

Legal Writing



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CHAPTER 8

LEGAL WRITING IN EXAMS AND HOW TO PREPARE

Legal writing in exams is very similar to legal writing in coursework essays and problem-based coursework. Students still need to follow similar steps in the writing process; however, the nature of the exam will change the marker's expectations of a written answer. This chapter will take you through the different types of law exams and the way this will affect your essay and problem question answers.

TYPES OF LAW EXAMS

Unseen exams: you do not see the paper or questions in advance.

Seen exams: you are given the paper/questions in advance to prepare.

Closed book exams: you may not take materials into the exams.

Open book exams: you may take specified materials into the exams.

The majority of law exams are unseen exams, which means that you will not have the questions in advance. Seen exams are exams for which you have either been given some or all of the questions or the exam paper itself in advance. There are two other main permutations as well, which are that the exam will be a closed book one, meaning that you will not be permitted to take any materials into the exam with you, or open book, in which you will be permitted to take some materials and to refer to them. You need to be clear on the type of exam you will be sitting and prepare accordingly.

TYPES OF QUESTIONS

Multiple choice: you are set a series of questions and have a choice of answers for each question. You select the most appropriate one (or other as stated on the paper).

Essay-based questions: you are given a title or a question and then asked to answer it in an essay format.

Problem questions: you are given a factual scenario and you are asked to advise a client or clients on their legal position.

The paper may contain three main different types of questions: multiple choice questions, essay-based questions and problem questions. Multiple choice questions do not require a written answer but the other two types of questions require an answer written in paragraphs and in full sentences, with evidence to

back up the points that are being made. The legal writing steps remain the same for different types of exams, but your preparation for the different exams should be a little different.

DIFFERENT TECHNIQUES

You should adopt a different technique and type of preparation for different types of exam and different types of questions.

You need to develop different sets of skills to perform well.

However, there are some similarities as well.

The keys to success are:

- preparation;
- knowing your paper;
- sorting out your timing;
- spending time reading the paper.

Your preparation should always involve you looking through past exam papers for each exam you will sit. It is extremely important that you know whether your paper is to be seen or unseen, whether it will be open book (and if so what materials you will be permitted) or closed book. It is also important that you know the anatomy of the paper, for example, the number of questions on the paper in comparison with the number you have to answer. You should also check whether you must answer particular questions or whether you have a completely free choice of questions on the paper. You should also be clear on the length of time you have to write each answer by dividing the total writing time available to you (this may be the same as the exam length, or slightly less if there is compulsory reading time as part of the exam) by the number of questions you must answer, assuming all questions are worth the same number of marks. That way, you narrow down the number of possible surprises during the exam. Most LLB or Graduate Diploma papers are relatively standard from year to year and thus it should be possible to be very well prepared before you enter the exam room.

Once you have entered the exam you should check that you have the correct paper in front of you and you should read the instructions on the front cover very carefully. A number of students fail exams unnecessarily each year, because they have not followed the instructions correctly and have answered too few or too many questions on the paper, or they have not answered a compulsory question. Once the exam starts, read through each question on the paper first, then return to the questions that you think you may answer and focus on those.

SIMILARITIES FOR ALL ESSAY AND PROBLEM QUESTION ANSWERS

Dissect the question you have selected.

Read it and then reread it.

Many marks get wasted because students misread the questions or instructions.

Plan your answer. Do not start writing straight away without planning.

Check through your answers at the end if you have time, while checking the question and instructions again.

You should approach your essay or problem question answer in the same way as you would outside an exam room, although you will be writing under timed exam conditions and consequently you will not have time to nip to the library to do any research, or to write for as long as you would normally write for a piece of coursework. This actually makes your task much easier, rather than more challenging, believe it or not. If you have revised the topic that is the subject of the question and prepared for possible questions in advance, the writing process should be very straightforward. You should simply need to dissect the question and then jot down all the issues that you think may be relevant to answering it. Next, note down any points you need to make as regards each issue, put down any evidence to which you need to refer and consider how the issue relates to the question. Reread the question to make sure you are clear on your task, then begin writing. Follow the structure of the essay as set out below, if you are in any doubt about how to write an essay.

STRUCTURING AN ESSAY ANSWER

Make a list of relevant issues.

Briefly jot down any evidence that relates to each issue.

Organise your ideas into a logical order.

Start writing.

