

BA in Jurisprudence  
*Essay Answers*

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What follows is some advice and guidelines for your written work. While there is no single correct style for legal writing, there are some things which are almost always done. This document is one view, compiled from and discussed with others, but do not be surprised if others more or less learned have other views. In the end it is not fair but you will be judged according to the standards of the person in power over your work. For present purposes that will be the tutor and ultimately the examiner.

As you read it, there will be a temptation to agree with points because they make sense on a level that is immediately apparent. They do make sense, but your agreement is not sought. Focus on critically assessing your writing style and identifying areas of uncertainty or weakness. These can then be worked through with help. This is a learning curve, and you will each progress at a rate determined by the effort and thought you put into it. You will, I am sure, realise in six months, a fuller meaning to something you think you understand now. In a year, a further revelation will occur to you. The more you strive, the more the boundaries of your awareness shift outwards. This is just one of the ways in which you are peeling back a façade you have encountered, and seeing more truth beneath it. There are some further examples briefly outlined below.

You will complete each year, and eventually graduate, with a label attached to you. That label can, in many ways, be what you make of it. The label, barring unfortunate circumstances, will already say that you went to x College Oxford, which can be both a blessing and a curse. If you work hard and with appropriate thought and sense, you might be tempted to show off a grade as your label. However, the reality is far less simple than that. Even if you work sensibly and diligently your grade may not reflect your ability. (Certainly if you don't work well, you will be discussing your potential rather than your achievements.) However, the label that I would encourage you to aim for is not one solely based on your results or grades. The most important thing is that during your time in Oxford you grow as an autonomous intellectual unit. You can then leave as the best lawyer you can be. While your grades are part of this, they are certainly not the whole story.

Consider the division between how you yourself think and how you then communicate those thoughts. Your writing is the medium through which you communicate. On one level, we all speak different languages: words which seem communal have different contexts and values to each of us. One of the first things to do whenever you take in information, is to analyse the terms being used and test them against your own understanding. In terms of eventual marks, some go to your use of words, but this is a slight anomaly. What matters is your thoughts, but these are clearly yoked to your ability to mentally conjure them, as well as then express them. As a consequence your ability to communicate, rather than merely express your ideas, is key to your development as a lawyer. This applies both when acting in person and in writing. More specifically in this context, the ability to write lucid prose is one of the key bridging elements between your abilities and success.

In particular, analyse the advice below and explore what it means for you personally. Take one example now: it is very common that jumbled long sentences which are poorly punctuated with little sequence or order are representative of a confused or unclear state of mind which is not desirable. Ideas can usually be compartmentalised. Short, clear sentences are both easier to read and suggest clarity of thought. These sentences should sit within appropriately placed and sized paragraphs. These paragraphs then flow together to express whole ranges of thought.

## *General*

There are (at least) four functions to written work for tutorials:

1. To aid in your understanding of the topic area by stretching you to consider and apply the law.
2. To improve your ability to communicate your thoughts.
3. To provide experience of writing:
  - a. First, there is the need to write in pressured conditions. This is something we will work up to as the exams get closer, but one example is doing a timed essay: you can think and plan for as long as you like, but the writing will be time-limited. A second form is the Collections (mock examinations) you do at points during your degree.
  - b. Second, the perfection of style. You need to perfect a precise and careful style. Learning from each essay you write, both as you write it, and afterwards, based on your reflection and the feedback you receive, helps you to perfect how you write as well as how you think.
4. To provide further materials which you can then help you to revise for the exam and for the future. Also, as you develop as a lawyer, you can look back at written work and see how you have improved, or merely changed: since the course is demanding, it is important to have reminders that you actually are getting better and better even if at times you might forget that!

Bear in mind that there are therefore differences in which of these are most important in any one piece of work you are set.

There are generally two wide categories of questions you will be dealing with: problem questions and essays. First, there are essay questions. These will allow for more individualisation of argument, but also allow you to get the point horribly wrong unless you are fighting to analyse the words in the question, rather than running with what you think they mean. You may also be set problem questions, that is to say a set of facts is provided and you discuss the legal implications as directed. They are generally less risky, as more material is provided, but that also makes it correspondingly harder to do very well. It should be noted that occasionally you will find other types of questions, such as to write a casenote on an important case, or, in Roman Law, a “gobbet” question, which calls for you to critically analyse a text you have been given.

## **Essays**

End your essay with a brief conclusion. Sum up the view that emerges from the discussion in your essay and mention the main reasons for it. This is more sensible than you might think. Rarely will essays be cut and dry, the question will have discursive issues. You are free to commit to points of view, but you must discuss differing interpretations in order to justify your own.

### **1. The classical arts essay structure**

- Introduction: What? Why? How?
- Body: Systematic progression through points that support the argument/point
- Conclusion: Summation of major points that support argument.

