

## 12: Legal Memos - Questions Presented

• In this chapter, we are going to explore what goes into writing the Questions Presented section of your legal research memo. Similar to the Questions Presented section of a case brief, the Questions Presented section in a legal memo contains the legal question(s) related to the client's legal matter (the reason the client retained our law office). The purpose of the Questions Presented section of your legal memo is to identify each legal question we are analyzing for our client.

A client's legal questions usually fall into one of the following categories (of course, there are others, but these are the most common):

- Does the client have a viable claim? (plaintiff)
- Does the client have a viable defense? (defendant)
- Does a particular statute/regulation/court decision apply to the client?
- How will the application of the statute/regulation/court decision affect the client?
- Is the client's proposed action legal/permissible/advisable?
- What documentation does the client need to make the client's wishes a reality (or) what should the documentation contain?

These broad legal questions led us to the specific legal standards we identified while researching and synthesizing statutes and case law. Each Question Presented will specify a narrow legal standard (such as the elements of a crime, a claim, or a defense) that needs to be analyzed in order to answer the client's broad legal question.

### Components of the Questions Presented

Each Question Presented has two components that must be included. The first component is the legal standard. The second component consists of the legally significant client facts or circumstances related to the legal standard.

### The Legal Standard

The first component of the Question Presented is the legal standard. The legal standard comes from the statutory language, precedent or other legal authority we identified as potentially applying to our client as a result of our micro- and macro-synthesis. Legal standards in Questions Presented often involve questions such as

- Did someone breach a legal duty? (element of a negligence cause of action)
- Did someone comply with/violate a statutory requirement?
- Does someone meet the definition of a legal standard? (For example, is the defendant an "employer" within the meaning of the statute? Did the defendant "use" his vehicle within the meaning of the insurance policy?)

It's important to continue writing your legal standards narrowly in your Questions Presented. Narrowly written Questions Presented, even if they seem repetitive, will lead to deeper and more focused analysis of the legal authorities and your client's facts in the Discussion sections of your legal memo. Resist the temptation to write a Question Presented based on the client's broad legal question. Following are some examples of poorly written legal standards:

- ☹ Was someone negligent?
- ☹ Is someone liable for xxx (negligence, breach of contract, etc.)?
- ☹ Is someone guilty of xxx (arson, homicide, etc.)?
- ☹ Did someone violate xxx statute?

All of these legal standards are too broad because answering each one requires analysis of two or more elements that must be proven/disproven or requirements that must be met to completely answer the question.

Remember our arson statute? This is how we synthesized it:

**COMPLETE CITATION OF STATUTE:** Wis. Stat. §943.02(1) (2005)

**COMPLETE CITATION OF RELATED STATUTES:** Wis. Stat. §943.02(2) (2005)

QUESTIONS	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
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QUESTIONS	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHO:	any person	Wonka is a person
WHAT:	<p>(1)(a) and (2) the action of <b>using fire</b> and <b>damaging another person's building</b>. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.</p> <p><b>OR</b></p> <p>(1)(b) the action of <b>using fire</b> to <b>damage any building and to fraudulently gain insurance money</b> The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire</p> <p><b>OR</b></p> <p>(1)(c) the action of <b>using explosives</b> to <b>damage another person's property</b></p>	<p>(a) A fire was set and the Chocolate Factory was damaged (\$1 million); Bucket is another person who owns the Chocolate Factory</p> <p>(b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire</p> <p>(c) explosives were not used, only fire. The Chocolate Factory is a type of property and it was damaged. Bucket is another person who owns the Chocolate Factory</p>
WHEN:	any time	January 30, 1 a.m.
WHERE:	in Wisconsin a building (a) and (b) property (c)	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building and also is a type of property
WHY:	because the statute says so	n/a
HOW:	<p>(a) or (c) <b>the action of setting the fire/using the explosives must be done intentionally.</b></p> <p>(a) or (c) <b>It must also be done without the other person's consent</b></p> <p>(b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire</p>	<p>(a) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire (\$ problems). These facts are evidence of intent</p> <p>(a) Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute)</p> <p>(b) this is not clear from the facts and hasn't been charged</p>
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

There is no question that "fire" was used to damage the Chocolate Factory, which is a "building" under the statute. Because Wonka did not use explosives, subsection (c) of the statute does not apply. Also, we are not overly concerned with subsection (b) of the

statute, because Wonka is not charged with insurance fraud (although he probably could be, based on the facts provided). There is also no question that the Chocolate Factory is a “building of another;” it is jointly owned by Bucket as well as Wonka, and the statute expressly states that even if one of the owners is accused of arson, it is still considered a “building of another.”

