

Advice on studying the English legal system

Introduction

English legal system is usually a core first year subject on law degrees. Indeed those of you who have studied law at 'A' level will be familiar with some of the content of this area of study. Generally speaking a full English legal system syllabus will cover the following areas:

- **Legal method.** This includes an exploration of the sources of law and the framework for how law it is to be read and used. Legal method encompasses statutory interpretation and the doctrine of judicial precedent;
- **The institutions of the English legal system.** This will involve a description and evaluation of institutions, such as Parliament's role as a law-making body, and the composition, jurisdiction and structure of the courts; and
- **The personnel of the law.** Here the role and organisation of solicitors, barristers, and judges will be considered.

While there is a basic core of material to learn, the approach to the study of this material may differ from syllabus to syllabus. For example, some modules on the English legal system may seek to emphasize the operation of law in an economic and social context, others may emphasize what the law is and how the law is to be interpreted.

Studying any module on a law degree requires the use and development of a range of skills and approaches. There is a shift from 'A' level, where reliance to a great extent, is placed upon the tutor for the material and its interpretation, to degree level where reliance is to be on your own efforts, guided by the teaching staff. This shift needs to be appreciated early in your degree programme as this impacts upon the way you are to approach legal studies. One of the first important early tasks to undertake, on a law

degree programme, is to determine 'what are the expectations of me'? Once you identify these expectations it is possible to focus your studies accordingly.

Aims and outcomes

It is always important to study with a purpose, to understand what the module is trying to achieve. A small amount of time spent reading the aims and outcomes of the English legal system module will give you an insight into what is expected of you by the end of the year. Use the aims and outcomes as a check list as the year progresses, to monitor your development on the module. Also be aware that it is the aims and outcomes that will be tested in the assessment process. Bearing this in mind will aid your preparation for the assessment process and allow you to concentrate your efforts effectively.

Syllabus

Equally a perusal of the syllabus will give further guidance. Identifying the syllabus content of the English legal system module on *your* programme of study is particularly important as English legal system modules differ greatly from law school to law school. Look to see what is encompassed in the module. The module might focus on, for example, legal method, or on the institutions. It should be apparent also from your lecture and seminar programme where emphasis is being placed within the syllabus.

Reading

Another early task you should undertake is to acquaint yourself with the range and types of materials you will have to access while studying the English legal system. Reading your textbook *English Legal System: Directions* is a starting point but, as with reading other textbooks, this will not be sufficient within itself. Reliance on a textbook alone will not help you to develop the understanding and skills necessary to become a good law student and ultimately a good lawyer. It is necessary go to the original authorities, legislation, cases, journal articles, and other materials that underpin the subject. Increasingly invaluable material is to be found on the Internet; particularly in relation to the institutions you are

studying, e.g. www.parliament.uk and www.lawsociety.org.uk. You will also have access to databases, such as Westlaw or LexisLibrary, which contains in electronic form many sources available in hardcopy form in a law library. However, not all material on the Internet, for example material which provides commentary or even basic information, will have been peer reviewed or checked, so it must be treated with caution. Check the authenticity of material before relying upon it or citing it in submitted work.

Lectures

It is argued that, as lectures may be a very passive experience for students, they are of less value in this interactive age. They are, however, still relied upon as the principal means of teaching on many degree programmes. On any module lectures may be used to serve a variety of purposes. The lecture may be used to explain how to undertake analysis of an issue; it may concentrate on a small point of law or on a difficult legal area; or be used to give an explanation of trends or themes. It is important for you to determine what it is that the lecturer is seeking to achieve, put another way you need to be aware of what purpose the lecture is intended to serve. This may be made plain by the lecturer or it may be that this is something that you have to deduce for yourself from the lecture content. Some students believe that lectures are there solely to provide a set of notes which when learned will be the basis for examination success. The lecture, or lecturer, will soon disabuse you of this notion. It is unlikely that your lecturer will seek to provide an exhaustive set of notes on the English legal system. Indeed you might feel that the notes given at 'A' level (should you have studied Law at 'A' level) were more comprehensive. Notes are not the issue; you might, however, find more comprehensive notes provided by your lecturer on your institution's e-Learning website or virtual learning environment. The purpose of the lecture should be to give focus to your study of an area of law, to explain and to direct you to sources of further study. A lecturer may also present different points of view and give guidance on the evaluation of the information supplied. A degree education is designed to prepare you to become an independent learner. By this is meant that you will be expected eventually to find source materials, read the source materials, and then use the materials. The module tutors roles will be to support you as you develop this new approach to learning. The expectation of the lecturer is that you will use the guidance given to undertake core reading and further research. Irrespective of the content the

lecturer will be providing a selection of sources which should be carefully noted along with the key points of explanation. The lecture will be indicating where you should direct your efforts in your studies after the lecture.

