What it looks like...
Legal Problem

Sigrid required a knee replacement. On 23 March 2012, she underwent surgery at the hands of Dr Botch in the Prince of Wales Hospital, NSW. The doctor (who was a registrar and had never performed this type of operation before) severed several main nerves and failed to correctly position the new joint. As a consequence, Sigrid can no longer walk without a crutch. She seeks legal advice from Hopeless and Outdated Lawyers. Sally, the solicitor advising her, obtains a Dr’s report and considers the relevant legislation. Sally writes to advise Sigrid that she has a very good cause of action and that there was negligence on the part of Dr Botch. The problem is, Sally does not advise Sigrid of the limitation period of her cause of action and fails to commence proceedings before these period expires.

Sigrid consults you. What is her remedy?
What facts are material?

- Analyse the scenario. What aspects are relevant?
- Where is the matter procedurally?
Legal Problem

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Sigrid consults you. What is her remedy?
ISSUES

1. What is the limitation period for a medical negligence claim? (How did the first matter go wrong?)
2. If this has expired, is there any way to address/remedy this?
3. If not, what other legal options does Sigrid have?
4. What remedies may these produce?
5. What risks do these remedies entail for the client?
Assertions of law and fact

- An assertion of law requires a primary source authority (case or statute)
- An assertion of fact requires a secondary source
- Common knowledge or commonly understood legal principle requires no authority

1. See p94 P Baron and L Corbin’s Legal Writing Academic and Professional Communication 2017 Oxford University Press
Rules

- The problem with Google.
- Limitation periods - medical negligence.
- Where do we start?
- Jurisdiction.
- Secondary resources
- Primary resources
Rules

- Extending the limitation period
- Scanning legislation
- Considering secondary sources
Rules

- Solicitor’s negligence - and breach of contract.
- Limitation periods for each cause of action (we don’t want to make the same mistake!).
Application of the Rules

- If the rule is derived from one case, summarise the facts and cite.
- If it derives from a number, reference these collectively.
- Note how the facts of the authority are applicable or may be distinguished from your factual scenario.
- For legislation, note correct Part, Chapter and section. Check that it has not been amended or repealed.
- Research is a court has recently applied this rule, noting hierarchy and jurisdiction.
Conclusion

- Should always address the questions asked (and refined) in issues
- Should explain why the interpretation of the legal rules you have made applies
- Explain why the facts of your case are distinguishable or applicable to authority
- ALWAYS considers what the client’s interests are and most expedient form of resolution. You may be legally “right”, but sometimes there is a better way to resolve disputes
- However, you can’t resolve a dispute until you are legally right