

LA TROBE LAW



Short Guide to

**Answering
Legal Problems**

La Trobe Law Short Guide No. 4

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1. Introduction

One of the most common forms of assessment in law school is answering legal problems. In very general terms, this task usually involves students being given a hypothetical factual scenario to which they must apply the law and reach a conclusion about the legal position of a person described in the scenario.

This *Short Guide to Answering Legal Problems* is written for students to help them understand what is involved in answering legal problems. The Guide is addressed specifically to law students in La Trobe University's Law School, but should still be relevant to other law students.

This Short Guide seeks in particular to do three things:

- explain what legal problems are, both in legal practice and in law school, to give you a clearer sense of what the task of answering them can involve;
- give you an overview of the main tasks most commonly performed in answering legal problems in law school; and
- provide various tips and warning on answering legal problems to help you develop your skills in answering legal problems.

This Guide will not be enough on its own to give you those skills. Practice and experience in answering legal problems in your specific law units will be more useful. It will also help you to study examples of answers to legal problems. As this Short Guide is meant to be short, it does not provide such examples, but a number of the works listed in section 5 below do. As you read this Guide, you may also want to have before you some legal problems from your current law units or from past examinations (often available via the library's online catalogue).

It is important that you note two things:

- This Guide is not a rule-book; it does not lay down fixed rules to govern every answer to all legal problems.
- This Guide does not set assessment policies that all units in the La Trobe University Law School must follow. Individual units may well have their own requirements and recommendations in addition to or different from any of the matters discussed in this Guide. Check with your unit co-ordinator regarding the approach to legal problems in any particular unit within the Law School.

2. What are Legal Problems?

Studying in law school is meant, among other things, to help prepare you for legal practice. This means that it is important to see how some of the tasks you perform in law school relate to what lawyers do in real-life legal practice. Answering legal problems is among one of the most immediately recognisable tasks of actual legal practice. In this section, we will briefly consider legal problems in legal practice before looking at legal problems in law school.

Legal problems in legal practice

Clients and their legal positions

A legal problem is typically a matter of a person's legal position being in need of clarification, and, accordingly, answering a legal problem usually involves making clear what that person's legal position is. "Legal position" here refers very generally to how a person in a particular factual situation "stands in the eyes of the law", which is usually a matter of the person being the subject of certain legal rights, liabilities, obligations, and so on. Note that this is a somewhat technical conception of what a legal problem is. Some people might, for example, think they have a legal problem when they have a problem that has something to do with the law, such as having a tax bill for which they had not budgeted. To a lawyer, though, there may not be much of a legal problem here, if the law is clear that the person is obliged to pay the tax. This lay person's sense of "legal problem" is perfectly legitimate, but it is important to note that lawyers usually mean something more specific by this term.

In legal practice, legal problems are usually provided by lawyers' clients. Clients commonly see a lawyer when they find themselves in situations in which their legal rights, liabilities or obligations are unclear or somehow problematic. One of the lawyer's tasks, among others, is to work out the client's legal position, given the facts of the client's situation.

Facts

Of course, it is not always simple or easy to determine just what that factual situation is. Initially, the lawyer will need to rely on what the client tells them about their situation, usually prompted by questions from the lawyer. Sometimes, though, what a client says about their factual situation may not be enough or is inaccurate, and further information and investigation is needed on the part of the lawyer, such as examining relevant documents or speaking to other people with relevant knowledge. Different people will have different perspectives on and perceptions of situations and events. This means that "the facts" concerning the client are not some objective narrative that falls ready-made out of the sky, but will often need to be constructed from possibly a number of sources. This is one reason why lawyers usually make clear that their advice to clients is based on the information they have been given or had confirmed by the client.

Applying the law

Having ascertained the relevant facts, the lawyer then needs to apply the law to the client's situation and work out what legal rights, liabilities, obligations, etc. the client has. This process is meant to be objective; the lawyer is here trying to work out what the law would most likely say about the client. It is something like predicting how a fair and reasonable judge would apply the law to the client. Indeed, what the lawyer is doing here is more or less putting themselves in the shoes of a judge faced with deciding the case. This means that one's prediction concerning Smith should be the same regardless of whether Smith is one's own client or a party *opposing* one's own

client — because the given facts and the law are the same whether Smith is your client or someone else's. Thus, the task is not one of advocating for a favourable outcome for one's client. That is the task of an advocate who tries to persuade a court that the correct application of the law to the client is in fact one that is favourable to the client. Such advocacy does, however, build upon the prior, predictive task of objectively applying the law.

Advice

Sometimes a lawyer will ask another lawyer to work out the client's legal position. Thus solicitors sometimes ask ("brief") barristers to prepare a document ("an advice" or "an opinion") which will explain the client's legal position. Barristers are often briefed to prepare an advice where the problem is complex, or requires more specialist knowledge, or involves litigation. On other occasions, a senior solicitor may ask a more junior solicitor within their firm to prepare an advice, for example when the senior solicitor needs to spend time on some other matter or the matter is not too complex or specialised. Note that "advice" is a little ambiguous in law. In ordinary English it perhaps most often means a recommendation of some course of conduct to another person. However, in the legal contexts discussed above, it also has an older sense of "information". So "to advise" someone in this sense is more a matter of giving them information, rather than a recommendation. If a lawyer does recommend a course of action to a client, then it will normally be in a conditional form, e.g. "If you are not prepared to risk the costs of losing the case, then I'd recommend trying to settle it outside court". Alternatively, it may simply involve explaining what the client's various lawful options are, what their consequences may be, and leaving it to the client to decide what to do.

Having worked out the client's legal position, the lawyer then needs to explain this to the client. This explanation to the client of their legal position is also called "legal advice", and it can be quite a difficult task where the client has trouble understanding the details of the law but the lawyer must nonetheless not misrepresent the law. Thus, an advice written by a barrister or solicitor that is addressed to another lawyer and an advice from a lawyer directly to a client can be quite different in style.

Of course, advising on legal problems is not the only thing that lawyers can do for clients. But it is one of the most important ones, and it often provides the basis for many other services that lawyers perform for clients.

Legal problems in law school

Given the importance of giving advice on legal problems in legal practice, learning how to do it is a core skill to be learned in law school. This is why so much of your "black letter law" units have problem-based assessment — to get you to think like a lawyer.

In legal practice, real clients' factual situations provide the legal problems, but in law school the factual situations are usually fictional. That is, we pretend that some factual situation has arisen and that a make-believe client stands in need of legal advice. Sometimes, though, law school problems are based on real situations (or variations of

them), but the point is that students are not normally asked to give real legal advice (indeed they are not allowed to do so). In any case, whether the facts are real or hypothetical, given by a client or by a law teacher, the basic task is essentially much the same: to apply the law to the given factual situation to determine a person's legal position.