In the early days of your study of law you should familiarize yourself with the materials to which you will be directed and where these may be found. The main materials you will need to access on a regular basis are:

- 1) Legislation – This comprises primary legislation in the form of Acts of Parliament and secondary legislation in the form of delegated legislation, such as statutory instruments;
- 2) Law reports – Law reports record the decisions of the courts;
- 3) Journal articles – The law library will house series of journals such as the Law Quarterly Review (LQR); the Modern Law Review (MLR); Cambridge Law Journal (CLJ); and the Oxford Journal of Legal Studies (OJLS). These contain, for example, articles where academics' explore issues raised by the law or explain the impact of recent legislation or case law.
- 4) Reports – You may be referred to Royal Commission reports or reports of the Law Commission or other government publications.

There are two methods that may be used to locate these sources: first, the university library; and, second, the databases available on the Internet. You will be introduced to both of these resources during your law degree induction course. Particularly note where the above sources are located in the library. It will be evident that Internet access is more convenient and has certain advantages. For example, note that in using commercial legal databases such as Westlaw or LexisLibrary, the legislation you access is in its amended form rather than say using the Office of Public Sector Information (OPSI) where legislation is in its original form. Also on accessing a case you will find much information to put the case in context, not least what has happened to the case since it was decided, e.g. has it been reversed on appeal or has it been overruled by a later court?

Note taking

A lecturer may begin by outlining what is to be covered in a lecture and highlight the main points that are to be explored. Indeed you should actively look for the structure of the

session. This might be made clear in the introductory comments made by the lecturer or in PowerPoint slides, which accompany the lecturer's comments. Such a structure then can form the skeleton for your notes; sub-headings are a useful way to organize your notes. Under these sub-headings key points and important sources should be recorded. These notes are a starting point for your post-lecture study.

Do not attempt to capture every word of the lecturer. As well as outlining the issues to be covered in a lecture, lecturers will often repeat themselves in summarizing what has been explained or in explaining the same point in several ways. Note the main points of the lecture and, of course, the sources of law.

A word of warning - it is essential to later check your notes. Cases or statutes may be misspelt or the names of concepts phonetically reproduced in notes, for example 'obita dicter' instead of the correct 'obiter dicta'. Should such errors find their way into essays or exam answers it becomes immediately apparent to the marker that a student has done little beyond reading the notes made in a lecture.

To save time you may wish to develop a system of abbreviations. For example, court could be abbreviated to c/t, Parliament to Parl't, Senior Courts Act 1981 to SCA1981, Court of Appeal to CA and so on. For further illustrations of this process see Wilson and Kenny, *The Law Students' Handbook*.

In summary, it is important to appreciate what it is that the lecture seeks to achieve and what your expectations should be of a lecture. The lecture is there to guide you as to the significant issues and/or arguments on a particular topic, to point you in the direction of relevant source materials and to expose you to the methods of the law. At the end of a lecture there may be time for questions to be answered, but if not, a note should be kept and any queries followed up in general reading or in a tutorial or seminar. The lecture is not designed to give you a complete set of notes or to exhaustively consider all the points on a particular subject. Think of the lecture as the starting, not the end, point of a process. What comes next is at the heart of the learning process.

After the lecture

As soon as possible after the lecture you should have a period of consolidation, where you ensure that the notes you have taken are accurate and that you understand the contents. Such a process is likely to fix the material in your mind and promote long term retention. Reading a textbook at this point will help you retain and develop your understanding of your area of study. Further to this you should compile a list of sources that you need to read. The next step is perhaps the most important in the learning process. Following the direction given by the lecturer you should read the source materials.

