

## **2.5. HOW TO DRAFT LEGAL DOCUMENTS AS SIMULATIONS OF PROFESSIONAL SITUATIONS**

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In this template on professional situation case studies we shall take a closer look at case studies simulating the drafting of legal documents in professional situations. Examples include the drafting of classic legal documents such as filing an application/complaint to a court or other public authority, drafting labour/civil/trade contracts or wills, but also the calculation of contributions or taxes, drafting of reclamation letters, filling bank forms, and organising modules of compliance schemes in different fields of law, etc.

This guide is not limited to a specific legal area, notwithstanding the examples given are linked to EU and international law, whose cross-cutting nature means that all legal disciplines could use this guide to make a case study, such as drafting a legal document or complaint.

The aim is to familiarise law students with the practical scope of the theoretical content taught at University. In particular, the drafting of classical legal documents such as contracts is often neglected in legal education. At least it does not take up the space that would do justice to its importance in later professional life. Familiarising students with such tasks provides them with an opportunity to practice their skills from an early stage on.

After participating in a case study simulating professional situations, students will

- be able to transfer theoretical knowledge to practical situations
- be able to apply their legal knowledge in practice
- be familiar with the formal requirements of drafting certain legal documents
- understand better the practical relevance of knowledge taught at university
- overcome the seemingly insurmountable hurdle of gaining practical experience during their course of studies
- be prepared better for entering professional life or the practical part of legal training (outside of university).

This type of case study is therefore particularly suitable for students at the end of their legal education (e.g. 3<sup>rd</sup> year Bachelor-Students or Master's Degree). Due to the fact that a broad prior legal knowledge is required, the degree of difficulty should not be underestimated, both with regards to the preparation that has to be done by the teacher and with regards to the execution by the students.

Since it involves the writing of longer text documents, such a case study is particularly suitable for longer series of lessons or a block course and should best be designed (partly) as a take home assignment.

## 2.5.1 STEPS TO DEVELOP A PROFESSIONAL SITUATION CASE STUDY (PREPARATORY STAGE):

### 2.5.1.1 Define the subject to be assessed, the setting you will be teaching in and the learning outcomes

To do this, the teacher will have to identify relevant issues beforehand to determine the complexity of the case study. Some points to consider:

- Subject of the class
- Specific content you would like to teach/exemplify through the case study

Regarding the settings you will be teaching the case study in, it might help you to consider the following points:

- Degree/Master's degree course in which the students are currently enrolled
- Prior-knowledge of the students; subjects previously taken by the students or the previous qualification of master's students.
- Length and type of the class (en bloc, weekly throughout the semester, interactive, take-home/library tasks etc.)
- Size of the group you will be teaching (does the size allow for interaction with individual students?)

Last you should think of the specific learning outcomes, hence what students should be capable of doing after finishing the case study.

Your thoughts should be recorded in a teaching note (see above: 1.2.5)



### 2.5.1.2 Writing the case study and identify the task to develop

1. For this task, first the substantive law to be applied must be determined which means the Treaty/Convention/Law/Regulation, etc. For example, it may be a question of domestic law that has to be resolved in domestic, supranational, or international instances.

As a (non-exhaustive) list of practical tasks we propose:



- legal documents/contracts,
- calculation of contributions or taxes
- drafting complaints
- writing reclamation letters
- drawing up a legal will
- filling bank forms
- filling contracts (labour, civil, trade, etc.)
- drafting statutes or rules of procedure (Companies, Trade Unions, Organizations, NGO's, etc.)
- organizing modules of compliance schemes in different fields of law (equality, crime, occupational risk prevention, harassment, discrimination, etc.)

2. When narrating the case story, for a professional situation case study it might be most suitable to choose a problem- or protagonist oriented approach, because in most cases the task will not require students to draft a legal analysis of issues that have already been drawn to a conclusion (equalling the view of a judgement at the appellate stage), but rather are asked to interfere in an ongoing situation, to take action themselves and change the legal situation (lawyer's view). For such a task the different interests at stake of the different protagonists or regarding the different problems at hand, must be attributed more weight than the underlying story. The case should end with a brief conclusion focusing on the discussion points, opinions and considerations.