Structuring an essay answer:

- start with an introduction;
- explain what the question is asking you to write about and which issues you will consider in order to answer it.

Middle section of the essay:

- organise your ideas into paragraphs, one idea per paragraph;
- start your paragraph by introducing the idea to the reader;
- develop and discuss the issue;

- back up what you are saying about the issue with evidence;
- conclude the paragraph by explaining how or why the issue is relevant to the question.

Conclusion:

- pull the issues together in the conclusion to come to a final answer to the question;
- do not go back through all the evidence;
- do not introduce new ideas.

Problem question answers are not that different in structure, although the arguments you are advancing are a little different. Follow the structure for essay writing, but bear the following points in mind as you do so.

STRUCTURING A PROBLEM QUESTION ANSWER

Important: who are you advising? All the parties or named individuals? Remember that a good lawyer does not give a one-sided view-point.

Start off each paragraph by making the point rather than by pointing out your evidence for a point you have not yet made.

Therefore, do not start a paragraph with a discussion of the facts of a case. Cases are evidence of the law as stated in legislation or the common law. Make your point first, then use the case(s) to back it up.

Remember to advise your client. Do not just talk about the general legal position.

A good lawyer does not give a one-sided legal opinion at this stage of a case. It is dangerous to ignore the possible legal pitfalls that the client may experience if the case were to come to court. You should be realistic about your client's chances. If there is case law that weakens your client's case then say so as well as providing case law that supports it. Angle your question towards your client's situation rather than writing an opinion on how the law stands on the legal topic that is the subject of the problem. You will not do well if you answer a problem question by providing an essay on the law of judicial review, for example. Instead, you should refer to your client's case in each paragraph and you should use cases and statutory references to back up the points you make, but not as a way of discussing the law in general terms.

LEGAL SOURCES

You must provide evidence to back up your points in problem questions, and this is evidence that could be cited in court.

Judges will generally only allow:

- primary and secondary legislation and common law (plus EU law and in some cases international law);
- cases from courts in England and Wales which have precedent value. These will be binding according to the rules of precedent. These are evidence of how the law has been previously interpreted;
- some persuasive authorities from other common law jurisdictions with similar law, which may also be cited in support.

You must provide evidence to back up your points in problem questions and this evidence is evidence that could be cited in court. Cases that have precedent value are extremely important. The judgments from other cases in England and Wales that may not have a binding precedent authority may also be persuasive if they address the same point(s) of law as your client's case. The judgments of Commonwealth jurisdictions may also be persuasive in the same way as non-precedent cases above. No other sources are classed as 'legal sources'. Occasionally, academic texts are referred to as evidence of the law if there is no case law on the point or if the case law is terribly confused. Certain sections of *Hansard* may be referred to as an aid to the interpretation of legislation by judges.

MOST FREQUENT REASONS FOR FAILURE IN EXAMS

The student:

- did not answer the correct number of questions having misunderstood the instructions;
- ran out of time and did not answer the correct number of questions;
- did not answer the question set/misunderstood the question and answered one he or she made up;
- wrote an essay on the general law rather than advising the client in a problem question;
- had not looked at past papers before the exam and so did not know what to expect.

Students sometimes fail exams because they do not know anything about the subject on which they are being examined. More usually they fail because they have not demonstrated the knowledge that they do have in the right way or by answering the correct number of questions set within the given time period. This is entirely avoidable if a student has prepared for an exam and has read the

instructions properly before starting. Revision is an important part of the process, and the next section provides a revision structure you may wish to follow.

REVISION TECHNIQUE

You need to revise for an exam not for a subject.

In other words, you must look at the past papers before you start your revision.

Learning chunks of information will not get you a high mark for essay and problem questions but may for multiple choice exams.

You need to be clear on the general principles for each topic that could be the subject of a question you will answer.

You should revise by considering the general principles of law for a given topic.

You then need to work out what evidence you have to back them up from cases, legislation and from academic opinion where the cases or legislation are not clear-cut.

You need to be clear on how the topics fit together in the subject.

There is little point in learning large chunks of information unless you are about to sit a multiple choice exam. Essay and problem questions are set to test your understanding of the law and to make sure that you know the general principles of each topic on which you are examined. They are not a way to test how much law you can remember from your lectures. You should prepare for these type of essays by revising the general principles for each topic, as well as the evidence that supports the principles. You should also practice dissecting questions and working out those issues that are relevant to them.