An early skill to develop is how to first find and then read the cases, legislation, journal articles, and reports cited in the lecture. This process is at the heart of academic study and effort spent in year 1 developing such ability will reward you throughout your degree level studies and beyond. When reading and making notes on source materials always make a note of the reference for the source, e.g. case, journal article, or book; this is a good habit and will in the long run save you time.

Preparing for Seminars or tutorials

Two obvious points should be made. First, in order to develop an understanding of an area and to appreciate how to tackle questions it is essential that you attend the seminar or tutorial. Some students view the lecture as the most important teaching session and avoid attendance at seminars. However, this misses the point of each session. Lectures and seminars serve different, but complementary, purposes. Lectures give direction and guidance, but seminars provide an opportunity for deeper exploration of issues and allow students to engage with the learning process. Understanding of an area or point may be confirmed or misapprehensions corrected. To have confirmed that your understanding of a legal area and approach to reading and using source materials are correct means that you can continue your future studies with confidence. Second, to maximise the benefit to be gained from the seminar you need to be in a position to understand the issues raised by the material; failure to undertake the reading means that you will find it difficult, if not impossible, to take part in the seminar discussions. So, attendance at the seminar is not enough, you must be fully prepared.

Seminars or tutorials may be based on the content of a lecture or some aspect of the lecture. Your work after the lecture will have started the preparation for the seminar. Consideration will have to be given to any further reading needed to answer the question or task set. Indeed there may a reading list attached to the question or task. As a minimum this reading should be undertaken. Thought must then be given to what the question or task requires you to do and how the information you have collected may be used in satisfying such requirements.

You may be asked a question on a problem area in the law. For example:

‘The creation of the Judicial Appointments Commission (JAC) in April 2006 was a positive development. However, although Parliament got it right with the issue of the composition of the JAC, it got it wrong with the issue of its powers. The JAC should have been power to directly appoint judges, rather than simply act as a recommending body.’

Discuss.

The difficulty you will have in answering a question of this type is, first, identifying and analysing the requirements of the question and then, second, structuring the material. By addressing the following questions this will help you analyse and structure material:

- Why and how did the problem in the law arise?
- What is the nature of the problem – give an explanation of it.
- How was, or is, the problem to be dealt with?
- Has the solution to the problem worked?

So the above question on the Judicial Appointments Commission could be tackled in the following way:

(a) the perception of the judiciary as government appointees lacking independence; and the criticism that judges came from a narrow social background and failed to proportionately mirror the gender and ethnicity composition of society;

(b) an overview of the system for the appointment of judges prior to the creation of the Judicial Appointments Commission, including identification of problems such as a lack of

transparency in the appointments process;

(c) the creation of the Judicial Appointments Commission by the Constitutional Reform Act 2005;

(d) an explanation of the composition of the Judicial Appointments Commission and whether as the question suggests the composition is satisfactory given the problems that were to be addressed by its creation;

(e) what powers has the Judicial Appointments Commission and the role of the Lord Chancellor in the process of appointment.

(f) finally, consideration should be given to what has been the effect of the operation of the Judicial Appointments Commission on the appointment of judges; recourse to statistics on judicial appointments in terms of gender and ethnicity would be essential.

Assessment

One of the first matters you will want to establish is how your module is to be assessed. This might be by an assignment or by an end of semester/ end of year examination or both. Getting to grips with the content of the module is one thing, demonstrating that you understand that content is another. You will have learned in your previous studies how to answer questions; this ability must be further developed and with some adaptation will serve you in answering law questions.

Assignments

Preparing for an assignment

Ensure you know the requirements of the assignment, e.g. word limits (are footnotes and bibliography included in the word count?), hand-in dates etc. Follow the requirements carefully. For example, do not exceed the word limit; at some universities exceeding the word limit will be an automatic failure. Guidance on this point may be found in the assessment regulations of your university.

Importance of assessment criteria

The piece of work set should indicate the criteria against which your assignment is to be assessed. For example, such criteria may include: ability to research and awareness of

sources; analysis; relevance of subject-matter; clarity of expression; accuracy; presentation; and appropriate citation of authority, referencing and inclusion of a bibliography. Use these criteria as a check list so as to ensure that you have done all the things expected of you by the examiner.

Writing an assignment

The starting point is to determine what it is that you have been asked to complete. As many English legal system assignments are in the form of essays, pay particular attention to the instruction. Usual instructions are 'explain', 'comment', 'discuss' or 'evaluate'.

