own case. You will have several analysis paragraphs depending on the nature of your legal issue. If legal issues are complicated, you can also opt to further break your analysis by subdivisions. ¶ Your last paragraph/sentence should briefly repeat its conclusions for this analysis section. The second defendant violated his duty towards the plaintiff by operating the school bus while intoxicated. Repeat above. III. The plaintiff suffered significant injuries as a result of the defendant's conduct. Repeat above. -- Sample What Linda Peterson has a claim against Pilates, owner of the Inc. Fitness Center (PPI) and developer of a unique personal pilates training method, alexandria Dmitry, a former PPI employee, resulted in Ms. Dmitry's unauthorized use of a similar training method at another fitness center for misappropriation of a business. Yes, a court most likely said that Ms. Peterson's individual Pilates plan method could be a trade secret and that Ms. Dmitry's use of this method at another fitness center could constitute the misappropriation of trade secrets because Ms. Dmitry should have known that the acquisition of the method was unfair and ms. Dmitry used the method without Ms. Peterson's express or implied consent. [[Include brief explanations of facts]] The validity of Ms. Peterson's claim for business secret misappropriation depends on whether (1) the PPI system can be a trade secret, (2) Ms. Dmitry should have known that the PPI system was acquired through unfair means, and (3) Ms. Dmitry used the PPI system without Ms. Peterson's consent. These issues are handled by the Colorado Uniform Trade Secrets Act (co-UTSA), C.R.S.A. § 7-74-102 (2009). Mineral Reserves Limited v. Jigan, 773 P2D 606, 608 (Colo. App 1989). Whether the PPI system is a trade secret and whether Ms. Dmitry's acquisition and use of the PPJ system constitute rigged are questions of fact. Gold Messenger, Inc. v. McGue, 937 P2D 907, 911 (Colo. App 1997); Powell Products, Inc. v. Marks, 948 F. Supp. 1469, 1482 (D. Colo. 1996). I. A court will likely find that Peterson's PPI system constitutes a trade secret. Without. Ms. Peterson's PPI system was not known outside her business. [[ANALYSIS AS CREAC]] B. Ms. Peterson's employees had no idea how the PPI system operates. [[ANALYSIS AS CREAC]] C Ms. Peterson took adequate measures to protect trade secrets. [[Analysis as CREAC]] II. Ms. Dmitry should have known that she had improperly acquired the PPI system. [[Analysis as CREAC]] III. Ms. Dmitry used the PPI system without Ms. Peterson's consent. [[Analysis as CREAC]] Ms. Peterson should succeed with the rigging of a business secret claim against Ms. Dmitry because (1) Ms. Peterson's PPI system is likely a trade secret, (2) Ms. Dmitry acquired Ms. Peterson's PPI system through improper means, and (3) Ms. Dmitry used the PPI system without Ms. Peterson's consent. The discussion is where you add your value to the firm's work and customer problem. You predict the possible outcome of the case using your research, knowledge, experience and judgment. You don't have a crystal ball, and you can never guarantee a result. Still you're being paid for An answer. You are also being paid to give a clear evaluation, which may mean conveying a clear message that there is a significant risk in moving forward. In other words, sometimes you have to give bad news. You want to write a prophecy that gives the reader confidence in your answer. You support your prediction with the law and the facts. Keep in mind that the legal reader is cautious and skeptical, and has a professional obligation to thoroughly vet your predictive memo. You must support your prediction with a clear application of law and cases for the exact synthesis of the law, a detailed case law analysis, and customer status. Your prediction is logical, sensible and to deal with risks. Check your discussion using oats criteria: objective, precise, thorough, specific objective you will write the same analysis if you represent the other side? Is this analysis intriguing or hurts your client's case, even if you include all relevant facts, issues and case laws? Fully you consider all sides of the issues, facts and alternative interpretations of the law, and all counterarrorities? Will a busy lawyer be able to read the specific memo and understand the cases and discussions without reading the officials cited? Birth. Organizing an effective discussion: For the busy and confused lawyer to organize the writing discussion, it helps to step back from the thinking and research process and put yourself behind the busy and confused lawyer's desk. Ask yourself: How can I communicate briefly, accurately, well, and quickly what lawyer needs to know how to make a decision, no matter how complicated the case is? There is no universal organizing formula. Legal authors are sometimes encouraged to use (or discourage) from using variations of the following as the basic writing framework: IRAC: Problem, Rules, Applications and Conclusions or FILAC: Facts, Issues, Laws, Analysis, and Conclusions or CREAC: Conclusions, Rules, Explanations, Applications, and Conclusions Any formula will not fit the bill every time; However, these briefs will help you remember the essential elements of any legal discussion. And remember, some firms and lawyers have preferences, so it always pays to check. A lawyer might want a detailed conclusion at the beginning of the memo. One can expect a small overview of the unified legislation in the discussion section. Here are some useful writing principles that you can apply, which work with any writing framework, and take into account the busy lawyer. Use these principles as guides, not tough and fast rules. The threshold issue there are threshold issues that can settle this case before a court might even consider concrete legal rules. First, consider discussing the issues of threshold. Example: Threshold issues jurisdiction: Lack of jurisdiction of court because plaintiff does not comply Agreed to process in contract. Res Judicata: The case should be dismissed on the basis of the principle of res judicata because the plaintiff raises the same issue that was