
International Law

Critical Thinking Frameworks in International Law

Gleider Hernández, *International Law* (Oxford University Press, 2019)

Responding to ‘problem questions’ in exams

Problem questions usually consist of a hypothetical or real factual scenario that engages various international legal issues. These often involve the application of international legal rules, principles and theories to the given set of facts. ‘Problem questions’ resemble what international law might look like in practice. Can you see how the abstract principles explained in the learning materials are applied in concrete scenarios? Problem questions, or ‘fact-patterns’ as they are known in North America, invite student reflection about how the law can apply to real-world scenarios.

There is an important caveat for students. *Do not treat problem questions as an opportunity to demonstrate abstract knowledge of all the possible applicable law!* The point of a problem question is to go beyond demonstrating knowledge of the law, and apply that knowledge to the facts at hand. Too often, a student will describe all the possible legal issues that might be raised, even if tangential or even irrelevant, and then only apply it to the facts in a superficial manner, sometimes even with a yes/no response. This is not ideal, as it does not give a student a chance to demonstrate their analytical capacities.

A step-by-step guide of how to tackle a problem question in an exam

Step 1. Read the facts carefully. Try to read the problem carefully and identify the facts as comprehensively and precisely as possible. This will help you to determine the relevant applicable legal norms or principles. In particular, think about the relevant parties and what their legal positions might be.

Step 2. Don't presume or infer facts. A problem question is drafted carefully. Sometimes facts may be fanciful or seem unlikely; but assume these are unlikely. Any silence or ambiguities are there for a reason: don't fill in the blanks and assume facts beyond those which are given, and do not offer answers that depend on assumptions.

Step 3. Identify the legal issues. The nature of legal problem questions is that they aim to raise various relevant legal principles and questions that you will have studied. Try to identify which legal rules might be relevant and consider what structure will be best to address them all. For example, at times the relevance of a legal principle depends on the applicability of another legal principle. Try to address them in logical order.

Step 4. Apply the law to the facts. It is here that students sometimes struggle, but a response to a problem question needs to be tailored to the actual facts at hand, not merely an enumeration of legal issues raised. Be careful, then, to apply the relevant law (identified in Step 3) to the most relevant facts (Steps 1 and 2), and to make sure that your answer is not merely a generic answer that could be applied to any legal question in the general field, but responds to the actual problem scenario, including grey zones, possible ambiguities, and competing claims.

Step 5. Offer a conclusion. The point of a problem question is to use the law to offer potential solutions to the problem. Think about how this would play out in the real world: what course of action might your client take, or what sort of judgment would you write? You need not take a strong or one-sided position, but you would usually offer a recommendation or take a position based on the facts at hand.