3. Alternatively, instead of presenting the students with a single story including all the relevant facts, it may make a professional situation case study more vivid and realistic if you choose to write several documents resembling evidence, such as letters, statements by different protagonists, official documents etc. and ask students to distract the facts from the evidence presented to them.

4. For further more general elaborations, see above: 1.2.2.

### 2.5.1.3 Materials

The lecturer should help/assist/suggest how the student can obtain the substantive law materials needed for case study resolution or should give the student basic directions so they can look for the materials autonomously. The lecturer could evaluate the materials given depending on the level of the students or the students' previous studies.

It is advisable to check the relevant materials before carrying out the task, especially if the materials have been updated.

### 2.5.1.4 Templates

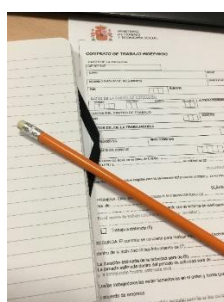
For most professional situations in the legal field, there are form specifications. In the course of time, a number of model templates have been established in order to maintain these formal requirements. Within the framework of a case solution, it

cannot be expected to have all these form specifications available. You may, therefore, want to provide your students with the necessary template(s)

Sometimes, to begin drafting legal documents it is therefore necessary to provide the students with standardised templates for contracts, complaints, claims, applications, reports, or briefs, e.g. as an annex to the facts of the case.

Alternatively, you might choose to include the search for an adequate template in the students' tasks. Depending on the topic, the first places to search for such templates are contract manuals, form books or collections of judgements. Materials for this purpose may also be found on various webpages, particular those related to EU and international law.

Those materials may be particularly helpful, taking into account that they may apply to different branches of law



### 2.5.1.5 Evaluation

The mark scheme should be clearly identified based on:

- Compliance of the document with applicable substantive regulations.
- Drafting of the document in accordance with applicable procedural rules.
- Quality of drafting with particular emphasis on the correct use of legal terminology and language.
- Accuracy of spelling and grammar.
- Submission by the required deadline.

### 2.5.1.6 Deadline

Establish a deadline for the writing and presentation of the case, which is reasonable considering the complexity of the matter and the materials provided.

### 2.5.1.7 Evaluation and feedback

The number of students in the group must be considered. The lecturer will lay out the possible solutions in class, emphasising the relevant issues. After the presentation, if

the group is reduced it is advisable to give individualised feedback after correction in class. It is also advisable to prepare a standard answer to simplify the task.

### 2.5.1.8 Q & A

Questions and discussion after the lecturer's presentation.

## 2.5.2 STEPS TO TEACH STUDENTS HOW TO SOLVE A PROFESSIONAL SITUATION CASE STUDY (TEACHING STAGE):

All of your thoughts regarding the teaching process should be recorded in a teaching note (see above: 1.2.5).

### 2.5.2.1 Determination of the query/intention and facts

The first step of solving a case study is to determine the query/intention of the protagonist(s) and the facts. This can either happen together with the students or students may be asked to do so at home in preparation for the class.

Usually, professional situation case studies are designed to help the protagonist's (e.g. client's) query/intention to succeed. In order to do so, it must first be determined what the actual query/intention of the protagonist is.

It is in the nature of things that legal laypersons (who will mostly be involved) usually express themselves inaccurately and legally incorrect. Therefore, the first task is to "translate" the protagonist's query into a legal question. To stimulate that process, it might help to ask the students the following questions: What intentions have been put forward by the protagonist? What does the protagonist want to achieve? Is this aim realistic? Have steps already been taken in this regard? Within which legal field does the problem of the protagonist fall? What legal procedure can help the client to succeed in his query?