The easiest way to revise is as follows. Take a piece of paper and write down the topic you are revising at the top. The topics will have been set out in the module handbook or the lecture schedule. Next, read through your lecture notes, your textbook and other notes and make a list of issues that crop up within that topic. These are the general principles of the topic. Your list will look similar to the ones you have made at the planning stage of your essays and problem questions, although it will be more extensive. Write a sentence or a couple of sentences under each of the issues on your list, which explain the nature of the general principle. Add in the detail of the principle and add in any evidence that you have to back up these points. Again, this is similar to an essay plan or a problem question plan, but is much more detailed. You should now have notes on a topic on two sides of A4, including a list of topics (which are the general principles) with a brief explanation of each, followed by sub-issues for each topic and evidence to back them up. If you do not understand any aspect of the information you have on your sheet of paper then you should go back to your notes and reread that section. You will not be able to write a good essay if

you do not understand the issues. Finally, you need to learn the information on the sheet.

Once in the exam, you will identify those questions that you will answer. After dissecting the question you can simply note down the general principles in a plan, one per paragraph and jot down the supporting information you can remember from your sheet of paper. Some of the principles from the sheet will not be relevant and those can be crossed out. Some you may not remember. However, you will already have a basic essay or problem question plan prepared prior to the exam, which should take the pressure off you.

PREPARATION FOR OPEN BOOK EXAMS

If you are allowed to take a notebook or folder in with you, make sure you know the regulations for the notebook. For example, it might need to contain only handwritten notes, be a certain size, etc.

Include as much useful material on the topic as possible, including evidence to back up the points.

Make sure you understand the information that is in there. The exam is not the best place to try to make sense of the topic.

Organise the book so that you know where to find things as quickly as possible.

Check whether you are permitted to highlight or underline materials.

Lecturers will expect more from your answer if you have access to information in a notebook, a statute book or a textbook in the exam. This means your answer should include more evidence to back up your points, as you will have access to that evidence rather than having to remember it as you would in a closed book exam. There will be an expectation that you will have the general principles at your fingertips, plus cases, statutes and academic quotes.

You will need to spend time preparing your materials for the exam. Make sure that you know whether you are permitted to underline or highlight passages, or to write in books that can be taken in. If you get this wrong then, at best, your materials will be taken from you. There is little point having material with you that you cannot use in the exam. The more time you spend flicking through your books, the less time you have to write. Less generally means more in terms of notes or materials. It is better that you have fewer notes that are focused and which you can use, than that you arrive with three folders of material that you do not know at all. Index your materials if you can, make sure that you have full citations for any sources that you will draw upon. The plagiarism rules will apply to any work that you cite from your notebook, so be sure to cite your sources.