In what contexts do law students answer legal problems?

There are three main contexts in which students are asked to answer legal problems as part of their assessment.

Legal Problems in Written Examinations

This is perhaps the most commonly encountered context for answering legal problems in law school — the traditional sit-down examination where students are given a limited time to answer legal problems they have not seen beforehand. Such examinations are usually open book (i.e. you may consult notes and textbooks), and do not involve conducting legal research (in the library or via the internet), as the relevant law should normally have already been covered in what you have studied in the relevant unit. Much of the advice in this Short Guide will have the traditional sit-down examination in view.

It is sometimes suggested that examinations are artificial environments that are not good simulations of real-life legal practice. There are, for example, the stresses of working under strict time limits, coping with material not seen before, the inability to speak to the client to get further information, and perhaps the need for further legal research to fully answer the question. However, many lawyers will tell you that this just as accurately describes much of their experience of legal practice. Of course, the academic context differs from legal practice in many ways, but learning to handle exams is a genuine skill that will stand you in good stead in legal practice, and, indeed, elsewhere.

Legal Problems in Assignments

Here students are given one or more legal problems to take away and answer in their own time. This gives you more time to plan, draft and polish your answer. This sort of assessment may sometimes also involve conducting legal research to find the relevant law before you apply it. (See the *La Trobe Law Short Guide to Finding the Law* for advice on this skill.) Sometimes legal problems in assignment format can take the form of a “take home examination”, where the examination paper is essentially the same as that for a sit-down examination but students have several days or a week to complete it.

Moots

In some units in law school, assessment can be by moot. This involves an oral presentation of argument as an advocate on behalf of a pretend client before an imaginary court. As mentioned above, advocacy is a special type of response to a legal problem, where one tries to persuade the court that the correct application of the law is one that is favourable to one's client. In requiring advocacy, mooting is

different to the more usual type of legal problem, which calls for a more impartial application of the law. To perform advocacy well, however, you need to have first gone through the more impartial task of predicting how the law probably will in fact apply to the case. Only then can you develop good arguments for one side or the other.

What particular questions are posed by legal problems?

So far it may sound as if legal problems (whether in law school or in legal practice) all have the same form. While it is true that most legal problems are variations on the very generic question of “how does the law apply to these facts?”, nonetheless there are many particular variations on this general theme and the specific questions posed by particular legal problems can be very different in form and content. It is essential to be alert to the differences in this regard, since answering any question well requires knowing just what the question is.

For example, “Would it be appropriate for the police to charge Desmond with murder?”, “Is the hearsay evidence of the witness Wendy admissible on behalf of the prosecution case against Desmond?”, and “Advise Desmond as to whether he could successfully raise the defence of self-defence” — all of these questions concern the “legal position” of Desmond, understood widely. But it is essential to appreciate that they are asking very different particular questions.

Some law school legal problems give you guidance as to the particular issues in question, as in the Desmond questions above. Other times, however, the problem may simply give you a factual scenario about some person, e.g. Dinusha, and then tell you to “Advise Dinusha”, with no hint as to the issues other than what is in the facts. Here you need to work out the particular issues yourself. (See further below on the communicative style appropriate in answering this sort of “advise X” question.)

Other times a problem may tell you, for example, to “discuss Vin’s rights against the police”. Here the “discussion” is not usually meant to be a general discussion about Vin’s rights from, say, a political science or philosophical perspective; the focus should still be on applying the law to Vin’s situation to elucidate Vin’s legal position.

Yet other questions may be more concerned with how a client might deal with a practical problem. For example, you could be asked to identify ways in which a client business should negotiate a licensing contract with a former competitor. Here you try to work out ways the client might reach its commercial goals by showing how the law can help and identifying potential legal problems to avoid. This sort of problem is not litigation-focused, but we still work “in the shadow” of the law as it is applied — or as we predict it will apply — in the courts. Advising on how to avoid litigation obviously requires a sound understanding of what litigation there could be, and this in turn requires working out the client’s legal position in a number of possible scenarios. (Advising on negotiations and, indeed, conducting negotiations on behalf of clients is an important part of many lawyers’ work, so these sorts of problems in law school can help you develop the negotiation skills you will need in practice.)

Communicative context

Learning a new kind of writing can be harder when you are unsure of what style or tone to adopt. It can help you “find the right voice” in writing answers to legal problems to understand something of the “communicative context” that is often assumed in legal problems in law school.

There are at least four basic aspects to any communication’s context:

- the identity or role of the speaker or writer;
- the identity or role of the audience or reader;
- the subject matter of the communication; and
- the purpose of the speaker or writer.

Successful communication of any sort requires the speaker or writer to have a good understanding of each of these four aspects of the communicative context.

At one level, of course, the communicative context in law school is quite clear: you are a student, writing for a marker, about the law, with the (probable) purpose of getting as good a mark as possible. At another level, though, in setting and answering legal problems in law school we usually also adopt a fictional communicative context. In this context, the student writes as a lawyer, for another lawyer, about a person’s situation, with the purpose of giving a reasoned and objective account of the person’s legal position.

In terms of a legal practice analogy, it may often be helpful to imagine that the facts have been given to you as a barrister in a “brief to advise” from a solicitor, or as a junior solicitor in a memorandum from a senior solicitor within your firm. The solicitor has perhaps gleaned these facts from the client in an interview and has written them down in the form you see in the problem as given to you. At this stage, you have not spoken to the client and are not in a position to ask the client or the solicitor for further information before submitting your advice. But you can note in your advice where you think further information is needed, why, and what the possibilities may be depending on what those further facts are.

You should regard the reader of your advice as a generic lawyer, not some specific person. Lawyers’ professional writing for other lawyers should generally be the same no matter who the lawyer is. Further, because you are writing to another lawyer, you should use correct legal terminology and a relatively formal or professional style. That is not, by any means, meant to encourage you to write in a verbose, convoluted, “legalese” style. Clarity and concision remain essential features of good legal writing. But it does mean that you should avoid the informality and simplification that may sometimes be appropriate when directly speaking to a client with a limited understanding of legal matters.

Regarding the person about whom you are writing, recall that they need not be your client. In practice, they most often will be, but, strictly speaking, whether or not the subject of your advice is your client is not relevant to the question of how the law objectively applies to that person’s factual situation as it is given to you. Indeed, it is often part of legal advice (e.g. in preparing for litigation) to spend as much time on the legal position of other parties, including your client’s opponents, as on that of your client.