### **2. The Differences with a Legal Essay**

Differences are more to do with content than structure.

Typical elements in a legal essay:

- Point/argument – typically noting a flaw in existing rule/principle
- Case discussion – facts of relevant cases and judgments
- Case analysis – review and critique of judgments
- Legal policy – analysis of the implications of judgments, principles and preferred principles

### **3. What to Avoid**

The need to deal with range of issues (argument, case discussion, case analysis, policy) often leads to adoption of a rigid structure. For example, students often feel it is appropriate to rigidly apply a single structure to all essays, such as the following:

- Introduction – general discussion of relevant area of law and then introduction to argument/point of the essay
- Background – outline of the history of the relevant area of law
- Case discussion – discussion of relevant court decisions and developments in relevant area of law
- Case analysis – analysis of the cases (e.g. persuasiveness of court decisions, application of legal principles, and consistency of decisions) in the context of the argument/point of the essay
- Policy – discussion of implications of judgments and preferred principles
- Conclusion – reiteration of points made in the essay

There are problems with a rigid approach:

- Words without a point – the structure can lead to pointless waffle
- Repetition – a rigid structure tends to induce unnecessary repetition
- Argument can lack punch

### **4. Getting the Structure Right**

- Have a point: don't just go out to write a treatise on an area of law. If nothing else, have a point or argument to make in the essay. If you don't have a point/argument, why would anybody want to read it?
- Start with a planned structure. Develop this as you do research into the area. In an exam it is also vitally important to write out a plan so that your answer has a proper structure – although of course you will have far less time available!
- Don't try to make too many points – often one is enough. Resist the temptation to diversify. Make fewer points and make them well.
- You must be willing to fit structure to your point/argument – you'll always have an introduction and a conclusion, however, what goes between should allow you to make your argument in the most forceful and efficient way as possible.
- Do not necessarily separate typical elements (case discussion, legal analysis, policy discussion) into separate sections – integrate point(s), court decisions, case analysis and policy into coherent structure that compliments your argument.
- Break your argument into components/sub-sections and deal with each component in turn.
- Consider using headings and sub-headings: they make the direction of your essay far clearer to whoever is marking it. If you do use them, make sure your headings and sub-headings reflect the relevant part of your argument – use shorter headings (no need to use a sentence when two or three words will give appropriate signal to reader about where your argument is going).

- Be prepared to juggle your sections to get the best fit – i.e. the one that allows you to make your argument in the most logical and forceful way.

An example:

‘Outside special areas for which public policy is deemed to require immunity liability for negligence, public bodies are subject to the same rules concerning liability in tort as any other person.’ Discuss.

A borderline answer will rule out description of legal principles concerning immunity of public bodies, where the dividing line lies and have a discussion of the cases associated with these issues.

A better answer will give outline of relevant principles, review relevant cases, critique cases (i.e. were the judgments logical and consistent?), and review legal policy issues.

The best answer will give outline of relevant principles, review relevant cases, critique cases, analyse policy *and* have a point (e.g. that the existing principles are unfair and result in artificial distinction between arms of government or that courts have cast the net too far etc.).

### **Problem Questions**

The problem set for discussion will be concerned with an area of law which you should recognise quite easily. Do not make the mistake, however, of treating the problem as an invitation to write all you know about that area of law. That is usually an indication of a shallow, inflexible understanding of the law. It earns you few marks. The principles which you describe must be related to the specific legal issues which emerge from the facts presented. The structure of your answer is important. Work out the most logical sequence for dealing with the issues. Some may be the consequence of others. Depending on how one issue is resolved, there may be alternative possibilities to be considered. An early lesson to take in is that your marks are awarded by the way you structure your answer: if you can show the legal issue, show the results of different interpretations and then make a judgment call about what you think is the right legal interpretation (and therefore the right outcome) you are on the right track. In fact, if you do this but happen to get the legal interpretation wrong, you will have shown the kind of error you made and not left the examiner to assume you know nothing. This approach therefore encourages you to get the right result, but if you do not, will get you more marks than any other. Fuller details are given here since problem questions are quite possibly things you have not attempted before.

#### *Structure and organisation.*

You could begin with an introduction but keep it brief. Indicate the main issues that emerge from the problem question. You should say enough to set up your approach to answering the question. Indicate how the different aspects of the problem fit together so that the structure in the body of your essay will have an obvious purpose to it. There is no need to recite the facts of the problem. If you find yourself considering writing more than a couple of lines on this, it could be better to skip such factual introduction all together.

Most of the answer should be concerned with argument and analysis. Keep to a minimum your discussion of the legal context in which the problem arises. It is argument and the specific application of the law to the contentious points which indicate a strong answer. Move logically through the legal issues raised by the facts. Devote most of your time to explaining the issues that are most important to the question. Lesser issues may be worth mentioning but do not

devote attention to them at the expense of more important points. Be discriminating in what you choose to write about.