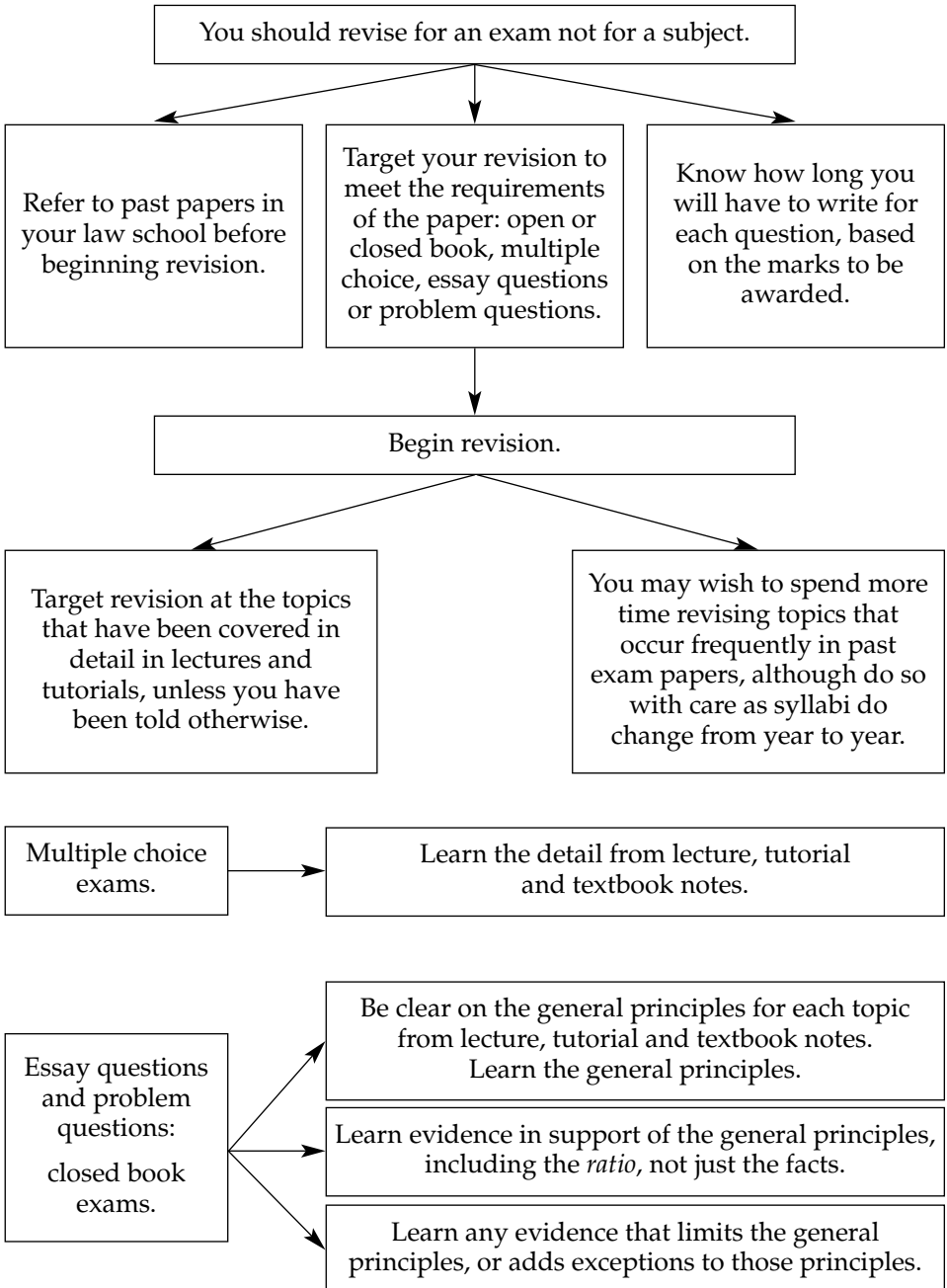
Finally, the main theme of this chapter is preparation. It is relatively easy to do well if you know the types of question you will be asked, the time you have to write each answer and you have revised the general principles, the evidence that backs them up and the way in which the general principles fit together. It is

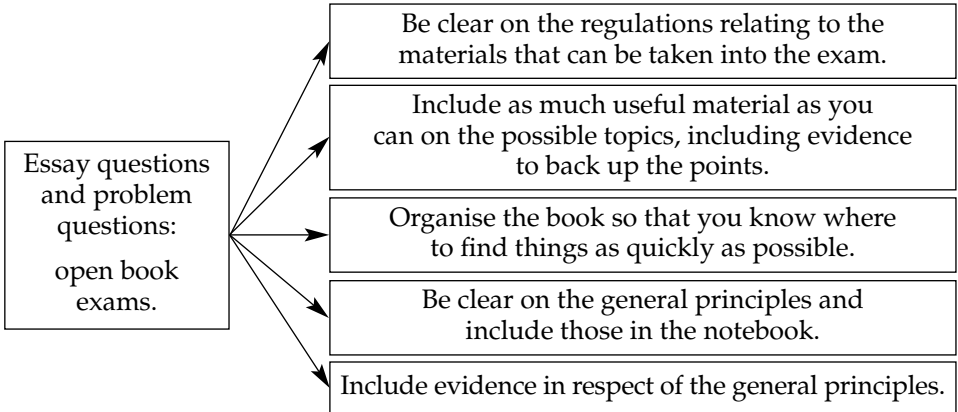
hard to do well if you enter the exam room unsure of what you have to do or how you will be tested. Prepare well and hopefully you will do well too. If, however, you find that you have not achieved the mark you expected, or you hoped for, ask for feedback from your tutor once you have your results. There are usually things that can be learned that will improve your marks for the future and there are very, very few students who cannot get through law exams with reasonable marks, because if we had doubts about your ability we probably would not have given you a place on the course in the first instance. Ask for feedback and use it as a way to improve your marks in the future. The next chapter provides some guidance on frequent feedback given to students to assist them to improve their performance.

SUMMARY

CHAPTER 8

The basic rules of revision technique is as follows:





Once in the exam:

