

Legal Writing



Lisa Webley

CHAPTER 9

USING FEEDBACK TO IMPROVE YOUR PERFORMANCE

Lecturers find themselves writing similar comments on many of the essays and problem question answers they mark. It is not that they are churning out the same old comments (or at least that is generally not the case), but that the same issues keep cropping up in students' work. This book has attempted to show you how to make the most of your legal writing to achieve the highest possible marks. However, if you find that you are receiving comments on the need to improve your essay structure, your focus in answering the question, your references and citations, use of bibliographies and your use of grammar, then the comments below may assist a little.¹ Some of these explanations have been expanded on in previous chapters.

COMMON FEEDBACK ON IMPROVING ESSAY STRUCTURE

- Your written work should begin with an introduction that explains how you will approach the question.
- Your essay should be divided into paragraphs made up of full sentences. Each paragraph should contain one main idea or issue. Paragraphs should follow on from each other and should be organised into an order that allows the ideas to develop into arguments. State the issue to be discussed at the beginning of each paragraph.
- A paragraph should begin with a sentence that sets out the idea or issue to be discussed within it. The middle section of the paragraph should discuss the issue and provide evidence in support of the discussion. Others' work should be referenced in footnotes or endnotes. The paragraph should then conclude by explaining the relevance of the issues to the question by stating what it means or why it is important as regards the question.
- Your essay should end with a conclusion that draws together the issues discussed in each paragraph but which does not explain the detail of those issues. It should summarise them and provide a final answer to the question.

All of these comments are about communicating ideas effectively to the reader. A well structured essay allows the reader to follow the arguments put forward and to weigh up the evidence. A poorly structured essay may detract from the arguments, confuse the reader and appear to deviate from the question. A well structured essay may contain the same content as the poorly constructed essay and yet the marks awarded would be very different. Communication is an important skill, and the structure of an essay will determine how well the ideas are communicated.

1 A version of this feedback is used in the public law module at the University of Westminster.

COMMON FEEDBACK ABOUT IMPROVING FOCUS TO ANSWER THE QUESTION

- You are marked on your ability to answer the question that has been set. You are not marked on your general understanding of the subject or the topic.
- You should spend some time analysing and dissecting the question to be sure that you understand the task that has been set. You may wish to rewrite the question in your own words or to make a list of the issues encompassed by the question.
- You should research the topics that are the subject of the question by reading through your lecture and textbook notes and working out important themes. Then plan your research and your writing in the light of the question. Reread the question regularly to make sure that you are specifically addressing it.
- Make sure that you explain in your answer why and how each point you make is relevant to the question. If you cannot make a point relevant then do not include it.

This feedback relates to the student's ability to diagnose the problem set, or to dissect the question asked. The essay may be well structured, clearly written, well evidenced and presented and correctly referenced, and yet, if it does not answer the question, the mark awarded will be towards the lower end of the spectrum. Students who have received this kind of feedback should spend longer on the diagnosis stage, by splitting up the question into the main topic and then the issues to be discussed, or dissecting the problem question into constituent facts, prior to researching the relevant law.

COMMON FEEDBACK ON CITATION/REFERENCES AND BIBLIOGRAPHIES

- You must cite all the sources that you have referred to in your essay. This includes any words you have used from others' works or any ideas that you came across in others' works.
- You should cite sources in either footnotes or endnotes and you should retain a consistent style throughout your work.
- The reader should be able to look up each of the quotations or ideas you have referred to by taking the reference you have cited and using it to look them up. Citations must be full and accurate.
- If you refer to a source and find that you need to refer to the source that your source has cited, then you must cite both sources: your source (which will be the secondary source) and their source (the primary source).
- A bibliography should contain all the sources that you have drawn upon in the process of your writing. This will include all of your own sources that you cited in your footnotes (not primary sources from your secondary sources, however) as well as other works that shape your ideas but which you have not directly cited in your footnotes/endnotes.

- A bibliography should be arranged in alphabetical order, usually by the authors' last names.
- You should group books under one heading, cases under another, and so on, according to the range of sources to which you have referred. A good bibliography will include a range of sources.
- You should cite your sources in full.

The feedback is specific and relatively easy to put into practice in subsequent essays. Keep a full and accurate record of all sources to which you have referred in your research phase and follow the referencing conventions set out in Chapter 6. Proofread the essay or problem question answer before submitting it for assessment, in order to check that all footnotes are complete.

