

Antitrust Law: Case Development and Litigation Strategy

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WRITING THE INTRODUCTION TO A REASONED MEMORANDUM OF LAW

Introductions to a reasoned memorandum of law (MOL) are usually standardized. While this may suppress your creative writing instincts, a standardized format serves a good purpose: readers, often law firm partners, agency officials, judges, or other lawyers who are pressed for time, can read them quickly and efficiently, know what question the memorandum addresses, find a concise statement of the answer, and know exactly the path the writer took to reach this conclusion.

Long MOLs usually have three paragraphs: (1) a statement of the question the MOL will address, (2) a concise answer to the questions without supporting argument, and (3) a “roadmap” that provides a guide to the rest of the memorandum.

Statement of the question. The first paragraph should state precisely the question the memorandum addresses. Where the recipient—usually the person who assigned you to write the memo—knows the background and importance of the question, the first paragraph should be a single sentence. The best way to start this sentence is with “You have asked me” and then state the question. For example:

You have asked me what a horizontal price-fixing complaint needs to allege in a complaint in addition to consciously parallel conduct to withstand a motion to dismiss under Rule 12(b)(6) on the element of conspiracy in a claim alleging a violation of Section 1 of the Sherman Act.

Sometimes, the question presented will have multiple parts:

You have asked me to (1) identify the rule in *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), regarding class certification; (2) determine why the majority rejected the plaintiffs’ evidence as insufficient to sustain class certification; (3) determine how and why the dissent differed from the majority; and (4) evaluate how *Comcast* has been applied in subsequent antitrust cases.¹

The precision of the questions posed in a memorandum of law (MOL) is crucial and offers two significant advantages. First, it forces you to frame the question precisely so that you can answer it precisely. Second, it allows you to verify with the assigning attorney that you both have a

¹ In non-academic legal documents (including court documents), case names in full citations are italicized. BlueBook Rule B2. By contrast, law review articles and other academic legal documents use ordinary Roman type for case names in full citations (except for procedural phrases, which are italicized). *Id.* Rule R2.1(a). However, case names alone in textual material (without citations) and short form case names are italicized. *Id.*; Rules 2.2(a)(i); 2.2(b)(i). REMEMBER: All submissions, starting with the introduction, should be BlueBooked. Failure to BlueBook will be detrimental to your grade.

shared understanding of the task before commencing your writing. It is often the case that there is a lack of common understanding between you and the assigning attorney, possibly due to the attorney not having fully conceptualized the question. Establishing a clear agreement on the statement of the task from the outset can prevent much frustration and ensure that your efforts are correctly directed. Additionally, a precisely framed question will likely yield a precise answer, whereas an imprecise question can lead to vague or off-target responses.²

In most MOLs, there is no need to provide background or motivation in the statement of the question. This is because the memorandum is typically prepared for the assigning attorney who is already familiar with the essential background and the reasons for requesting the memorandum. Any necessary background, including new facts uncovered through your research, should be incorporated into the first substantive section of the MOL rather than in the statement of the question.

It bears emphasis that this approach ensures the MOL remains focused and relevant. Keeping the question statement clear and concise will help you avoid unnecessary digressions or overgeneralizations and enhance the overall effectiveness and clarity of the legal analysis.

Short answer. The second paragraph should state the answer to the question presented. Two things are important in writing this paragraph.

First, it should answer the question stated in the first paragraph. You would be surprised at how often a MOL fails to answer the question presented. If the answer requires qualifications or conditions, or if there is a split among the courts regarding the issue, those need to be clearly stated. Additionally, if there is any uncertainty regarding whether a court would accept your answer if presented with the question, be sure to explain why.

Second, the answer should be concise. It should not provide any legal reasoning or support (unless a governing case is directly on point). The reasoning and support will follow in the remaining section of the memorandum.

IMPORTANT: In many cases when writing the early drafts of the introduction, you will not yet have an idea of what the answer to the question is. If you have a tentative idea, I recommend including it in the early drafts. This will help sharpen your thinking when writing the memorandum, and short answers are always subject to change—as is everything else in the memorandum—until you have finalized it. If you do not have a sufficient idea of the answer, however, it is proper to include a placeholder in the text stating that the short answer will come in later drafts (e.g., “[SHORT ANSWER TO COME]”).

The roadmap. The final paragraph of the introduction should be the roadmap. This roadmap guides the reader through the analysis in the remainder of the memorandum. It should be written in the active present voice, dedicating a sentence or two to explain what each section covers. After reading the roadmap, the reader should have a clear understanding of how the analysis will progress. The initial section of the analysis should provide the background and relevant facts necessary to understand and provide context for the question presented. Subsequent sections should address different aspects of the analysis in a logical order. The concluding section will summarize the entire analysis and reiterate the answer to the question.

² There is a third advantage in this course: it allows us to pick a topic that will require 15-20 double-spaced pages of rigorous analysis to answer. Some questions can be answered in only a few pages—those will not work for a two-credit paper.

The roadmap is a critical piece of the MOL. It serves as a navigational tool, enabling the reader to anticipate the structure and flow of the argument. This clarity enhances the reader's ability to follow the logical progression of the analysis, making the overall argument more persuasive and understandable.

Final thoughts. Introductions are hard to write. Expect to go through several drafts as you think through your memorandum.

Be careful with your word choices and your grammar. Poor word choices and grammatical errors are distracting at best and, to many readers, signal an inadequately trained writer. When in doubt, check with a style manual. The Internet is an excellent resource for answering even obscure grammar questions. At your level, there is no excuse for grammatical errors.

Use the present active voice. The passive voice often leaves important questions unanswered. Use the active voice unless using the passive voice is absolutely necessary.

Finally, as a matter of personal choice, I prefer to write an introduction with three continuous sections and no headings. Others prefer adding headings for the first and second paragraphs—typically, “Question Presented” and “Short Answer.” After the Short Answer paragraph, they add the heading “Analysis” and include the roadmap as the first paragraph of the analysis section. The sample two-credit MOL uses this latter format. You are free to use either style.

First drafts of the introduction, along with the identification of key cases, are due Wednesday, February 7. You do not need to submit an outline for a two-credit paper. The roadmap in the introduction should tell me everything I need to know about how you are going to approach the analysis.

Good luck with your writing. If you have any questions, email me.