### 2.5.2.2 Clarification of the substantive legal issues

After working out what the intention of the protagonist is, you should turn next to the legal issues of the case. Even though the main task in a professional situation case study is to draft a practical legal document, the students nevertheless need to think about the underlying legal issues. Before starting the work on the actual draft, the teacher should therefore stimulate a discussion about the relevant legal issues. This can be done e.g. through a set of questions related to the different problems. If the case study is designed as a take-home assignment, you might want to include specific questions related to the underlying legal issues in the students' tasks. A conclusive description of the questions to ask is not possible here, as they differ depending on the specific case. You could however start by asking students which provisions of particular statutes or judicial precedents could be applicable to the situation. However, keep in mind that the focus of a professional situation case study does not lie on the

substantive examination of the case, but on the transfer of the legal results into a practical legal document.

### 2.5.2.3 Procedural and strategical consideration

After working out the intention of the protagonist and the underlying substantive legal problems, in a next step students should think of solutions to those problems, including procedural aspects through which the intention/query of the protagonist can be realized. Different solutions may be discussed with students at this point. The main objective leading such a discussion will usually be which solution is in the best interest of the protagonist, hence helps the protagonist to achieve his query and bears the smallest risk. There may be cases where the protagonist wants to achieve several (maybe even conflicting) goals. In this case, solutions need to be compared and weight against one another. Students might want to accompany their practical legal document with an explanatory note to the protagonist (particularly if the protagonist is a paying client seeking advice from a law firm) laying out the pros and cons of different solutions and an explanation why the student has decided to choose one solution over another. As a teacher you may want to include writing such an explanatory note (where necessary) as a specific task.

### 2.5.2.4 Draft

In a final step, the draft itself needs to be drawn up. The challenge for the students lies in transferring their legal analysis into a practical legal document. Authenticity is of particularly important at this point. The student should therefore focus on precise, technically correct legal language and stay as close to the structure suggested by the templates as possible. Templates including a pre-defined selection of words and phrases can be of great help at this stage. They may also provide a basic structure which the draft can follow. However, students must keep in mind who the document is addressed to. One of the major differences between a legal analysis written for a university class and a practical legal document is the audience. While a legal analysis for a university class is being read and must be understood by people with a prior legal knowledge (e.g. the teacher, fellow students etc.), practical documents might have to be understood by a variety of people with a variety of backgrounds. Further explanations, clarifications etc. might hence be necessary. The most important rational, however, is to assure that the practical document proposes an adequate solution to the protagonist's problems.



### 2.5.3 Further Materials/Readings

#### Templates:

- European Convention of Human Rights

<https://www.echr.coe.int/Pages/home.aspx?p=applicants&c>

[https://www.echr.coe.int/documents/admissibility\\_guide\\_eng.pdf](https://www.echr.coe.int/documents/admissibility_guide_eng.pdf)

- European Social Charter

<https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>

- EU Law

[https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level\\_en#:~:text=You%20may%20submit%20your%20petition,citizenship%20and%20free%20movement%20website.](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en#:~:text=You%20may%20submit%20your%20petition,citizenship%20and%20free%20movement%20website.)

- ILO Conventions

<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/representations/lang--en/index.htm>

<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>

#### Reading Materials:

*Kerstin Diercks-Harms, Die rechtsgestaltende Anwaltsklausur, Boorberg, 2013*

*Markus Sikora/Bernadette Keil, Kautelarjuristische Klausuren im Zivilrecht, Vahlen, 6th ed. 2022*

*Joseph William Singer*, How Law Professors Can Write a Problem Solving Case, The Case Studies Blog | Harvard Law School, 20 August 2013, available at: <http://blogs.harvard.edu/hlscasestudies/2013/08/20/how-any-law-professor-can-write-a-problem-solving-case/>, (01/06/2023)

*Level of difficulty:* ★★★★★

*Duration:* ★★★★★

*Main teaching objectives:* Transfer and application of theoretical knowledge to practical situations, learning about formal requirements, preparation for professional life by gaining practical experience