Finally, a couple of points on the communicative style usually required by the “Advise David” kind of question. First, as noted earlier, here you are really being asked to *inform* the audience of David’s legal position, not primarily to make practical recommendations regarding possible courses of action. Sometimes, though, it can be appropriate to conclude an answer with a short, conditional sort of recommendation (e.g. “... therefore David is highly likely to be found liable in negligence. If he wishes to minimise his financial losses, he should consider settling at the earliest opportunity”). A conditional form of recommendation is usually best, as we cannot always say what a client’s real preferences would be (e.g. David may care more about what he sees as a matter of principle than about his money). Secondly, despite the apparent grammar of the phrase “Advise David”, you are not normally being asked to speak directly *to* the client, David, which could well require a quite different communicative style in real life. Instead you are usually being asked to inform an imaginary legal audience *about* David’s legal position. So you should use the third person (“He is likely to be found liable to pay damages”) rather than the second person (“You are likely to be found liable to pay damages”).

Answering or solving legal problems?

Is an answer to a legal problem a “solution” to the problem? It is very common to speak of “solving” legal problems rather than “answering” them. This Guide avoids the word “solution”, for two main reasons. First, it can encourage the limiting idea that there must always be one correct solution to a legal problem. Secondly, what for the lawyer is a “solution” to a problem may be a disaster for the client. For example, your advice about a client may be that they are likely to be found guilty of blackmail and face the prospect of up to 15 years in jail. That may be the best answer to the question posed by the client, but the client is not likely to see it as a “solution” to *their* problem. Nonetheless, the terms “solving” and “solution” are very commonly used in the same sense that “answering” and “answer” are used in this Guide, so don’t read too much into the use of the different terms in other contexts.

3. How do I Answer a Legal Problem?

This section gives a brief overview of the different basic tasks that are most commonly required when preparing an answer to a legal problem in law school. These tasks or functions are described only very generically here. Various aspects of these tasks will be elaborated on in section 4 below.

It cannot be over-emphasised that *there is no formula for answering legal problems*. For one thing, problems differ, so even if there was a formula for one kind of problem, that may well not apply to other kinds of problems. In any case, even if there were just one kind of problem, there is no fixed rule-book applying to that one kind. So do not take the following as providing a fixed set of steps that must be rigidly followed in all cases.

Moreover, as you consider each of these tasks in relation to particular problems, you should bear in mind all the other steps as you go. That is to say, working out the

answer to a legal problem is not a linear process whereby one step can be completed in isolation from the other steps. Instead, each stage is influenced by the other stages. So you need to be aware of the whole as you attend to particular steps, while also being aware that the whole is ultimately made up of particular steps.

This also means that the structure of your written answer need not rigidly follow the structure of the exposition below. The steps below are functions or tasks that will normally need completing in preparing an answer. They need not exactly match the structure of your final written answer.

Read the facts

Know the facts of the situation, as given to you. Read them carefully and thoroughly. Identify the main people or entities in the scenario and their relationships to each other. (It can sometimes help to do a rough sketch map of these.) Think about what these people and entities are likely to want, e.g. compensation, the return of their property, an acquittal? Note any gaps and areas where more information is needed to give a fuller answer.

As you read the facts, also think about the degree to which they resemble or differ from any of the factual scenarios observed in the relevant precedent cases you have studied. As you study the precedent cases in various areas (e.g. medical negligence, confessions, etc.), you will very often see recurring types of factual scenario. When some new set of facts sufficiently resembles the fact patterns of precedent cases, the relevant rules found in those precedent cases will normally apply to the new facts. Whether some new set of facts really does fit the pattern, though, is often one of the key threshold issues to be worked out. Grappling with this issue of whether the facts of a seeming precedent case are properly analogous to those of a current case or whether the precedent can in fact be “distinguished” from the new case is a key part of the case-law reasoning that is central to the common law.

With this sort of thing in mind, lecturers will therefore often construct new factual scenarios by taking a familiar fact pattern found in the relevant precedent cases and creating a novel twist. This twist to the facts will then usually raise the question whether the new facts fit any patterns found in the precedent cases and so bring the case under the scope of those precedents.

So, in short, don’t just read the facts as if you were reading a short story. Read them with a lawyer’s eyes to see what resemblances and what differences can be discerned in relation to existing precedent cases. This also means that the more familiar you are with existing precedents, the better will be your legal reading of the new facts.

Read the task you have been set

What is your specific task? Regardless of what you think the question might be about or should be about, what are you actually being asked to do? The question may not always be asking how a client can get what they ultimately want. Read the question very carefully. For example, have you been asked to “Advise Dorothy” or have you

been asked to “Advise on the admissibility of Dorothy’s taped confession to the police at 7 am on 3 April 2005”? As already stressed, while the generic task is often similar across legal problems, the particular question asked is vitally important.

Identify the legal issues raised

What legal issues are raised by the facts as given? What questions or potentially disputed legal points could be raised? For example, in relation to the admissibility of Dorothy’s confession, is the issue whether Dorothy’s confession to the police was voluntary, or whether the police have satisfied the statutory taping requirements, or indeed are both (and even other) issues raised?

Within each main issue, what sub-issues, if any, are raised? The sub-issues raised will often correspond to the elements of a particular cause of action or criminal offence. For example, if the question asks whether Vivian has a claim in the tort of negligence, then you will often have a clear set of sub-issues to be addressed, matching the elements of negligence: was there a duty of care; was the duty breached; and was material damage caused by the breach? Or, in other problems, there may be alternative ways in which a main issue could be settled. For example, if the main issue regarding Dorothy’s confession is whether it was voluntary, is the sub-issue whether Dorothy was subject to oppressive conduct or whether she was induced by a person in authority? Don’t, however, assume that a particular issue is raised in a problem simply because your notes include that issue under the relevant general heading. Look at the facts to see whether they do in fact raise that issue.

“Spotting the issue” is a key skill, but there is no simple, generic formula for how to do this. Most often, though, you will be better able to identify the relevant issues through being familiar with the relevant precedent cases and rules of law (statutory or case law). Through recognising resemblances and having a sense of how the reasoning of precedent cases would be extended to the new case, you will find spotting the issues in the new case easier.

Also, where you are asked a specific question about the facts (as in law school problems, but not always in legal practice), that question may provide a guide to what the relevant issues are.

So, in identifying issues, bear in mind all the other aspects of answering legal problems: the facts, the question posed, the relevant rules of law and how those rules might apply to the facts. This reinforces the point made earlier: the process of preparing answers to legal problems is non-linear, as each part of the process influences the other.

This “non-linearity” is further underscored here in that it would probably make just as much sense to put “Identify the relevant legal rules” *before* “Identify the legal issues raised”. Facts themselves don’t raise legal issues. It is largely because we read those facts through the lens of existing legal rules that we see issues emerging from them. So, in a sense, our knowledge of the relevant legal rules starts operating before we identify the issues. And yet our sense of just which are the “relevant” legal rules is

itself informed by our grasp of the facts and the issues likely to be raised by them. This circularity is, however, by no means vicious.

How is it best to phrase issues? Again, it will often depend on the context, but usually it will help to pose issues by putting “whether” in front of the relevant proposition (e.g. “whether Dorothy’s confession was voluntary” or “whether the police satisfied the taping requirements”) or by phrasing them in terms of a question (e.g. “Was Dorothy’s confession voluntary?” or “Did the police satisfy the taping requirements?”).

Identify the relevant legal rules

What are the relevant rules of law that apply to those issues? What, for example, are the legal requirements for taping a confession, and what exceptions, if any, are there to these requirements? What cases (with what ratio decidendi) are the applicable precedents? What statutory laws are applicable? (Note that you will draw upon your knowledge of the law in identifying the issues in the first place (see above).)

Identifying the relevant rule is not always a simple or straightforward task. It can sometimes involve a significant degree of interpretation and argument. Thus, sometimes one of the issues to be decided in your answer is the very question of what the law is that is applicable to the facts. For example, the current authority in Victoria of a 40 year old English case on police searches may be in doubt, or the correct verbal formulation of a legal rule may be unsettled.

Apply the rules to the facts

How exactly are those relevant legal rules to be applied to the facts of the case? Which bits of which rules apply to which bits of which facts? For example, do the facts given satisfy each of the requirements for an admissible tape-recorded confession? If not, are the exceptions satisfied by the facts?

This is usually the hardest and trickiest part in answering legal problems, for, among other difficulties, it may not be clear-cut how a general and perhaps vaguely formulated rule applies to the particular facts in front of you. Rules that sound clear and sensible in the abstract can often become frustratingly vague and unco-operative when brought face to face with the nitty-gritty of factual situations.

Also, not every factual situation given in a legal problem (either in law school or in legal practice) will fit neatly into the existing categories of the law. Don’t expect the facts always to be readily captured by the existing rules. Indeed, as noted above, the facts in law school problems are usually constructed precisely to pose a problem in this regard. Dealing with such mismatches is a key part of common law reasoning, as the development of the common law has for centuries thrived on mismatches between new facts and existing rules. It is one of the main ways in which new precedents are developed.

So, despite the difficulties you may encounter in connecting rules and facts, bringing the law to bear on the facts is crucial in answering legal problems. Don't just state the relevant law and then shy away from applying it to the facts in the hope that the rules will apply themselves or the reader will finish the task for you. That task is yours, and if you don't apply the law to the facts, you will probably fail that question.

Reach a conclusion

What is the result of applying those rules to those facts? How are the issues you have identified actually answered? What is the relevant resulting legal position of the person (or people) whose factual situation you have been considering? Will the law provide the remedy that the person seeks? If a conclusion can only be tentative, then give an appropriately qualified conclusion.

As always, the conclusion should answer the question asked. For example, if the original question was "Advise on the admissibility of Dorothy's taped confession to the police at 7 am on 3 April 2005", your conclusion may be that Dorothy's confession is unlikely to be found to be involuntary and so will be admissible on that point, but is likely to be found to be inadmissible due to the breach of the statutory taping requirements by police.

Summary — F.T.I.R.A.C.

To summarise the above processes, it can be useful to remember the acronym "F.T.I.R.A.C." for Facts, Task, Issues, Rules, Application, and Conclusion. There are various acronyms in the literature on legal problems. They all point in more or less the same direction.

This acronym does not, of course, provide a formula or fixed structure for answering legal problems. It is more a heuristic device, i.e. a tool to help you work through a problem but which will need to be adapted and developed as you use it in particular cases. "F.T.I.R.A.C." should at least help to remind you of the main basic tasks that most legal problems require you to perform in some way in properly answering them. It is rare that a good answer does not demonstrate that each of these tasks has been performed.

4. Tips and Warnings

This section contains tips and warnings which elaborate on various of the points made in section 3 above. They have answering legal problems in sit-down examinations primarily in mind. (See the very last entry for some comments on answering legal problems in assignments.)

Answer the question

A quick way to lose marks is to fail to answer the question. There are at least three ways to fail to answer the question. The first one is to fail to write anything at all. (That will get zero marks.) The second way is to write something which does not answer the question actually asked. (Perhaps it answers a question the student wishes had been asked. See further below on relevance.) A third way is to write something that is on track to answering the question but ends before a conclusion is articulated in answer to the question. (See below on timing.) While this third way is the lesser of these three failings, it is still best to finish your answer and state your conclusion explicitly.

Don't avoid coming to a conclusion just because you are not sure that it is 100% certain. If the conclusion is not certain (and there is no reason to assume that all or even most answers to legal problems must be certain), then still draw your conclusion and indicate how likely the result is that you have identified.

Give reasons for your claims

A good answer to a legal problem does not just present "the correct answer"; it shows *why* it is the correct or preferable answer by presenting the arguments for it. This means that you should give reasons why you think the answer you give is the right or best answer. Thus, though the conclusion reached is very important, just as important (certainly in terms of your assessment as a law student) is the quality of the reasoning or argument by which you reach that conclusion. So an answer to a legal problem should not just provide a one line response (e.g. "The evidence of Wendy is inadmissible") but should also explain why that conclusion is the most reasonable one to draw.

Significant weight is put on your reasoning because it is here that some of your most important skills as a lawyer are shown. Over the long run, it is good legal reasoning skills, and not memorising selected areas of law, that will get you to the better answers. This is why it is good reasoning skills, among other skills, that you will need to take with you into legal practice.

Also, good reasoning skills are usually linked to good communication skills. A finely modulated speaking voice or a good eye for formatting a document are not worth much if what you convey in your speech or your documents is logically flawed or incoherent. Reasoning skills are essential in enabling you to convey meaningful thoughts to another.

Be aware of the strength of your conclusions

Reasons for a conclusion should provide logical support for that conclusion. That support, however, need not always be a matter of guaranteed certainty; it may often be more a matter of degrees of support.

As noted above, good answers to legal problems are not always certain. The support they receive will often be only a matter of degree. It is important to appreciate that

this lack of certainty need not be simply a subjective feeling on your part, but may in fact be an objective part of the best answer. A good answer to a legal problem will, therefore, demonstrate an awareness of the strength of its conclusion. If a tentative conclusion is the reasonable one, then be tentative. But be clear that that is what you are doing.