Present the legal principles that relate to the issues raised. Explain them clearly and directly. Do not fudge your explanation of subtle points, otherwise the reader will be left to wonder whether you really understand what you are talking about. Do not just refer to rules by way of labels (e.g., "the breach concept", "the foresight rule") but try to explain the substance of the rule by showing how it applies specifically to the facts. You indicate by this that you have a deeper and more purposive understanding of the rules, rather than a mere knowledge of them. Cite the main cases from which the principles take their authority. Cite cases in preference to secondary authorities, i.e., texts and articles. Consider alternative lines of argument but do not pretend to find controversy in a legal point that is straightforward.

Remember that you must relate the content of your answer to the points raised by the problem. The problem raises questions to which you must provide an answer. A discursive description of the law, with no real attempt at application, is hardly an answer to the questions raised.

## **Writing style**

### *Drafting*

The aim of writing is to convey your understanding as readily as possible. It is not enough that *you* understand what you mean, if the reader has to struggle to understand what you have written. In particular, be aware that gaps or errors in your writing might be hard to see: your mind will fill in the blanks without you realising because it knows the material so well.

Do not use a long or complicated word if a simple one will do. There is no need for grandiose rhetoric. Never use legal jargon which you do not understand. Your lack of understanding will probably betray itself to the reader. Equally, use your own words and develop your own style – don't copy or mimic others (although be prepared to learn from others). Short sentences tend to be more easily understood than long ones. Active sentences are good, passive sentences are usually less easily understood. Be concise.

In general the first line of the paragraph should set out what the paragraph will be discussing, then the rest of that paragraph explores the first line. The penultimate last sentence can then link back to the main thesis of your work, and the final sentence can introduce the next paragraph. A quick test is to read the introduction to your essay, the first and last line of each paragraph, and then the conclusion: ask yourself if this forms a complete picture of the key points in the work.

When discussing cases, be thorough, yet concise. There is no point spending a whole paragraph discussing the facts of a case unless that case is absolutely central to the area of law *and* the facts are significant *and* you will be discussing how the facts support your argument.

Identify the weaknesses, or what others may perceive as weaknesses, in your argument and address them concisely. However, avoid setting up a "strawman" simply to knock him down: if there is no merit in a suggestion, do not suggest it merely to melodramatically demolish it. A similar thing happens when, in trying to rigidly follow a structure, students write something like "x would not apply if the defendant had in fact been drunk" when there is no evidence of alcohol affecting D. If there's no evidence, do not mention it in your answer without a very good reason. Finally, be sure to include discussion of legal policy. This means not only what the rules are and whether they are logical and consistent with previous rules, but also whether (and why) the rules are good for society.

Many of the principles that constitute the areas of law you will be concerned with are abstract and conceptual. They are only as precise as the language used to describe them. Sophisticated

ideas need sophisticated language. Correct use of grammar sharpens the subtlety with which you can explain your ideas. Good ideas are useless if they are warped by distorted expression. Avoid stilted or wooden language. Read your work aloud to yourself. If you find yourself tongue-tied over something that you have written then the chances are that the reader will have difficulty in understanding it.

### *Editing*

The final stage is necessary but very unpleasant. Editing is a vital process. You must be prepared to go over and over your essay to get the structure and wording right. Be critical of your work. Ask yourself if it make sense? Is it persuasive? Would an alternative structure be better? Is the grammar correct? Make sure also that your spelling is correct. Computer spell-checks are useful for picking up typing errors that you would otherwise overlook. This leads to the last point on writing: it is not over once you've put the final full stop in. Do the words accurately convey what I am trying to say? You may wish to ask a friend who has also completed the essay if you could swap essays and comment on them. This would not be with the aim of converging on the same answer, but purely on the question of style. Be prepared to make drastic changes: they can be worth the effort.

The last thing to ask yourself is whether you have written something that the examiner would accept as an answer to the question. If you find yourself with doubts, having to redo the essay might add incentive to analysing and planning the next one better so your time is not wasted again. Of course, as noted at the beginning, this is a learning experience and everyone makes mistakes; it is repeating the same mistakes that is undesirable.

### *Review*

Just as looking back at your essay within a day or so of having written it is painful, so too is looking back after it has been marked. However, there is a lot to be gained by examining and perhaps redrafting your essay to embed your new wisdom. **It is particularly vital that you maintain a focus on how you write especially as you might be writing an essay a week.** It is a bit like learning to touch type: given that you will likely spend a lot of your life typing, it makes sense to be able to do so quickly and efficiently and regularly spending a little time improving your technique will save you far more time (and made everything far more enjoyable) in the long-run. A similar message applies to periodically checking that you are making your notes as effectively as you can, from lectures, textbooks, cases, statutes, articles and of course, tutorials.