set out in previous proceedings between the parties. Statute of Limitations: The case must be dismissed because action was initiated two years after the Statute of Limitations is gone. Statutory definition: The statute requires minors to wear bicycle helmets, and the defendant was nineteen years old when the ticket was issued. Statutory definition: The statute imposes full liability for dog bites on owners who do not control their dogs. The defendant is not the owner of the dog. The Orient busy reader is the first to discuss issues you think the court is most likely to base its verdict on. Presenting advances to the most important issues helps a time-pressure lawyer assess the overall strength of the client's situation. Tell the busy lawyer in advance what to expect the result so that lawyers can read with a purpose in mind. Skilled writers use techniques to point out writing first because they know it's easy for the reader to absorb and remember their points if they are previously laid out. Telling the reader up front also means that you provide an overview for each section and subsection. In example Anna's memo, she included an overview to establish a framework for her discussion: the courts do not allow exceptions to the well-founded requirement in Rule 31.04(1) that an action is entitled to be investigated for adverse search in a party's interest. However, case law holds that the right to search is not absolute and under Rule 2.03 the court shall determine whether the exemption is appropriate. This responsibility is on the exemption-seeking side and the Court must be satisfied that a clear case has been made on the evidence. To succeed under Rule 2.03, we will need to establish two elements: an exemption from the court's discretion oral search to exempt the reader from standard oral search for law enforcement before the reader needs to understand the law in order to evaluate its prediction. Start with the law before submitting your analysis. And remember, confused lawyers also need evidence — so cite authority. Starting with the law doesn't mean you only recite results in the series of cases you found in your research. You do not start your discussion section with a section, The Law, where you list and describe all cases. Educating means analyzing and synthesizing, as opposed to summarizing legal authorities. The specified lawyer wants an active presentation that contrasts the comparisons and arguments of facts and cases, and explains how statutes and regulations fit together and are interpreted by case law. The busy lawyer wants an analysis, not a book report. crooked walk Case discussion and your fact most legal writing experts suggest that you discuss a case after you immediately apply it to your case facts. The discussion and application of the case helps the reader to follow the knitting together and evaluate your analysis. And you avoid unnecessary repetition. Use familiar structures whenever possible you want to make it easier for busy lawyers to follow your reasoning. Lawyers are used for certain types of arguments, so if you follow a familiar structure you help them quickly see your point. If the legal issue is governed by case law, your discussion may track the elements established in major cases. Ben's restrictive covenant memo effectively conducted separate discussions using the subsidshak that paralleled the analytical frame used in the major Supreme Court case. Similarly, if the law mandates certain elements trust in claim or defense, you can organize the discussion section to track those elements. If you're counting on drawing parallels with instances of a case, you can highlight key elements or facts that you want to point to for comparison by setting it as a separate subsection, subsirity or paragraph. If each party should prove important facts, your memo can follow the burden of sub-topic proof. Use the structure to value loud structure signals for a reader, whether the author intends it or not! Readers pay attention and remember what they do read first. With this in mind, you may: discuss issues outside of sequence and start with the person who is most important to your prediction, or begin with a border procedural issue that the court will consider before anything else, especially if the memos will be used to determine the litigation strategy. Make the most use of descriptive internal title descriptive titles and sub-headings to communicate your message and even make a complex memo readable. Major discussion titles can announce the law and your prediction. Ben Hall's restrictive covenant memo like people in the title create loud and tell readers exactly what to look for as they read: Covenants require special circumstances for not competing in employment contracts Bradley-Tech's world employment relationship does not present special circumstances The descriptive sub-title makes a visual reference point — a mini-content table that points readers quickly to explore. can use for. Ben Hall changed the criteria in his observation paragraph into descriptive sub-headings that underlined the points for easy reference: the breadth of restrictions the nature of the tech world's business and Bradley's role in the non-checking employment agreements in the competition section Ben's descriptive sub-title took a long discussion section and readable by it: breaking it into the manageable part of the break Prompt the beginning of a new sub-topic for Where are they? Titles also make up white space. Think of white space as increased oxygen for the brain. White space is easy on the eye and lets the reader pause, breathe and think. c. Prediction vs Persuasion Your Business Role: Advisors vs Advocate Skilled Legal Authors take every opportunity to accomplish their purpose. As a consultant, your objective is this: inform the alert and, most importantly, predict a possible outcome from a neutral and objective point of view. Predictive writing reader for office memos depends on you to present powers and risks objectively. The predictive memo is a document used to make a decision, whether it is: The senior attorney decides the strategy in a case or a client decides whether