

STRUCTURE YOUR LEGAL MEMORANDUM

BY MARK GANNAGE¹

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This article suggests one possible approach to structuring your legal memorandum. Some inexperienced legal researchers frequently spend considerable time and effort finding the law relevant to a particular practical problem, only to founder when reporting in writing their research results. The deficiency is often poor organisation. Like other legal skills, organising and writing memoranda is an art that can be honed with practice.

The legal memorandum is the most formal, polished, and comprehensive written document for reporting the results of your legal research. It summarises and analyses the relevant law and applies it to a particular fact situation. In practice, the memorandum can be a crucial document to a case or file. The memorandum might be sent directly to the client or be the basis of other written work, such as a factum, opinion letter, pleading, legal instrument, or judgment.

Accordingly, given its importance and potential uses, your memorandum should adhere to the hallmarks of excellent legal writing, including organisation. A well-organised memorandum conveys a lucid, methodical way of thinking about the problem. When structuring your memorandum, you should adhere to the canon that, to the extent that the written word is capable, your writing is and should be a transparent window into your thoughts.

There is no one right way to organise a memorandum. You can appropriately structure your memorandum in many different ways. The variable structure might depend on such factors as the memorandum's purpose, your instructions, your reader's needs, the nature of the problem, your legal findings, the logic of the subject, the

scope of your research, and any standard approach adopted by your law office. These factors might require you to be flexible and to structure your memorandum creatively and idiosyncratically.

This article focuses on organization. It suggests how to partition your memorandum (exemplifying the recommended form) and what to address in each part.² Some of the following suggestions might help you to craft a suitable, effective, and time-efficient format for reporting the results of your research and analysis.

In practice, your arduous legal research and analysis can be immeasurably valuable. Its value will be enriched if its written communication is coherent, focused, and orderly. Adopting these recommendations for structuring your legal memorandum could enhance its clarity, potency, and usefulness.

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¹ I am grateful to my colleague Susan C. Zimmerman for her helpful comments.

² An examination of such other specific and important presentation elements as style, usage, syntax, citation, footnotation, quotation, grammar, punctuation, and spelling can be found in the extensive literature on legal writing and is beyond the scope of this article.

MEMORANDUM

TO: [reader] (e.g., instructing lawyer, client, judge)
FROM: [your full name]
DATE: [date of submission]
FILE: [file number; client/matter]
SUBJECT: [topic] (describe precisely)

TABLE OF CONTENTS [optional]

- It's an outline for your reader—a snapshot of your structure, approach, and analysis. It helps your reader quickly find specific parts.
- It's appropriate if the memorandum is long (e.g., exceeds 10 single-spaced pages) and covers several issues.
- It can easily be generated automatically by computer to comprise numbered or lettered headings and subheadings, and page references.

I. BACKGROUND (or PURPOSE OF MEMORANDUM) [optional]

- Describe the context. State briefly what you have been asked to do and why (e.g., upcoming court appearance, client seeking legal opinion, legal question arising from draft agreement, proposed legislation, bench memo for a pending case).
- Identify scope of instructions and research.

II. FACTS

- This part ensures that you and your reader are starting with the same information. It tells your reader the genesis of your research and analysis and the basis of your conclusion. It permits your memorandum to stand on its own.
- Summarise all legally relevant facts as you understand them. If appropriate, do so in a chart, table, or diagram. In any case, be concise and precise.
- Identify your sources. Some possible sources are your reader; the client (if he or she is not your reader); the file; your own investigation.
- Chronological order is often most helpful (unless another order seems more logical and makes the information more clear, such as grouping sets of facts that raise separate issues). Separating and numbering the facts might make them more understandable.
- If there is some disagreement or uncertainty about the facts, say so and state both sides.
- A summary of the facts might instead come *after* the issue/question and conclusion/answer parts in some circumstances, particularly where these parts are straightforward and simple.

III. ASSUMPTIONS [optional]

- If you have legally relevant, unanswered questions, you might have to make certain assumptions.
- Identify them either in a separate section or by including them in the above section retitled "FACTS AND ASSUMPTIONS."

IV. ISSUE(S)

- State the legal question(s) asked or the issue(s) considered in the memorandum. They map your approach to the problem.
- Articulate briefly, clearly, simply, concisely, precisely, and accurately.
- Break down each question into all relevant sub-issues.
- Present separately issues and sub-issues as questions.
- Deal with pivotal issues first. List issues and related sub-issues in a logical order. Number them.

V. CONCLUSION(S)

- This part is a terse summary of your answers to the issues you've identified above based on your assessment of the *likely* application of the law to your case. It's an abbreviated statement of that which you analyse in detail in your discussion below.
- Write this part last but present it first (i.e., before your detailed discussion) so that your reader knows quickly the bottom line before reading about how you got there. Remember: you're not writing a suspense thriller or a murder mystery.
- Answer the question(s). Be direct, clear, and complete. Don't be indecisive, hesitant, or inconclusive. Take a stand. Identify any doubts about the outcome. Any qualifications of your opinion should be based on reason and supported by the law.
- Don't reiterate your legal analysis.
- Don't introduce "new" information (i.e., information that does not appear in your discussion).
- Number each conclusion to correspond with each issue. Clone the wording of the issues as closely as possible.
- This part may also be relied on as a summary for other uses (e.g., for the firm's information retrieval system or memo bank).

VI. LEGISLATION [optional]

- Set out verbatim if critical to your conclusion.
- If longer than a page, consider paraphrasing and appending a highlighted, tabbed photocopy or printout.

VII. DISCUSSION (or ANALYSIS)

- Describe the relevant law (e.g., legislation, cases) and commentary on the law (e.g., texts, encyclopedias, policy statements), then apply them to the facts of your case. Either integrate the description and the application, or adopt a sequential two-step approach for each issue.
- Predict how a court would *likely* resolve the issue(s) and apply the law to your specific facts.
- Group similar cases. Summarise any common facts and principles that emerge from relevant cases.
- Describe the significant components, including the essential, germane facts and key issue(s), of the cases you've reviewed. This lets your reader assess how similar, different, or applicable each case is to your specific facts. Where appropriate, distinguish cases and draw inferences. Assess where your problem fits into the range of fact situations of the pertinent cases.
- Extract and apply the principles from the leading cases. Use these principles as premises in your legal argument (i.e., a conclusion supported by reasons). Identify any trends in the case law.
- Address fairly any arguments on *both* sides of an issue. Anticipate what positions and counterarguments might be advanced by the opposing side.
- Don't ignore or conceal any uncertainties, inconsistencies, ambiguities, conflicts, gaps, or confusion in the law. Explicitly identify them.
- Don't mislead your reader about the current state of the law. Don't be inaccurately one-sided or deceptively optimistic or pessimistic. Don't let wishful thinking cloud your reasoning. Give both the "good news" and "bad news," if any, of your research results.
- Give an opinion on the strengths and weaknesses of your position. Present persuasively the best arguments based on any relevant legislation and common law principles.
- Show your reasoning. Reach a conclusion. Ensure that it's supported by the law.
- Make any suitable recommendations about a course of action. Be creative. Think strategically. Focus on getting results.
- Analyse each issue separately. Show your reasoning, using a step-by-step approach.
- Use headings corresponding to each issue and sub-issue so that the discussion is easy to follow ("signposting"). Number them.

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- Ensure that the hierarchy of headings is logical and consistent.
 - Make the language of each heading correspond to the language of each issue or conclusion (i.e., be consistent in the words you use).
 - Start each paragraph with a topic sentence (indented) to focus the discussion.
 - If time, logistical, or other practical constraints force you to rely solely on secondary sources, say so.
 - Identify any pertinent missing information and potentially outstanding issues.

VIII. SOURCES CONSULTED (or RESEARCH CHECKLIST)

- Either list the authorities you reviewed, starting on a new page, or append a completed standard checklist of sources consulted.
- Include full, accurate citations for cases and secondary sources for current and future reference.
- Specify the exact search terms used in any electronic research, the databases searched, and the number of cases, records, or “hits.”
- Identify any helpful Web sites visited.
- List your sources in a logical order (e.g., reverse chronology, most to least germane or authoritative) under subheadings (e.g., cases, secondary sources). Identify this order for your reader.

IX. APPENDIXES [optional]

- Examples include leading cases, relevant legislation, or previous relevant memoranda that you’ve updated.
- Identify, organise, highlight, and tab them for your reader.

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