However, to secure an arson conviction the State will also need to prove beyond a reasonable doubt that the fire was “intentionally” set and was set “without the other person’s consent.” Even though Charlie Bucket’s joint ownership of the Chocolate Factory has no impact on the question of whether it qualifies as “a building of another,” the question of “consent” is subjective in the same way as the question of “intent.” As such, it is a separate element that the State must prove beyond a reasonable doubt.

Based on the above, we have two **legal standards** to analyze:

1. Will the **State** be able to **prove beyond a reasonable doubt** that Wonka **“intentionally damaged”** the Chocolate Factory?
2. Will the **State** be able to **prove beyond a reasonable doubt** that the **damage** to the Chocolate Factory **occurred “without the other owner’s consent?”**

There are a few important things to notice about these legal standards. First, each one specifies the level of the burden of proof (beyond a reasonable doubt, because this is a criminal matter) as well as the person having the burden of proof (the State, because this is a criminal matter). This information about the burden of proof is critical to a complete analysis of any litigation matter, whether it is criminal or civil. Second, each one separately identifies a narrow legal standard relating to one of the elements the State must prove to secure an arson conviction. Even though it seems repetitive and to include some overlap, each legal standard must be analyzed separately; thus, each one needs a separate Question Presented.

## The Legally Significant Facts

The second component of the Question Presented, the legally significant facts, tells us what the client’s case is really about. When you are deciding which legally significant facts to add to each Question Presented, think of it asking, “Why are we here?” It can be helpful to think of the following questions:

- What happened that is raising the legal question for the client?
- What did the parties do (or not do) that is making us question whether the legal standard has been met (or has been violated, or should be applied to the parties)
- What conduct or facts are the parties arguing about?

Previously, we wrote the Facts section of our legal memo, which contains all of the legally significant and contextual facts for the entirety of the client’s legal matter. For each Question Presented, we want to pull out only the legally significant facts. Legally significant facts directly impact whether the Question Presented will be answered “yes” or “no.” In other words, legally significant facts are those facts which, if they were changed, the outcome for the client would likely change as well. The statutory synthesis and the fact analysis we previously completed help us determine which facts to add to each Question Presented we drafted above.

1. Will the **State** be able to **prove beyond a reasonable doubt** that Wonka **“intentionally damaged”** the Chocolate Factory when the facts show:

- a. **A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day; (legally significant fact)**
- b. **Accelerants were used at several locations around the Factory; (legally significant fact)**
- c. **Wonka was identified as the person dancing across the street from the fire shouting “Burn, baby, burn;” (legally significant fact)**
- d. **The Factory’s records are being audited for financial irregularities; and (legally significant fact)**
- e. **Wonka owns a \$1,000,000 Preferred Player’s Card from LaCasino? (legally significant fact)**

2. Will the **State** be able to **prove beyond a reasonable doubt** that the **damage** to the Chocolate Factory **occurred “without the other owner’s consent”** when the facts show:

- a. **The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;**
- b. **Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;**
- c. **Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;**
- d. **The Factory’s records are being audited for financial irregularities; and**
- e. **Bucket owns a \$1,000,000 Preferred Player’s Card from LaCasino?**

Notice that, just like we saw in our fact analysis worksheet, some facts are contained in more than one Question Presented. That's OK! Remember, we need to describe completely and in detail all facts, circumstances, and conduct that makes us wonder whether each legal standard has been met.

