

Legal Writing



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CHAPTER 2

APPROACHING, STRUCTURING AND WRITING YOUR ESSAY

It is hard to know where to start when it comes to writing an essay or an answer to a problem question. Students often say that the most difficult stage of writing is to begin and many academics find this as well with their own writing. When one has lots of ideas, it is difficult to sift through what should be left out and what should be included, and how to put those ideas down on paper. The easiest way is to split the process up into stages and to work through each one in turn without worrying about the next until you have completed the last one. This chapter will consider how to approach writing an essay.

STAGE 1: READ THE QUESTION

You are marked on how well you have answered the question.

Make sure you know what task you have been set.

You need to spend some time working out what the question is asking you to do.

You should never begin to write until you understand the task that you have been set. Writing in a state of confusion will lead to a confused piece of writing and a lower mark than you would hope to achieve. One way to make sure that you are clear on what the question is asking you to do is to rewrite the question in different words, or to write out the main subject of the question followed by the specific points you must address in order to answer the question fully. You may need to expand on the title in order to make sense of it. A typical essay title would be something like this:

'The British Parliament was once supreme.' Discuss with reference to Britain's membership of the EU and its obligations in relation to the European Convention on Human Rights (ECHR).

The essay is asking you to address a number of issues. The main subject of the question is parliamentary supremacy (sometimes known as 'sovereignty'). This should be the subject of your essay. The essay question asks you to discuss parliamentary supremacy, but it also instructs you to consider two issues in particular in your discussion: Britain's membership of the EU and its obligations in relation to the ECHR. Your answer must consider these issues in the light of parliamentary supremacy. It is important that you focus on these issues. Look up any words in the question of which you are unsure, before you dissect the question as set out above. Each word will be in the question for a reason. You are ready to move on to the next stage of writing once you are clear about the task you have been set.

STAGE 2: READ THROUGH YOUR NOTES AND MAKE A LIST OF RELEVANT ISSUES

Read through any lecture or tutorial notes on the topic.

Make a list of issues from your notes that appear to relate to the question.

Research the main issues for the subject area and take notes from your textbook if you have not read around the area already.

Carry out further research: you need to look at more than the textbook and the case book to write a good essay.

You should consider other books, journal articles and official publications.

The reading list in the module handbook will give you some ideas of what reading you need to do and where to look for evidence.

See Chapter 5 for tips on how to make the most of your reading and how to use research material in your written work.

You need to work out which issues are relevant to your question. It is a tricky stage to explain as the issues are specific to the title that has been set, which does not help you in the early stages of your own writing. Having said that, there are hints to relevant issues and these should be set out in your lectures on the topic that forms the subject of the assessment. Similarly, it is likely that the key issues on a given topic have been discussed in your tutorial or seminar on the topic. Finally, the key issues will be set out in your textbook reading, which may have been set as pre-reading for your tutorial. Key issues are principles or concepts; they are not details or reams of facts. Key issues would include: the general principles of offer and acceptance in contract law; the theories of parliamentary supremacy in public law and how the established theories of supremacy have been affected by membership of the EU or signature of the ECHR; or principles that must be demonstrated in order to prove negligence in tort law. Cases, statutes and the detail of individual theories are all evidence of the key principles or concepts rather than the principles or concepts themselves.

You should take notes on the key principles and concepts that form the basis of the question topic, but only include enough information so that you are able to understand the principle along with any evidence that supports differing views of that principle. Try to avoid including lots of other information, as this will simply confuse the issue when you come to plan and to write your essay. In note terms, less may very well mean more marks.

STAGE 3: ORGANISE YOUR IDEAS INTO A LOGICAL ORDER

This is a form of essay plan.

List the issues and number each one.

Write a sentence next to each issue to explain what the issue is.

Note down any evidence you will use to support your discussion of the issue (cases, quotes, etc) under each issue.

Check that the issues are in a logical order.

You should be able to make a list of issues that you will discuss in your essay from your notes, but these will be in no particular order. The easiest way to sort them out is to leave them in a list for now (with large gaps in between each issue) and to write a sentence after each issue that explains what the issue is about, like so:

‘The British Parliament was once supreme.’ Discuss with reference to Britain’s membership of the EU and its obligations in relation to the European Convention on Human Rights.

- 1 Introduction.
- 2 Basic definition of parliamentary supremacy – this is the term given to a collection of theories that explain that the British Parliament has the supreme power to legislate, to amend and to repeal law in the country.
- 3 Theories of parliamentary supremacy – the differing theories of supremacy suggest that Parliament has different roles and different levels of power to legislate depending on the theorist’s view of Parliament.
- 4 Parliamentary supremacy and the EU: Parliament is no longer supreme – there is evidence to suggest that, as a result of Britain’s membership of the EU, Parliament is no longer supreme.
- 5 Parliamentary supremacy and the EU: Parliament remains supreme – there is evidence to suggest that, as a result of Britain’s membership of the EU, Parliament remains supreme.
- 6 Parliamentary supremacy and the ECHR: Parliament is no longer supreme – there is evidence to suggest that Parliament lost its supremacy once Britain signed the ECHR.
- 7 Parliamentary supremacy and the ECHR: Parliament remains supreme – there is evidence to suggest that Parliament is still supreme even after Britain signed the ECHR.
- 8 Conclusion.

The next stage is to list any evidence you have that relates to the issues – a case, a statutory reference, a quotation or an idea from an academic work. If these point in different directions then group the ones that support a view of that issue and those that are against a view of that issue. For example, for point 4 on the list:

- 4 Parliamentary supremacy and the EU: Parliament is no longer supreme – there is evidence to suggest that, as a result of Britain’s membership of the EU, Parliament is no longer supreme.

European Communities Act 1972 [see notes on the statute for detail].

Discussion of *Factortame* case on the hierarchy of UK and EU law [see notes on the statute for detail].

Reference to Hilaire Barnett’s book *Constitutional and Administrative Law* [see notes on the statute] on this point.

Then write a sentence at the bottom of that issue heading, stating how you think this issue may be relevant to the question, or what it means as regards the question. For example:¹

Parliamentary supremacy and the EU: Parliament is no longer supreme – there is evidence to suggest that as a result of Britain’s membership of the EU, Parliament is no longer supreme.

European Communities Act 1972 [see notes on the statute for detail].

Discussion of *Factortame* case on the hierarchy of UK and EU law [see notes].

Reference to Hilaire Barnett’s book *Constitutional and Administrative Law* [see notes] on this point.

This indicates that where there is a direct conflict between British law and European law then European law will prevail, thus suggesting that the British Parliament is no longer supreme as European law is hierarchically superior.

Continue with this process until you have exhausted all the issues on your list. You should now have a whole series of issues with a sentence explaining each issue, evidence that you could use in a discussion of the issue and a sentence explaining each issue’s relevance to the question. Read through your plan and consider whether any of the issues need to be reordered to assist the flow of your ideas. Do some follow on from others? Are some totally unconnected and need to be kept separate? Once you are happy with the order then you are ready to move on to the writing stage of your essay or to your problem question answer.

STARTING TO WRITE

You are only now ready to begin to write your essay or problem question answer. It is important that you have first completed the writing stages above, as otherwise you are likely to jump into the middle of the essay and then write around in circles, with no clear idea of what you need to say and how you will attempt to say it. The writing process can be split into small and manageable steps. Good luck with your writing!

¹ Other cases could also be provided as evidence in support of this proposition; these sources have been used for illustrative purposes.

STAGE 4: WRITING YOUR INTRODUCTION

Set out your approach to answering the question by mentioning briefly the issues you will cover.

If you cannot do this then you are not clear on how you are going to approach answering the question. Go back to the question.

Your introduction should now be very easy to write as your introduction is simply a paragraph in which you set out the task that you have been set (very briefly) and explain the issues that you will deal with in your essay or problem question answer. You should be able to do this from the plan that you developed at stage 3 above. A simple introduction may look something like this:

It has been suggested that the British Parliament was once supreme, but that its supremacy has been eroded as a result of Britain's membership of the EU and its signature of the European Convention on Human Rights. In order to examine this proposition it is necessary to consider the definition of parliamentary supremacy and differing theories of supremacy. The essay will consider evidence in respect of Britain's membership of the EU and the extent to which that affects parliamentary supremacy. The essay will also consider Britain's signature of the European Convention on Human Rights in the same light.

STAGE 5: WRITING THE MIDDLE SECTION OF YOUR ESSAY

Organise your ideas into paragraphs. Each paragraph should contain one issue.

At the beginning of each paragraph state what the issue is.

Develop and discuss the issue within the middle part of the paragraph. Provide evidence for the points you are making.

Finish the paragraph by stating why this issue is relevant to answering the question.

The middle section of your essay is made up of a series of paragraphs and each paragraph will correspond to one of the issues that you have set out in your plan at stage 3 above. The middle section of your essay will also be relatively straightforward to write from your plan, if you have followed the stages through in order.

What is a paragraph?

A paragraph is a block of text. Some people indent the first line so that it starts slightly further along the page than the rest of the lines in that block of text. Other people prefer to stick to a block of text that begins at the same point on each line, just as this one does. This is increasingly common as people use word processors to write their assessments. If you are unsure about what is accepted practice in your law school, check with your tutor to see if there are guidelines

on presentation of work. A paragraph should be a self-contained unit, which means that you should finish off your idea or issue in one block of text before moving on to another. If the paragraph appears to be rather long, then consider whether you have more than one idea or one issue in that one paragraph and split it accordingly.

How do I construct my paragraph?

The easiest way to write a paragraph is to stick to an easy formula until you feel comfortable with developing a more personalised style of writing. A formula that appears to work for students is set out in stage 5. The first sentence of your paragraph sets out the issue that you will write about in the paragraph. This is likely to be similar to the sentence that you have written in your plan next to the listed issue. This sentence explains the content of the paragraph to the reader, so that the reader knows where he or she is being taken next. The middle part of a paragraph is the discussion section. The sentences in this part will explain the issue by providing the principles associated with the issue and will set out any evidence to support these principles. If the issue is relatively uncomplicated, you may be able to put arguments for and against the issue in one paragraph. However, if your paragraph looks to be becoming too long, you may wish to split the issue into two paragraphs – one that provides the discussion of the arguments on one side, and one that provides the discussion of the arguments on the other. Your paragraph should be rounded off with one or two concluding sentences, which are very important. The concluding sentence explains how and why the issue is important in relation to the question. This sentence is an important one as it is your original material. You have worked out why it is an important point and your analysis, if well founded, should improve your marks as indicated by the assessment criteria in the introduction to this book.

An example of a paragraph for point 4 is as follows:

There is evidence to suggest that, as a result of Britain's membership of the EU, Parliament is no longer supreme. Britain joined the European Community and by passing the European Communities Act 1972, gave effect to EC law within our domestic jurisdiction. Section 2(1) states that 'All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties ... are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced ...'. This primacy of European Community law was evidenced in the case of *R v Secretary of State for Transport ex p Factortame (No 2)* (1991) in which EC law was applied in that case, even though this meant that the Merchant Shipping Act 1988 had to be disapplied as it directly contradicted the EC law.² Parliament had passed the Act subsequent to the European legislation and thus there could be no question that the will of Parliament was to legislate in contravention of Community law. This suggests that parliamentary supremacy has been eroded as the courts will not apply British law that contravenes EC law that is directly applicable in the UK.

2 Barnett, H, *Constitutional & Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) p 218.

Once you have provided your analysis you may move on to the next paragraph, which should contain the next issue from your essay plan devised in stage 3. Repeat the pattern until you have exhausted all the issues on your list.

WHY USE EVIDENCE?

Evidence adds weight to your arguments. It shows how you know that what you are saying is true.

Do not make an assertion if you do not have the evidence to back it up.

Evidence may be found in cases, statutory references, authoritative quotes or research findings.

You must reference the sources you have drawn upon in footnotes or endnotes (discussed in Chapter 6).

As indicated above, it is important to have evidence to back up the points that you are making. Evidence may be in the form of cases, statutory references, quotes or ideas from academic work including theories, empirical research findings, and academic opinion on cases or legislation or on how law is working in practice. Newspaper debates or phone polls are evidence of what the public thinks about an issue, but they are not authoritative accounts of the law. You may use sources such as these to supplement your legal sources if, for example, you are discussing how the law is perceived by the public, but do not use such sources as evidence of what the law is or how judges have decided cases. Your evidence is there to support your assertions and consequently it must prove your point.

Evidence should be used in the middle part of a paragraph, but you should not begin a sentence by referring to evidence, unless you go on in that sentence to explain the principle or idea to be discussed in the essay. You should tell the reader the point you are about to make before providing the evidence to back up that point. If you begin a sentence with a discussion of a case or a statute, then you are asking the reader to work out why it is important. It is similar to being in court as an advocate defending someone on trial for murder, standing up at the beginning of your submission to the jury and explaining that the police found a knife at the murder scene before proceeding to describe the knife in detail. If you then sat down, the jury would be left knowing a lot about a knife but without having any idea about how that helps your client's defence to the charge of murder. The jury has not been told the point of your exposition of the evidence and its members could jump to any number of erroneous conclusions that do not help your argument in favour of your client. Instead, you need to explain the relevance of the knife to the jury in the hope that this will clear your client's name. Always explain your point.

STAGE 6: THE CONCLUSION

Draw the issues and their relevance together.

Take the points that you have made at the end of each paragraph to construct your conclusion.

Do not introduce new ideas.

Once you have exhausted all the issues on your list and provided evidence to back them up, you need to complete your essay by writing a conclusion. Your conclusion is the answer to the question in summary form, taking into account everything you have said previously in your essay or problem question answer. If you have followed the structure set out above then you should be able to read through the first and last sentences of each paragraph and pull those together into a conclusion to the question. Try to avoid introducing new ideas into your conclusion, as these should have been dealt with in your essay already. Make sure that your conclusion accords with the rest of your essay, in other words, do not tack on a conclusion that you think the marker will agree with even though your essay is pointing in a totally different direction. There are rarely right and wrong answers in essays and it is better to write a conclusion that fits with your essay than to manufacture a conclusion that you think will be popular.

EXERCISE 1: TEST YOUR KNOWLEDGE OF ESSAY WRITING

Have a go at writing an introduction, a middle paragraph or two middle paragraphs of your own for the essay title used as an example above:

‘The British Parliament was once supreme.’ Discuss with reference to Britain’s membership of the EU and its obligations in relation to the European Convention on Human Rights.

Consider your paragraph structure. Does your paragraph begin with a sentence or sentences setting out the issue to be discussed, a middle section in which the discussion takes place, and a concluding sentence or sentences in which the issues within the paragraph are explained in the light of the question?

You may wish to compare your paragraphs against those in the answer section towards the end of the book.

SUMMARY

CHAPTER 2

You may find the following essay writing stages assist you in writing essays. Do not begin these stages until you have completed those set out in Chapter 1.