to continue with litigation. On the other hand, motivational writing is strategic for motivational writing court, demand letter, etc. for factum and briefs. As a lawyer, you craft every element to convince the reader that your situation is right. Elements of predictive and inspiring writing will be the same elements of predictive and inspiring writing. Both: All relevant facts accurately support state law and cite unfavorable instances. Tone, word choice, sentence structure, organization, and emphasis in predictive and persuasive writing differ greatly: Predictive writing uses neutral language, while motivational writing uses loaded words to appeal to a reader's cause or emotion. Predictive writings present facts in a balanced fashion, while motivational writing often plays up important facts to the customer's position and plays down facts that are less favorable. Predictive writing discusses all sides of an issue, while motivational writing emphasizes arguments that support the customer's position and separate all other arguments. Neutrality does not mean that you abandon customer interests or goals. You still do your best to overcome weaknesses and address counterarrances. The challenge of objectivity neutral and our professional role as objective consultant is often challenged by some subtle and somewhat if not subtle prejudices: we often have the image of our clients and their problem in our minds as we evaluate research and case law. We first hear customers' versions of the facts and are leaning towards their perspective. We would prefer to give customers good news about the strength of their situation or the possibility that they will achieve their objectives. And then many lawyers have the second natural instincts that want to win. The predictive memo should face the natural tendency to lean toward your side's point of view. It is a good habit to audit your memos for neutrality and objectivity to audit the content, tone and word choices of your memos for neutrality and objectivity. Here are some questions to query your text with: D. can busy and Do lawyers rely on your prediction? As your discussion section moves from explaining to law enforcement, legal readers begin to test your analysis against their thinking process and knowledge. Legal readers will be looking for signs that you have thought through multiple ways matters, statutes, and customer facts can be interpreted. Your analysis should be clear, clear and reasonable. Consider the following mini-checklist: Now review your own memo writing experience and add to this checklist. Anna's mentor suggested an editing technique to examine the organization and flow of the memos. You first take out the titles and then run them together in a separate document. The reader should just be able to follow their discussion with the titles. Then, if your sentences are disjointed and out of order, you exclude the subject sentence for each paragraph and read them with the headings. Example Anna used this tip to modify and rearrange the subject sentences in her analysis sections to make her score consistent. Here are the title and subject sentences from the first issue in Anna's analysis section: courts do not allow exceptions to the well-founded requirement in Rule 31.04(1) that an action is entitled to be investigated for any other party's adverse finding in the interest of one party. 1. Courts exempt child plaintiffs from oral search if there is concrete evidence that the child will risk psychological harm from participating in the search process. In case of success under Rule 2.03, we will need to establish two elements: in the court's discretion to exempt Andrew from the standard oral search of proof for exemption from oral search a) The discretion of the court to exempt a child from oral search courts is not always considered psychological harm in determining the exemption from the search. Courts now take this position, but are willing to grant exemptions from oral search, where cogent medical evidence shows psychological harm will likely result from it. b) The standard of evidence is the balance of possibilities Courts now look at the persuasive medical evidence of damages to exempt parties from examinations under Rule 31. The risk of harm certainly requires the certainty of loss that does not require early decision making. In an initial case, the Diocese of Toronto in Canada did not grant f(J)v. Roman Catholic Episcopal Corporation (1996), 42 O.R. (3d) 312 (General Div.), lax J. not granted exemption from oral search in the case of an adult plaintiff in a sexual abuse case. There is a good argument that F(J) will not apply to our case because the facts are quite different. Recent cases show that certainty is much more a standard, even in the case of adults. Thus, it is likely that the court in Andrew's case will not require evidence of certain damages, and will instead be satisfied with the balance of probabilities of trial though, even if Some injury applies, evidence from Dr James will support the argument that Andrew should be freed from the ordeal. Court child plaintiffs have more flexibility in relation to courts have accepted a wider range of evidence in cases involving children. In the case for exemption for Andrew to strengthen, we must debate the proposal that the Court has a duty to protect vulnerable minors from the risk of harm, which proved to be on the balance of probabilities. Dr James' evidence should therefore be sufficient to support the position that Andrew be exempted from verbal search. e. Case discussion How much case detail do you need to enter in a legal memo? It's not a simple question to answer because there are competitive demands in play. The amount of detail you want the assigning lawyer to have confidence in your analysis. Details needed the specified lawyer does not want to read every case you discuss. Details you need to be specific; Every detail must relate to a legal issue in its memorandum. The short details you need are analyzed, not summary or writing a law review article. Memos needing fewer details are most effective when they are concise and to the point. The short details you need to draw parallels, distinguish an adverse case from your customer's position, or support a policy argument. Oh details, yes, and then there needs to be the preference of the specified lawyer! A lawyer wants to know the procedural history for every case. Another lawyer wants you to include the facts in a footnote. And yet another lawyer expects you to boil down the essence of the case for a line or even a bracket phrase. It is a balancing act. You need to include related facts, holding and reasoning to assure the specified lawyer that he doesn't need to read the case to check your analysis, while at the same time you need to write a focused, disorganized case analysis that connects the case to the legal points of your memo. Your decision on how much case detail is needed comes down: context, audience, and purpose for your assigned memo, and why you chose to include the specific case. In the restrictive covenant memo, Ben grappled with how much detail Elsely give up on the case. Because Elsely is a major matter, Ben first thought most of the facts would drop on because the designated lawyer was likely very familiar with the matter. However, eventually Ben opted for a detailed discussion, in part because in later cases Elsely used legal principles to arrive at the opposite results, and because Ben needed to distinguish elsely facts from his client's facts. Ben Elsely put his case synthesis in terms of the details needed and supported how he applied case law principles to his client's facts. In the Civil Procedure Memorandum, Anna discussed a case in great detail (Kidd) and then Sparse with details for all other cases he cited. Anna Kidd delved into the case because it is the leading case and one of Anna's practical recommendations is based on the type of evidence accepted in Kidd. Anna included: key facts (plaintiff's age, injury, trauma), procedural history (holding and reasoning of the lower court), medical evidence available to the lower court (a letter from the minor doctor focused on the specific behavior of the family), and the appeals court's analysis of evidence and causes. On the contrary, cited Anna for each of the other cases, she only included specific facts or reasons relevant to the court sub-issue or paragraph subject matter. Here are some questions you can ask yourself in thinking through how much case detail is included. And, of course, your decision on what to include for each case will have to balance the answers to many of these questions. Reference: What is the background to include this case? How does this case fit into the development of the court's legal principles that I am applying and my overall analysis? How will this help the reader in decision making? The question to ask yourself the amount of detail is this a major matter that most people know very well? In less detail, I am raising this matter because it lays down the principle of law which all courts follow, but the facts are not very important? Is this matter central to my analysis in less detail? Does the case in more detail present a novel legal issue or argument? In more detail does my client's case present a novel issue or argument addressed by this case? Is the case in more detail one of many cases that illustrate the same thing? Less detail is the case outdated and now a precedent I trust? Is the law in less detail starting to evolve away from the logic of the case? In more detail what is the limited precedent weight in the case, either because it is from a lower court holding or any other jurisdiction? In less detail, as long as I argue it should be pursued there are procedural issues in the case that are central to the outcome? Audience in more detail: What are the features and expectations of the reader? The question to ask yourself the amount of detail the specified lawyer knows well in the area of law? Less detail will the memos of the firm go to the bank? Has the lawyer specified in more detail asked for a regular client memo applying case law established for the case? Is there a preference for the lawyer or firm specified in less detail how matters should be discussed? Need to inquire for purpose: how am I using this case? The question to ask myself the amount of detail is what I need to extend this to make sure my conclusion is clear? More detail Do I need details to display similarities with my client's case? More detail Do I need details to separate the case from my client's case? Point a bail or bracket in this case in more detail Getting used to? Is less detail Case a major authority in my synthesis? In more detail, I am asking the court to dismiss the matter? In more detail am I using this case to support a policy argument that the law should be changed? More detail F exercises predict the outcome stating your prediction: Here's a brief overview of the customer's status and case law for the following two exercises: You represent the seller (alliance) in a case where the buyer (generator) wants to pay the seller $100,000 in economic losses when the seller's equipment has deteriorated. The written contract contains a limited warranty that limits the buyer's remedy to replacement or repair and does not include damages, especially for economic losses. Earlier in the year, Alliance Generator paid $5,0 to cover two damages related to equipment failures in shipments, one in February and then one in May. Generator says the alliance's president verbally revised the original contract by waiving the exclusion clause of the limited warranty. In case of a long-standing appellate level in your jurisdiction, new ideas are required to support the contract amendment. Another recent appellate level case in a neighbouring jurisdiction adopted a modern commercial reality approach that recognized contract revisions after ongoing contracts without new consideration, until contract changes had been achieved through economic pressure. No matter in your jurisdiction has followed the commercial reality approach; However, your Court of Appeal has not yet considered a case arguing the modern commercial reality approach. Exercise 1 - Predicting a Good Results Exercise 2 - Delivering Bad News