It is particularly important in law to be aware of the relative strengths of rival positions. So be alert to alternative arguments and the degree of support they provide for rival conclusions. Sometimes, indeed, there may be virtually equally good reasons for both sides of the question (or all three, or all four sides, for that matter). On such occasions, one can be quite confident that the most reasonable conclusion is that there is an even balance between the different arguments. Avoid the easy way out, though, of shrugging one's shoulders and simply saying, in effect, "I don't know; the decision is up to the court". If the arguments are evenly balanced, you should say so.

Is there no one right answer?

It is sometimes said that there is no one right answer to a legal problem, only more or less good arguments in support of particular conclusions. A deeper point sometimes made is that there can be a "correct" answer to a legal problem, but that the correct answer is simply the one which is the conclusion of the best argument. In other words, according to this view, the quality of the argument is the criterion for the correctness of the answer, as there is no other mode of access to correct legal answers.

Regardless of how these theoretical questions are to be settled, it is at least clear that well-reasoned arguments for one's conclusions are essential. Thus, you can still earn valuable marks in an exam on the strength of the quality of your reasoning and argumentation even where you run out of time and don't get to clearly state your final conclusion or you reach a conclusion with which the examiner wholly disagrees.

More negatively, the converse is true, too: presenting bad or weak arguments will lead you to wrong or weak answers. Even if it is true that there is ultimately no one right answer, not just any answer will be a good one — there can still be plenty of bad ones.

Legal authorities

Giving reasons includes, among other things, citing authorities in support of your assertions as to what the law is. That is, avoid merely stating a legal rule. You should also cite the relevant case or statute that is the source of the rule. Full citations are usually not required in sit-down examinations; abbreviated forms of citation are normally acceptable, e.g. the case name or the statute name and section number. Check with individual unit co-ordinators.

Where the relevant legal rule is in fact contentious or uncertain, it may be appropriate to critically analyse the relevant cases or statutes and argue for a particular interpretation, e.g. by arguing that a recent statutory amendment changes the way in which an existing High Court case should be applied. This analysis and argumentation also sometimes involves policy issues about what the law should be. But be wary of

getting too distracted by policy or interpretation issues or of engaging in lengthy reviews of the law when the question does not ask for it. Your discussion should always be directed to helping you to answer the question. Also, don't get too distracted by the facts of precedent cases; if you do need to mention the facts of other cases, stick to the relevant ones and state them concisely. A case note is not required.

Finally, avoid copying out slabs of legal rules in your answer. Your skills as a textual transcriber are not being tested. Long quotations from cases or legislation, even where the quoted rules are relevant, won't advance you very far toward answering the question, especially where the rules are not then applied to the facts to generate an answer.

Be objective and impartial

Unless you have expressly been given the task of being an advocate on behalf of one side or the other, you should remain impartial. Legal advices are like physician's diagnoses: they are objective assessments of the client's position (cf. a patient's medical condition) and may well not be what the client would prefer to hear.

In one sense, though, most often you *are* advocating for a particular answer to the question as being the most reasonable one. That is, you are trying to persuade the reader that this is the most reasonable answer. But that is not advocacy on behalf of the client. You want to persuade the reader that this is the most reasonable answer because after an objective assessment you think it is in fact just that.

Consider both sides and alternatives

As part of being impartial and to ensure that your answer is comprehensive and well-founded, you should consider the arguments for and against particular positions. Of course, not every issue can be thrashed out in detail in your written answer. You need not chase every rabbit down every burrow. You will need to judge which issues are important enough to warrant a fuller treatment.

Also, where the facts are uncertain or a legal decision could go either way and it is important which way the matter is resolved, you should consider the alternative answers. For example, it would be a poor answer that ran along the lines of "The facts do not say when Dilbert became bankrupt, so it is not possible to answer this question". A better answer would examine what the main alternatives and their consequences are, as follows: "If the date of Dilbert's bankruptcy is found to be 5 May 2003, then he may apply for an early discharge, and if successful he may then apply to the bank for the loan before the vendor's offer lapses. However, if the date of bankruptcy is found to be after that date, then he will not be able to apply for an early discharge, and will therefore be unable to apply for the loan before the offer lapses."

Be relevant

A very common weakness in student answers is failing to keep answers relevant to the issues. Read the question very carefully and think very carefully about what issues are

raised. Make sure that your answer is always in some way contributing to answering the issues raised. Students often go off on tangents by mis-identifying the relevant issue and discussing matters at cross-purposes with the problem at hand.

Relevance is, of course, sometimes a matter of degree and there can sometimes be reasonable disagreement about relevance. It is part of your legal training, though, to develop a sense of legal relevance and, very importantly, a capacity to show how something is relevant to something else.

Cover all the main issues

Even if what you write is relevant, it may not be all that is relevant. In other words, there is the problem of covering only some of the main issues and leaving others out. A common weakness in student answers is to grab hold of the first issue that is spotted and dart off to write about that one issue, without a backward glance to the other issues left by the way side. If you do not spot all the relevant main issues, your answer will be incomplete. This is a good way to lose significant marks. So it is usually very worthwhile to take time to think carefully about what the issues are and to plan your answer accordingly.

Of course, not every conceivable issue is worth pursuing, and so you will often have to make a judgment as to which issues *are* the “main” issues and should be addressed and which are the more peripheral ones that you can afford to by-pass.

Structure your answer clearly

Good structure is essential to a good answer. Many student answers to legal problems suffer from poor structure — they are rambling, repetitive, and do not progress clearly and logically from issue to issue. An answer that is clearly and logically structured from the first paragraph onwards will almost always gain marks purely on that score, even if the arguments it contains are no more cogent than the arguments to be (eventually) discerned in a poorly structured answer. A clearly weak argument is still preferable to a mumbled weak argument.

It will usually be a good idea to identify distinct issues clearly and then go through the “RAC” process (rules, application, conclusion) with each issue separately. Thus, in a problem where several distinct issues are raised (which is the case in most problems), the RAC process will need to be done repeatedly. This can sometimes mean that the same facts will be addressed a number of times but with respect to different issues. Be alert, however, to actual repetition.

Avoid being too rigid in your structure

While it is generally a good thing for there to be some match between the elements of the structure of an answer and the various functions the answer performs, sometimes students are overly rigid in their structuring of answers to legal problems. This is especially common where “IRAC” is treated as providing a universal template for structuring answers. As stressed above, the IRAC process identifies *tasks* to be

performed or functions to be fulfilled in *preparing* your answer, and need not correspond to structurally distinct *parts* of the *final* written answer itself. How the final written version appears on paper need not fixedly re-present each of the stages of your preparation.

A common rigidity in this regard is where students doggedly produce distinct sections in which they, respectively, state the relevant laws, apply them to the facts, and then draw the relevant conclusions. While this is not an error (indeed, for beginners it can be helpful to start practising by laying out answers in this sort of way), nonetheless, it can be a rather plodding way to approach matters. It can sometimes be a little blinkered, and can take up space and time that will often be better used in doing all three tasks more or less at the same time, and allowing you to move on to cover further ground. That is, it is often better to identify the relevant legal rules at the same time as you apply them to reach a conclusion. That is, you can *show* your understanding of the relevant rules as and when you apply them.

For example, (using very generic terms here to save space) a relatively pedestrian approach would be to write as follows:

Issue: whether Derrick is guilty of the offence of X.

The next issue to consider is whether Derrick is guilty of the offence of X.

Relevant rules of law:

It is a criminal offence to do X. As contained in section 123 of the Miscellaneous Crimes Act 1999 (Vic), the offence of X comprises the following three elements: E1, E2, and E3.

Application:

On the facts given, Derrick satisfied E1 when he did A, satisfied E2 when he did B, and satisfied E3 when he did C.

Conclusion:

Having satisfied all the elements of X, Derrick is therefore very likely to be found guilty of X.

There is no basic error here at all, but, depending on the context, it may be quicker and no less revealing of your legal understanding to write something more concisely along these lines (again very generically for our purposes here):

Is Derrick guilty of X-ing? In doing A, B and C, Derrick clearly satisfied, respectively, the three elements of the offence of X under s 123 of Miscellaneous Crimes Act 1999 (Vic), and so is likely to be found guilty.

This more concise kind of treatment may be more appropriate where the issue is not the most central one or is not so controversial. Again, it is a matter for judgment in particular cases as to when to be more concise and when to be more detailed in one's arguments. Be prepared to be flexible in your approach when the occasion calls for it.

If you have time to plan, draft, revise and edit an answer, then it can sometimes be useful when exploring the problem to follow the more structured approach just as part

of an initial rough draft answer. Then, as you revise and edit your answer, you will discern which parts of the answer can be profitably edited and streamlined, and when an approach could be varied. In most exam situations, though, this won't be feasible; you will only have time for some planning and then writing just one draft. But by practising answering legal problems beforehand you will develop your capacity to judge when and how to streamline, vary, condense or expand the structure of your answers.

Headings

It has been reported that in some academic disciplines the use of headings is frowned upon. Not so in law. While not essential (and an absence of headings is not normally the basis for losing marks), nonetheless good use of headings will usually help you to make the structure of your answer clearer. They will normally help you in your writing and also help the reader (i.e. the examiner) in their reading by giving them signposts. If you have a good structure, the headings should be easily inserted, as it will be clear just what each paragraph or group of paragraphs is doing.

Introductions

It will usually be helpful to start your answer with a brief introductory paragraph. The main function of an introduction should be to identify the main issues to be covered in the answer. But be very concise. You don't need to spend half a page setting the scene, or reviewing academic debates in the area, or previewing the arguments you will present in the main body. Some students fall into the trap of using their introduction to outline their arguments in so much detail that they find their "outline" has taken up a page or more and anticipates too much of the main presentation of the arguments, while not yet being a full enough treatment to stand as the main presentation itself.

It will usually be enough simply to note the main issues raised by the problem and to be duly addressed in the answer. For example, an entirely satisfactory introduction could run as follows: "To advise whether Dorothy's taped 7 am confession is admissible, the following issues need to be determined: (i) whether the confession was voluntary; (ii) whether the police complied with the statutory taping requirements; (iii) whether it would be unfair to admit it; and (iv) whether it would be against public policy to admit it." The main body of the answer could then proceed by systematically going through each issue in turn.

Don't change the facts

It is rare for every relevant fact to appear in the scenario given in a legal problem. This is not a failure on the part of the person setting the question, for gaps in the facts occur frequently in legal practice, and so learning to deal with such gaps is an essential skill.

If you think the facts as given to you do not provide a sufficient basis for drawing a conclusion, say so, and indicate what facts would fill the gap and how they might do so. Do not get in touch with your inner novelist and add to the facts to fill in perceived

gaps. Where different results turn on different possible but unknown facts, make that clear. There may even be inconsistencies in some factual scenarios. Again, this happens in real life, especially where there is more than one witness making a statement. Again, deal with such problems as and when they arise by noting the problem and what its effects are. None of this grappling with unco-operative facts gets in the way of your answering the problem; it is part of what is assessed.

Be wary of questioning the question

It is true that sometimes a good answer can show that the original question makes a questionable assumption or is misconceived in some way. For example, a question may ask “At what date did Harry become bankrupt?”, but after a rigorous analysis of the facts given you may legitimately find that at no stage did Harry in fact become bankrupt. If so, then note this and present your arguments for this conclusion.

However, this is a very rare situation, so be wary of taking this route or, where you do, of going too far in this direction. In answering legal problems you are not engaged in an intellectual debate with the person who gives you the facts and sets the task (whether that be the client, the senior solicitor, the instructing solicitor, or your teacher). For example, if the question asks you to “advise as to whether Wendy’s hearsay evidence is admissible”, it is not a good idea to respond by arguing that “the question fails to consider the Victorian Law Reform Commission’s recent report recommending that all hearsay evidence be prima facie admissible, which I shall now discuss”. This is a direct route to irrelevance. This warning is not intended to stifle your intellectual freedom or to force you to be compliant. It is a matter of learning what the task in front of you is asking for.

Don’t repeat the facts or the question

Don’t waste time repeating large parts of the facts or repeating the whole text of the question at the beginning of your answer. Of course, it will often be appropriate to refer to certain facts in the course of your answer, or to note what question it is that you are answering at a particular point. But too many students pad out their answers by needlessly repeating what is already written in the examination paper. This is usually simply ignored by examiners.

Practise answering problems

The best way to learn how to answer legal problems is to practise doing it. In most of your “black letter law” units you will most likely be given problems to work on during semester. It can also be very helpful to look at past exams and practise on those. When you do, it can be a very good idea to do so under simulated exam conditions (e.g. limit your time and the materials you use.)

Studying recent past examination papers can also give you ideas about the kinds of problems and questions that may be posed in particular units, and can be a guide to the sort of thing to expect in future exams. However, proceed very carefully here, as

the content of many units will evolve over time. Check with the relevant unit coordinator as to what may or may not be valuable in studying past exam papers.

Time yourself in exams

One of the main constraints you work under in an examination is time. Make sure that you apportion the right amount of time to each question. This means that the number of minutes that you spend on a question should be roughly proportionate to the number of marks the question is worth. (The examination instructions should indicate how much the questions are worth.) Too often students spend too much time on the early questions and too little time on later ones, but the extra marks they may — or may not — get on the longer answers are very rarely adequate compensation for the marks lost on the too-short answers.