### *Citation conventions.*

You may wish to use footnotes or endnotes to give the citations for articles and cases. The cardinal rule is to be consistent and clear in your citation style. I suggest you follow the citation style in the official Law Reports or a similarly established source. Within Oxford academic circles, and increasingly in the wider world, OSCOLA is an established source for standardising citations (standardised citations being the norm in many other countries, Oxford has led in England finally catching up!). A quick reference guide is available: [www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012quickreferenceguide.pdf](http://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012quickreferenceguide.pdf) and further information can be sought here: <https://www.law.ox.ac.uk/research-subject-groups/publications/oscola>.

Case name are written in italics when typed, and underlined when handwritten. There is no need to do both. The source of citation is not italicised or underlined, e.g.

*Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548.

The form of citation *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 @ 570 is ugly and best avoided. Just write *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548, 570 if you wish to refer to a specific page in the case. Some texts now use *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 at 570, though I think this is less elegant.

If you wish to refer to a particular page of the case cited in immediately preceding footnote, you should write:

*Ibid*, 571.

If you wish to rely on a specific principle which a judge refers to or refer to some aspect of his/her reasoning, you should give a specific page reference to the appropriate part of the case. It strengthens the impression that you have a detailed knowledge of the case.

Note the distinction between round and square brackets. Copy exactly what you find in the report. Square brackets mean that the set of reports is organised according to years. [1991] 2 AC means the second volume of the Law Reports Appeal Cases issued for 1991. Round brackets are used in sets of reports that are ordered according to volume numbers. The year in round brackets refers to when the case was decided. So (1882) 21 Ch D refers to a case which was decided in 1882 and which is reported in volume 21 of the Law Reports Chancery Division reports.

Articles may be cited in the following form:

A T Denning, "The Recovery of Money" (1949) 65 LQR 37, 40.

If you are unsure about the proper form of abbreviation for the journal title use the form you see in the journal itself.

Books may be cited in one of the following ways:

F H Lawson and B Rudden, *The Law of Property*, 2nd ed, (Oxford, 1981), 40.

F H Lawson and B Rudden, *The Law of Property*, 2nd ed, (Oxford, 1981), at p. 40.

Refer to cases or articles in a footnote or endnote.

Refer to judges and their titles in the appropriate manner. A judge should be referred to as Fry J, not Fry. Note the difference between the titles of judges in the Court of Appeal and the House of Lords. Brown LJ would be a Court of Appeal judge while Lord Brown would be a judge in the House of Lords. The abbreviation for a Justice of the Supreme Court is JSC, hence Baroness Hale JSC, and Lord Phillips PSC (for President of the Supreme Court).

(vi) *Collaboration and plagiarism.*

I have no objection to your working together in your tutorial preparation. It would be beneficial also if you discussed your progress among yourselves. Discussion is an excellent means of testing and refining your ideas. The more you all work together inside and outside a tutorial, the more you can learn. When you come the actual writing of your essay, however, you must work individually. You must not copy another person's work without attributing the source.

This applies as much to other students' work as it does to the academic authors which you rely upon.

*(v) Criteria for marking essays*

Described below are some of the main criteria that I will take into account in marking your answers. They are there to give some detail to the general marking criteria the faculty issue each year. They relate mainly to problem questions. You should bear them in mind as you follow the course, prepare for tutorials, and revise for the examinations. Concentrate your efforts on the kind of work which will, in the end, be most beneficial to you.

Structure:

- Introduction not unduly long or peripheral; sets up the discussion of the problem simply and makes clear what the author is trying to do with her/his answer.
- Legal issues stated clearly; good flow of argument, allowing connections between sections of argument to be easily understood.
- Conclusion stating the outcome and the main reasons.

Coverage and argument:

- Comprehensive: recognises the issues which emerge from the question set; discussion covers the ground.
- Law accurately and precisely stated; avoids errors or vague formulations which may conceal a lack of precise understanding.
- Discrimination in selecting the law to be discussed, and in selecting the most authoritative and relevant case law or statutory provisions. Credit will not be given for material that has little or no connection to the question set. Answer does not go off on a tangent.
- Discrimination in concentrating attention on the most problematic or important points.
- Argument is proportionate to the difficulty and importance of the issue raised. Avoids a pre-digested account of the entire topic, which is related only marginally to the question set.
- Shows how the law applies in that the presentation of argument is closely directed to the issues emerging from the facts of the problem. Legal tests are applied and a reasoned account given of their outcome.
- Evidence of understanding of the legal rules (their purpose, limitations and practical consequences), rather than a mere superficial knowledge of the rules themselves.
- Originality of approach or insights.

Presentation:

- Fluency and quality of expression; grammar and spelling; citation of relevant case names; legibility.

*Dr Matt Dyson, July 2018; gratefully acknowledging the assistance of Dr David Fox and Dr Andrew Johnston.*