COMMON FEEDBACK ON SPELLING, PUNCTUATION, GRAMMAR AND STYLE

- You should check your written work to make sure that you have eliminated spelling errors and editing errors as far as possible.
- You should read your work through to make sure that the sentences make sense.
- You are being assessed, in part, on your ability to communicate your ideas effectively and poor grammar and poor spelling will detract from the ideas that you are trying to communicate. Most universities provide assistance with written English and so if you are concerned about your grammar then do talk to your personal tutor to find out what assistance there is within the university.
- Avoid using phrases that may be appropriate in every day speech but that are not appropriate in written work, including slang: for example 'Dicey was like interested in the role of Parliament'.
- Pay special attention to words that end in 's' as these words may be plural or they may be words that indicate that something belongs to someone or to something. For example: 'The students in the library' (plural, as there was more than one student in the library) and 'The student's books were in the library' (one student had left his or her books in the library. The apostrophe indicates that the books referred to in the sentence belonged to the student).
- It is important that you check your work thoroughly before submitting it for assessment; many errors are avoidable.

Most spelling errors are easy to correct using a spellcheck facility on the computer, assuming that the default language has been set correctly to 'English-British' rather than to 'English-US', for example. Many word processing packages also have a grammar check facility, although these can be misleading, and consequently should be used with care.

Chapter 1 focuses on assessment and grading criteria and provides an analysis of what marks within different classifications mean in relation to student performance. Read through these again, if you are in doubt about what the mark you have been awarded means in respect of your own performance in

an essay or problem question answer. A student who has been awarded a mark under 40% (assuming that 40% is the pass mark) needs to spend more time dissecting the question and getting to grips with the tasks. Once clear on the question, he or she should spend time reading through lecture and tutorial notes before carrying out research on the question. This should be translated into a plan and then into the essay following the steps described in previous chapters. A student who has been awarded a mark of 40–49% has probably written an answer on the topic that is the subject of the question but not on the question itself and should concentrate on identifying the precise task set through the question. A student who has been awarded a mark of 50–59% should concentrate on identifying the issues relevant to the question and using their research findings to construct an argument to answer the question. A student who has been awarded a mark of 60–69%, and who wishes to improve, should concentrate on developing his or her analysis of each issue by adding a sentence at the end of each paragraph stating why and how the issue is relevant to the question, as well as undertake further reading to provide depth to arguments within essays. A student who has been awarded a mark of 70% or more has done extremely well indeed and simply needs to replicate his or her approach, structure, research and written style in future essays.

Essay writing technique tends to improve with practice. In addition, it also helps to read through the feedback from previous essays and then to refer to the question and the assessment criteria again to see whether you can learn from previous experience. It is also a good idea to reread your essay once you have received your mark and feedback, even though this can be a painful exercise. However, it is often possible to be able to see where one could improve, if the essay is written along with the feedback. This is the best way to ensure that essay writing technique, and marks, improve in the future.

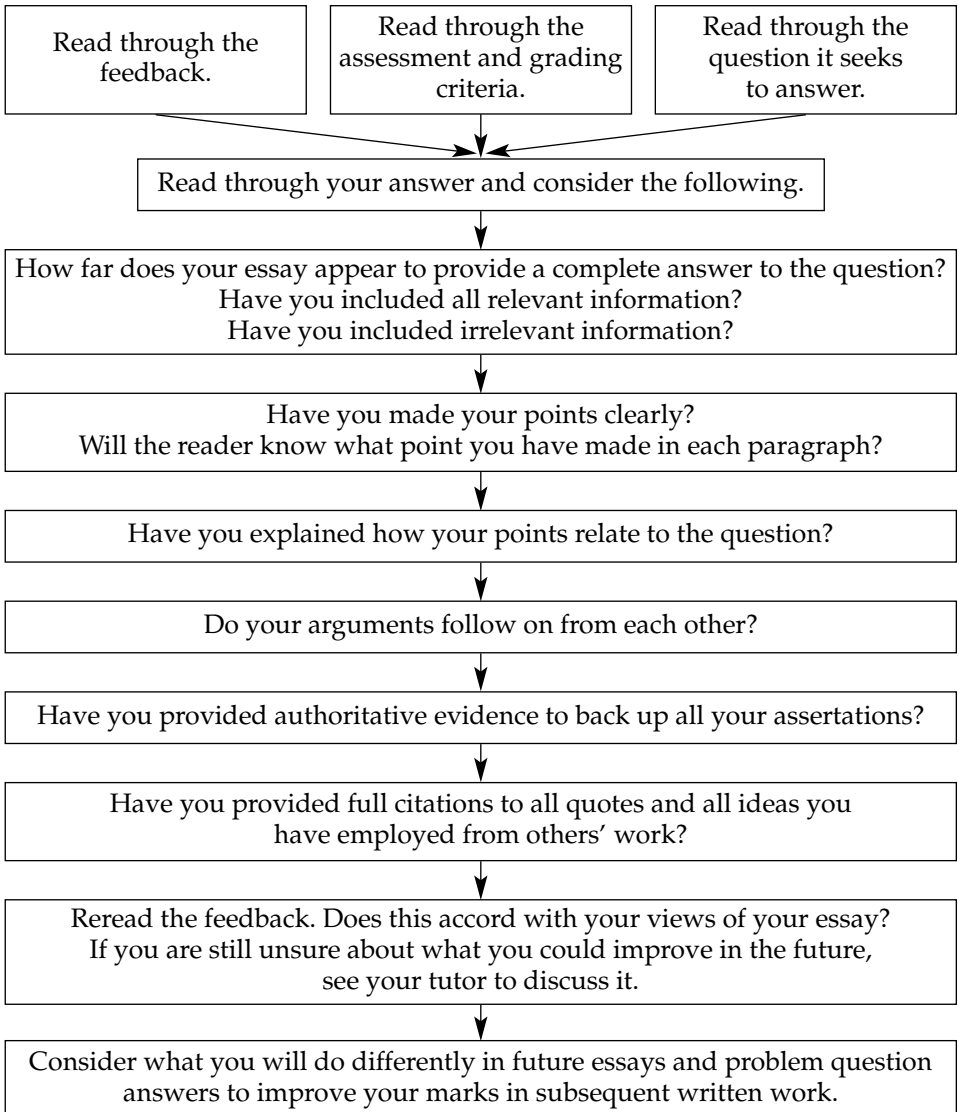
SUMMARY

CHAPTER 9

Feedback provided by the marker is intended to help you to understand why you were awarded the mark given for the assessment. However, it is also a tool to assist you in improving your written work in the future. You should try to learn as much as you can from your previous performance and use this to develop your approach, research, structure and written style in subsequent essays.

Before you undertake a piece of written work, look at previous feedback to remind yourself of potential pitfalls and how to avoid them in this work.

Once you have received feedback on your current essay, consider the following:



ANSWERS TO EXERCISES

CHAPTER 1 – EXERCISE 1: APPLY YOUR KNOWLEDGE OF ASSESSMENT CRITERIA

The mark awarded was 45% for a short essay of about 500 words. This essay did attempt to address the subject matter of the question. There was application of some relevant material – reference was made to the EU and the ECA 1972 as well as the Human Rights Act 1998. Presentation was adequate. However, the language used was at times formal and at other times informal. The student appeared to be familiar with the subject, although there was some confusion surrounding the Human Rights Act 1998 and the European Convention on Human Rights.

The essay would have been greatly improved by the following:

- an introduction that addressed all the key issues in the title rather than purely sovereignty and the EU;
- a proper series of paragraphs rather than unfinished paragraphs;
- a paragraph defining the main issue in the question – parliamentary sovereignty;
- more evidence to back up the points being made;
- conclusions at the end of each paragraph to round off the issue and to explain its relevance to the question;
- a reference to the text from which the student has taken the example about ‘smoking on the streets of Paris’;
- a reference to the *Thorburn* case, sometimes known as the *Metric Martyrs* case, rather than purely to the facts of the case. The legal issue in the case needed to be discussed rather than the background facts;
- full case citations and full citations of Acts of Parliament, including the year of enactment;
- more formal language;
- proofreading for obvious errors;
- some of the law was correct, but some was muddled – the European Convention on Human Rights and the Human Rights Act 1998 were not correctly described.

The essay, if properly written and structured, would probably have achieved a mark in the 50–59% range, although without more evidence to back up the points being made, it would have been unlikely to have been awarded a mark of 60% or above.

CHAPTER 2 – EXERCISE 1: TEST YOUR KNOWLEDGE OF ESSAY WRITING

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.

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 EC 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.¹ 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.

CHAPTER 6 – EXERCISE 1: TEST YOUR UNDERSTANDING OF REFERENCING: CITING OTHERS' WORK

1 The sovereignty, or supremacy, of Parliament is 'the dominant characteristic of our political institutions'.⁽¹⁾²

2 'The requirement of obedience to law is strict: and yet there are limits:

If the Sovereign command a man (though justly condemned) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre, medicine, or any other thing, without which he cannot live; yet hath that man the Liberty to disobey.'³

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

2 Dicey (1898), 1959, p 39 as cited in Barnett, H, *Constitutional and Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) p 177.

3 The Leviathan (1651), 1973 as cited in Barnett, H, *Constitutional and Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) p 178.

Or:

‘The requirement of obedience to law is strict: and yet there are limits: “If the Sovereign command a man (though justly condemned) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre, medicine, or any other thing, without which he cannot live; yet hath that man the Liberty to disobey.”’⁴

3 Barnett highlights parliamentary sovereignty as one of the organising theories of our constitution and its nature and characteristics provoke debate amongst theoreticians of all descriptions.⁵ She considers that international lawyers focus on state sovereignty in international terms, whereas political scientists consider sovereignty in the light of political governance. Lawyers examine sovereignty, perhaps unsurprisingly, from a legal standpoint, identifying the nature of legislative power within the State.⁶

A couple of points to note for guidance:

- you should not simply put quotation marks round the extracts and consider that to be an appropriate answer. This will not be paraphrasing, but rather a direct quote;
- if you are paraphrasing someone else’s words, then try to use your own words as far as possible. Please do check that you have not simply changed the one or two words in the sentence but otherwise copied Barnett’s words;
- the paragraphs should be read and analysed and your paragraph should contain a summary of the key concepts;
- check that you have fully referenced Barnett’s work in footnotes, for both paraphrased and quoted passages.

EXERCISE 2: FULL AND ACCURATE REFERENCING

Source 1:

Murphy, T, ‘Cosmopolitan feminism: towards a critical reappraisal of the late modern British State’ in Millns, S and Whitty, N (eds), *Feminist Perspectives on Public Law* (London: Cavendish Publishing, 1999) pp 19–40.

4 *Ibid.*

5 Barnett, H, *Constitutional & Administrative Law*, 4th edn (London: Cavendish Publishing, 2002) p 177.

6 *Ibid.*

Or:

Murphy, T (1999) 'Cosmopolitan feminism: towards a critical reappraisal of the late modern British State' in Millns, S and Whitty, N (eds), *Feminist Perspectives on Public Law* (London: Cavendish Publishing) pp 19–40.

You may choose to put full stops after the authors' initials and after the abbreviation for pages (p or pp.).

Source 2:

Barnett, H, *Constitutional and Administrative Law*, 4th edn (London: Cavendish Publishing, 2002).

Or:

Barnett, H (2002) *Constitutional and Administrative Law*, 4th edn (London: Cavendish Publishing).

CHAPTER 7 – EXERCISE 1: TEST YOUR UNDERSTANDING OF STYLE ISSUES

1 'It could be considered that parliamentary supremacy has been eroded, and some may suggest lost entirely, as a result of Britain joining the European Community.'

This sentence should be followed with a discussion of the point, including evidence to back up the assertions.

2 'The case of *R v Secretary of State for Transport ex p Factortame (No 2)*⁷ provided evidence of the way in which European law is interpreted by the domestic courts where there is a conflict between European law and an Act of Parliament. In that instance, the House of Lords granted interim relief to the plaintiffs pending a decision by the European Court of Justice on the validity of British law as compared with European law on this point. Consequently, in a situation where there is a direct conflict between the two, the British courts may give precedence to European legislation and, if necessary, to apply this in place of the British Act of Parliament.'

This would need to be followed with evidence pointing to the relevant judgment within *Factortame (No 2)* to back up this assertion.

3 'It could be suggested that the Human Rights Act 1998 has become semi-entrenched within the British Constitution, if one were to believe that the public would not tolerate any attempt to repeal the Act, and thus that Parliament would not readily repeal the Act.'

The writer would need to provide evidence to reinforce this assertion.

7 [1991] 1 AC 603.

USEFUL BOOKS TO ASSIST WITH LEGAL WRITING

Bradney, A, Cownie, F, Masson, J, Neal, A and Newell, D, *How to Study Law*, 5th edn (London: Sweet and Maxwell, 2004) – this is particularly good on research and on how to read and to use cases and statutes.

Clinch, P, *Using a Law Library: A Student's Guide to Legal Research Skills* (London: Blackstone Press, 2001) – a very good guide to making the most of your library and your research tools.

Hanson, S, *Legal Method and Reasoning* (London: Cavendish Publishing, 2003) – strong on all aspects of legal method. A particular favourite with students who learn through diagrams.

Holland, JA and Webb, JS, *Learning Legal Rules*, 5th edn (Oxford: OUP, 2003) – particularly good on legal method, on reading the law and on law, fact and language.

McVea, H and Cumper, P, *Learning Exam Skills* (London: Blackstone Press, 1996) – just as the title suggests, this book takes you through exam skills in detail.

Murray, R, *How to Write a Thesis* (Maidenhead: Open UP, 2002) – a great book for students who are undertaking dissertations or other forms of extended writing.

Strong, S, *How to Write Law Essays and Exams* (London: Butterworths, 2003) – this is a more detailed look at legal writing and provides a comprehensive account to assist with essays and exam writing in law.

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