Most law exams have a period of reading time before writing time starts. During reading time you are usually permitted to make written notes on the exam paper or elsewhere than in the exam script book. Reading time is a very valuable period; use it well to settle in, get organised, work out the structure and general requirements of the exam paper, and decide which questions to answer (where there is choice). If there is time, you can also start reading the facts and planning your answers.

Plan your answer

As already noted, but worth repeating, take the time to plan your answers. This is usually a key step in producing well-structured answers. If you have one hour to answer a question, taking 5 to 10 minutes to plan your answer is time very well spent. It will usually be best first to identify the main issues to be addressed and sketch a coherent overall plan based around those issues. You can then “sub-plan” the sections within that bigger picture. However, you need not plan every last step of your answer before you write. A plan is not a rough draft of your answer.

Be familiar with your exam notes

Most law examinations are “open book”, i.e. you may bring in notes and books to use in the exam. (Always check, however, as to the rules pertaining to particular exams.) Take advantage of this and prepare good notes for use in exams.

You should prepare your own notes to help you in open book examinations. Do this steadily throughout the semester, and not just in the last week or two before the exam. Give your notes practice runs by using them to answer legal problems from class or from past exams, and then revise them in the light of that practice.

There is no one format for such notes, but most good sets of notes will contain, among other things, summaries of the relevant rules of law, concise case notes on the important cases, and specific guides and tips on answering problems relating to particular issues (e.g. a flow chart on how to answer a problem about bail).

In producing your exam notes, don't just cut and paste your notes from classes or from your reading. (Still less should you cut and paste the lecturer's notes, brilliant as they may be.) Write a new document, drawing upon multiple sources and informed by your own experience in answering problems in the relevant area. By writing your own notes afresh, they will become more familiar to you and so will be much easier to use in an exam than text just copied from somewhere else. Your notes should also be clearly indexed so that you can find things quickly. It is highly desirable to be very familiar with your exam notes, so that you may use them efficiently and effectively in the exam. It is too late to start reading the law for the first time in the exam hall.

The main feature of exam notes is that they should help you to answer legal problems well in exams. This means that good exam notes are unlikely to be very long and do not need to form a comprehensive textbook on the relevant subject matter. Some students seem to take comfort in producing weighty tomes into which every last bit of material covered in the unit is jammed. Most such students discover (too late) that equipping themselves with these unwieldy compilations is not very helpful, primarily because they are not written for the purpose of being used as a tool in answering legal problems under exam conditions.

Read judgments as examples

Note that the process of identifying issues, identifying and applying rules of law, and coming to a conclusion are essentially what judges do in their written judgments, which give their reasons for decision. This is why we go through this process in answering legal problems — because we are effectively trying to predict how an impartial judge would decide a future case by thinking like a judge. This means that you already have thousands of examples of answers to legal problems available, in the judgments of the courts. So it is a good idea to read cases carefully, not just to get the rules of law from them, but also to see how judges go about answering legal problems. Of course, not every case will be a useful example, and not all judgments display exemplary styles of writing.

Write clearly and concisely

Clear, precise and concise English expression is essential to getting your ideas across to the reader. Your marker can only assess what is on the page in front of them, and so your document must stand on its own feet and communicate effectively to the reader.

Write clear, grammatically correct and properly punctuated sentences. Spell each word correctly. Use clearly distinct paragraphs for distinct stages of your answer. As you progress from sentence to sentence, and from paragraph to paragraph, there should be a clear sense that the argument or analysis is unfolding in a logically ordered way.

Of course, it is understood that exams are not normally occasions in which the best English is produced. Nonetheless, those students who have good English skills and who have practised exam writing will usually write relatively good English in exams,

and this will put them at a distinct advantage over those who write poor English in exams.

Teach yourself English

A high standard of English expression is rightly expected of law graduates. Unfortunately, English expression is still a major area of weakness for too many students. At university level, English expression is not taught but it is assessed. This means that you must largely teach yourself if you want to improve (though some help is available from the Faculty's Language and Academic Skills Unit). There are plenty of resources available in bookshops and the internet to help you improve your English. Those who work at improving their English expression (even those who already have good skills in this area) will be making a very prudent investment and will give themselves a clear edge over those who do not.

Avoid exam scrawl

A common vice in student answers to legal problems in exam papers is what examiners refer to as "exam scrawl". This involves abandoning any clear plan of where you are going and just starting to write in the hope that the right ideas will emerge from the verbiage and if they don't just press on with writing and writing words that seem to connect with each other but may not and no one is quite sure which is a sentence and which isn't and which issue is being discussed it is hard to know and it becomes deeper and deeper confusing I mean more and more mired in itself but if you just keep going and write more and more words many of which repeat themselves and say the same thing over again and cite the occasional legal authority (Denning LJ said something about this in a case somewhere) and therefore use words like "therefore" and "thus" now and then to make it thus seem as if there's an argument here somewhere, and also the occasional legal-sounding terminology like void for want of certainty of terms for effect, hence, then just keep going and get a sufficiently large number of words (possibly as part of an argument, however in contrast thus probably not) scrawled across the page, some of them might from the defendant's point of view contain the elements of an answer which the reader will be able to construct for him or herself, if they have survived after wading through my scrawl and are feeling at all charitable ...

Almost always, a concise answer that is half the length of one of these prolix, meandering, barely coherent answers will do better if it gets to the point clearly and directly. Don't be afraid to take the time to write a concise answer. Of course, an answer can also be too concise, so avoid also the other extreme of not saying enough or being cryptic.

Point form and bullet points

What should you do if you are running out of time and you want to get something down on paper to show that you know at least something about the issue, even though you have no hope of writing a complete answer? It is understandable that in this situation students will resort to "point form", i.e. writing which does not consist of proper sentences but identifies some concept, thing or event in a heavily abbreviated

form. For example, “confession not vol b/c pol no fed D, and no bed & offered let mate off & frget drgs”.

While such point form notes are better than a blank space, be very wary of relying too much on them when timing starts to be an issue. If the greater part of an answer is written like this, it can very hard to decipher. Point form notes are really only for last ditch efforts 30 seconds before the end of writing time. Timing is one of the skills assessed in exams, and so you normally will lose marks if you misjudge your timing and resort to ungrammatical writing.