### Additional Tips for Writing the Question Presented Section.

- **Choose a structure that you will consistently use in the memo.** There are a few different ways to structure your Questions Presented. Some people like to use Roman numerals (I, II, III) for the legal standard and capital letters (A, B, C) when listing the legally significant facts relevant to each legal standard. Other people like to use Arabic numerals (1, 2, 3) for the legal standard and lowercased letters (a, b, c) or bullets when listing the legally significant facts relevant to each legal standard. Still other people like to write the Question Presented in one sentence (this works best with short legal standards and only a few facts). Regardless of the structure you use, be sure to phrase each Question Presented as a question.
- **Use a formula when writing your Questions Presented.** I suggest using something similar to what you see below, to make sure you include both the legal standard and the legally significant facts:

Is [legal standard, specifically described] met **when the facts show:** [legally significant facts relevant to the legal standard]?

- **Use your own words.** Don't simply regurgitate (or copy) legal standards you find in statutes or court decisions. Write them in your own words, so that you are certain you understand them.
- **Watch out for sentence fragments.** You should almost never start a sentence with the word "whether."

### Review and revise your Questions Presented

Once you've got a good first draft of your Questions Presented, make sure to review and revise them. Things to consider when revising:

- Proofread carefully for grammar, punctuation, spelling, capitalization, and other writing mechanics
- Check for accuracy, especially when writing about dates, times, numbers, weights, or measurements
- Make sure your Questions Presented are internally consistent in terms of names (including acronyms and "short forms" of names) and verb tenses (past or present tense)
- Cross-check your Questions Presented against your Facts section. All facts listed in each Question Presented must also be contained in the Facts section of your legal memo.

On the next page is an example of what our legal research memo looks like at this point. The components we've drafted so far have been put in the correct order. An appropriate memo heading has also been added to the top.

## WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL LEGAL RESEARCH MEMORANDUM

TO: Supervising Attorney [insert the person's name]

FROM: Conscientious Legal Practitioner [insert your name]

DATE: April 1, 20xx [insert the date you are providing the final draft to your supervisor]

RE: Analysis of Likelihood of Arson Conviction

State v. Willy Wonka; Brown County Case No. 20xx-CF-1234

Our File: CF-Wonka-20xx-983

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### QUESTIONS PRESENTED

1. Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory when the facts show:

- a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;
- b. Accelerants were used at several locations around the Factory;
- c. Wonka was identified as the person dancing across the street from the fire shouting "Burn, baby, burn;"
- d. The Factory's records are being audited for financial irregularities; and
- e. Wonka owns a \$1,000,000 Preferred Player's Card from LaCasino?

2. Will the State be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred “without the other owner’s consent” when the facts show:
- a. The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;
  - b. Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;
  - c. Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;
  - d. The Factory’s records are being audited for financial irregularities; and
  - e. Bucket owns a \$1,000,000 Preferred Player’s Card from LaCasino?

## FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory (Police Report). The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire (Client interview, Bucket statement to police). The fire caused \$1 million worth of damage (Insurance claim filed by Bucket).

The fire inspector’s report revealed the use of accelerants at several sites around the factory (Fire Inspector Report). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to the fire (Police Report). She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire (Police Report). At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing (Police Report). She could hear the man shouting, “Burn, baby, burn!” (Police Report) From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire (Police investigation file, lineup report).

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket (Client interview, Bucket statement to police, Incorporation records, Real estate records). Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire (Police Report, Bucket statement to police). Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices (Client interview, records from auditing company). Weegocha states that \$1 million is unaccounted for in corporate record books (Audit report). Corporate record books also reflect that the factory has been operating at a financial loss for the last three years (Chocolate Factory financial records).

Both Willy Wonka and Bucket have Preferred Player’s Cards at LaCasino (Client interview; LaCasino Preferred Players roster). LaCasino policy is to issue Preferred Player’s Cards only to regular customers gambling at least \$1 million (interview of LaCasino manager; LaCasino pamphlets). Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years (Client interview, Audit report). However, Wonka and Bucket deny using corporate monies to gamble (Client interview, Audit report).

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

The next several chapters will focus on the most important section of the legal research memo – the Discussion section.

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