

PROBLEM QUESTION ANSWERS (4): STATING THE RULE

EN: Hi, welcome back. I'm Eric and this is the Quick Guide to Legal Writing. In this episode, we'll look at how to effectively state a rule when you're answering a legal problem question.

EN: By the end of this episode, you'll learn: key elements of a rule – namely, statement of law and statement of authority; language of obligation – 'must' and 'it is necessary to'. After you have raised the issue, stating the relevant rules is an essential step in answering a legal problem question. When you state the law, you are actually demonstrating at least three kinds of knowledge. First, you know which rules are relevant. Second, you know the legal effect of those rules. And third, you know where those rules come from. There are two key elements of a statement of rule. First, a statement of law that provides the relevant legal principle. Second, a statement of authority that provides the legal sources for the rule, usually case precedents or statutes. A statement of rule usually, though not always, includes both law and authority in this way. Let's take a look at some examples from our sample problem question, the case of Susan and the combusting hairdryer:

SL: Section 16(2)(a) Sale of Goods Ordinance provides that the implied condition of merchantable quality does not apply to defects that are pointed out to the buyer before the contract is made.

EN: Here, the statement of authority comes first and is followed by the statement of law.

EN: The source of the rule is legislation but it could also be a case precedent, like this:

SL: Under *Atico International (HK) Ltd v Sparko (Far East) Ltd*, consumers can reasonably expect that a product would be safe when used in conjunction with other related products in accordance with any relevant instructions.

EN: Here, the legal principle is supported by case law.

EN: Rules often establish legal duties and obligations: what you **MUST** do by law. They can also establish legal rights and powers: what you **CAN** do by law. In our example, the case of Susan and the scorching hairdryer, we see the language of obligation being used to describe necessary steps in

legal tests. For example, with respect to breach of contract:

SL: Third, in relation to causation, one must show that the conduct in breach of contract was the cause of Susan's injury, but it need not be the only cause (*Lam Tam Luen v Asia Television Ltd*).

EN: Here, the condition necessary to establish the claim of breach of contract is signaled by the modal verb 'must'. You could also use the phrase 'it is necessary to'.

EN: Okay, let's review. In this episode, we've learned that the key elements of a rule are: 1) a statement of law, which provides the legal principle; 2) a statement of authority, which provides the source of law. We've also seen the language of obligation — 'must', 'it is necessary to'. This can play an important part in the statement of law.

EN: In our next episodes, we'll look more closely at how to cite precedents and legislation in the statement of authority. Stay tuned!