Sometimes, though, students think of “point form” as “bullet points”, i.e. sentences which are grammatically correct but whose layout does not follow the traditional paragraph of running text. This can be quite acceptable if done well. For example, rather than writing this:

Dorothy’s confession was not voluntary, because she was subject to oppressive conduct in not having received any food in the whole 12 hours she was in police custody and in not being given an adequate bed to sleep in. Moreover, she was induced to confess by Constable Doright’s offers to let her friend Sharon go if she confessed to the crime herself and to “forget” her drugs charges from 2004,

you might lay the text out as follows:

- Dorothy’s confession was not voluntary, because she was:
 - subject to oppressive conduct in:
 - not having received any food in the whole 12 hours she was in police custody; and
 - not being given an adequate bed to sleep in;
 - and
 - induced to confess by Constable Doright’s offers to:
 - let her friend Sharon go if she confessed to the crime herself; and
 - “forget” her drugs charges from 2004.

This format can be a way to present your points clearly. But be wary of overdoing it. If a whole answer consists mostly of bullet points, it can actually become much harder to read. Moreover, some students combine ungrammatical point form with bullet points to produce a peculiar textual effect which rarely serves their interests.

Avoid legalese

A few students still suffer from the illusion that good legal writing must adopt a verbose and convoluted style, being of such manner and form as shall at one and the same time effect grandiloquence whilst intimating, *inter alia*, that the correspondent is possessed of the requisite linguistic sophistication hitherto presumed an indicium of the aforementioned learned professional style. Forget it. Just write plainly and directly. Make your sentences as simple as you can without losing the inherent complexity of the ideas you need to convey.

Though plain and direct language is best, answering legal problems nonetheless remains an exercise in formal writing. Plain English is not colloquial or informal English. Moreover, the law inescapably deals with a technical terminology and uses complex concepts that cannot always be simplified without loss.

The first person pronoun

Legal writing is meant to be objective, and it is appropriate to write in a way that promotes the objectivity of your reasoning. This does not mean, however, that use of the words “I”, “me”, “my” or “mine” is absolutely forbidden. Their presence does not automatically inject a fatal streak of subjectivity into your writing. And, conversely, the mere absence of first person pronouns does not guarantee your reasoning is solidly objective. Indeed, writing so as to avoid using first person pronouns can sometimes produce needlessly convoluted and unclear expressions.

Nonetheless, keep yourself well in the background, and if you use the first person pronoun, do so conservatively. For example, it is quite acceptable to write something like “I would therefore conclude that Veronica is likely to be awarded damages” or “as my argument in section 3 above showed ...”. But avoid something like “I just feel it would be a travesty of justice if poor Veronica didn’t get damages”.

You will often in the law come across the phrase “it is submitted that ...”. This is a form of expression which seems to have its origins in the fact that barristers, in presenting arguments to a court, do not present their own views but simply arguments that can be put in favour of their client, e.g. “It is submitted on behalf of the defence, your Honour, that ...”. This phrasing is often used in academic legal writing as well (though academics often *are* presenting their own views). It can be a useful way of avoiding using the first person pronoun, if one wishes to. But make it clear by the context that it is you who is doing the submitting and that you are not referring to someone else (as in, e.g., “It is submitted by Professor Baker that ...”).

Write legibly

In exams, do make an effort to write legibly. If you have poor handwriting, work at improving it. Also, in exams, write in blue or black ink. Pencil becomes very hard to read after the script book has been handled many times before it is finally marked by the examiner. In exams don’t waste your time using liquid paper, rulers, different coloured inks, etc. If you need to cross something out, just clearly cross it out using parentheses and a single line through the text, (~~like this~~), rather than wasting time with liquid paper or attacking the offending words with litres of ink to obliterate all traces of them. If you need to draw a line, do it free hand. If you feel a need to use different coloured inks for each of your main text, case names, statute titles, headings and sub-headings, don’t bother — it is a waste of time. You can make things perfectly clear through underlining case names, dropping to a new line for new headings, etc.

Answering legal problems in assignments

The above tips and warnings have had answering legal problems in sit-down examinations primarily in mind. Most of them, however, are still very relevant to

answering legal problems in assignments that you can do in your own time. Nonetheless, it may be helpful to say a couple of points here about legal problems in assignments in particular.

The questions posed in assignments are often likely to be a little more complex or involved than those encountered in exams, so take the time to read all the relevant material even more carefully.

One of the main things to consider is whether any legal research is required to complete the assignment. Assignments requiring legal research are sometimes set where you have not been taught the relevant law in class prior to receiving the assignment. Thus, the task here includes teaching yourself the relevant law by starting from scratch. This can be more realistic, as real life legal clients don't walk into your office with "contract termination problem" written on their foreheads and a set of power point slides explaining the relevant law tucked under their arm. Where an assignment does require legal research, you may be asked to give an account of your research and how you identified what the relevant law is.

Also, there may be a need in assignments to spend more time analysing and interpreting the law before applying it. For example, it may be appropriate to spend more time analysing how a High Court precedent case has been restricted by its interpretation in a subsequent High Court decision, or arguing how choices regarding a certain policy issue could lead to a statutory provision being applied differently.

Another, fairly obvious, feature of assignments is that because you have more time and (normally) access to a word-processor, a fuller and more polished answer is expected. This means you should draft your initial answer and then revise it. You may need to do this several times to produce a properly finished work.

5. Further Reading

This Short Guide is just an introduction to the task of answering legal problems. There is a number of other publications which give further advice and, very importantly, provide examples of answers to legal problems. It is highly recommended that you consult at least some of these works listed below. You may find it a good investment to buy one or two of them.

- P Keyzer, *Legal Problem Solving* (2nd ed, 2003)
- R Krever, *Mastering Law Studies and Law Exam Techniques* (6th ed, 2006)
- M Brogan and D Spencer, *Surviving Law School* (2004) chs 5 and 13
- S Chesterman and C Rhoden, *Studying Law at University* (2nd ed, 2005) chs 9 and 10
- B Wolski, *Legal Skills: A Practical Guide for Students* (2005) ch 3
- K Laster, *Law as Culture* (2nd ed, 2001) ch 5, sec. B
- J F Corkery, *Starting Law* (2nd ed, 2002) ch 15 (esp. pp. 226–234)

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- C Cook et al, *Laying Down the Law* (6th ed, 2001) chs 4 and 16 (esp. pp 397–400, i.e. para 16.24)
- E Campbell and R Fox, *Students' Guide to Legal Writing and Law Exams* (2nd ed, 2003)
- T Hutchinson, *Researching and Writing in Law* (2nd ed, 2006)
- Any of the titles (such as those on torts, evidence or administrative law, for example) in the *Butterworths Questions and Answers* series or the *Butterworths Tutorial* series, both published by LexisNexis Butterworths. These books contain many detailed examples of answers to legal problems in the relevant subject area.

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Disclaimer: Please note that all statements as to the law contained in this document are intended only to illustrate writing styles for educational purposes and are not necessarily accurate representations of the law.

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