- **Explain.** In providing an explanation it is expected that you will give reasons for the matter raised by the question.
- **Comment.** This instruction expects you to comment upon a proposition or state of affairs raised in a quotation or statement. You may need to place the event in context or to demonstrate the impact that it has had.
- **Discuss.** Where 'discuss' is used you are given the opportunity of assessing the strengths and weaknesses of, for example, a particular position, argument or rule of law. This may be done in the form of debate or argument.
- **Evaluate.** This is an invitation to appraise the worth of an argument or topic.

The purpose of a written answer is to show that you understand an area of law as it applies to a question. In writing your answer you should list the issues raised by the question and then select material relevant to the issues. The process of selection of material is important as this, in part, demonstrates to the examiner that you understand what the question concerns. It can be seen that relevance depends upon the terms of the question. A question is not usually an invitation to write all you know about a topic area; material must be selected by you and its link to the question made plain.

The material selected must then be structured. An answer should have an introduction, a middle section, and a conclusion. It is the middle section where the issues raised by the question should be considered. This will itself need to be structured to ensure that the

issues are dealt with appropriately. The introduction and conclusion should be written after you are satisfied with the middle section. An introduction should outline the issues to be considered in the middle section and a conclusion should draw together what has been said in the middle section. Importantly, a conclusion should not introduce new material; a conclusion draws from material already discussed in the body of the text. On reviewing your essay should you find new material in your conclusion then you must revise your conclusion or amend your middle section.

In displaying your understanding your explanations must relate to the issues raised by the question. If a question mentions a concept, for example the doctrine of judicial precedent, then some explanation of the concept must be given. But if a question asks you to discuss the following statement, 'The doctrine of judicial precedent is inflexible and unjust', then it is not enough to merely explain the doctrine of judicial precedent. The main thrust of the question concerns an exploration of the advantages and disadvantages, of the doctrine of precedent and whether the former outweighs the latter. Emphasis needs to be placed on the perception that the doctrine is inflexible and unjust. The issue of certainty in the law created by the doctrine must be carefully considered. It must also be noted that the doctrine operates in different ways in different courts so that there is a way of overruling unjust precedents. Avoidance of precedents, for example by distinguishing, may also be explored.

Remember you should make explicit reference in your essay to source material and include appropriate references. References may be included in footnotes.

Referencing

An important part of scholarship is appropriate and effective referencing. The idea behind referencing is that the reader is able easily to locate the sources upon which you rely. Referencing also ensures that credit is given to the originator of the work; without referencing the ideas of another person may appear to be those of the writer of the assignment. Failure to acknowledge the work of another by an appropriate reference may infringe your university's plagiarism regulations and lead to sanctions been taken against the offending student.

There are various ways in which references may be presented. In the first instance, establish if your Law school specifies a particular referencing system; if so use it. If not you may want to consider the guidance given in the Oxford Standard for Citation of Legal Authorities (OSCOLA), which may be accessed at <http://denning.law.ox.ac.uk/published/oscola.shtml>. The important point is to include all information necessary for the marker to find the source and to be consistent in the presentation of such information.

Finally...

Before submitting your assignment, check for obvious mistakes of presentation, grammar, punctuation, and typographical errors.

What to do after the return of your assignment

While an assignment may count towards your final mark for this module, it should also be viewed as a further learning experience. There is an important feedback opportunity to be taken. Feedback may be given orally in a lecture, in written form dealing with general issues and/or in specific comments on your assignment. Reflect on the comments and seek to discover where extra marks may have been gained by identifying any weaknesses in your understanding of the question set, the relevant law or your essay technique. Should you be unclear on any of the above matters make an appointment to see your tutor for further advice and guidance.

A note about group work

Teamwork is an important feature of everyday working life so it is possible that you may be asked to submit a group assignment or undertake a group presentation. The issue here is one of organization and management. Clear identification of roles and responsibilities within the group is vital to the success of such an undertaking.

Oral presentations

With the increasing emphasis upon the development of skills, you may be asked to give a presentation either individually or as part of a team. In doing so certain basic points should

be borne in mind. First, the key to a successful presentation is structure. Always make sure that your audience knows where the presentation is going. Use PowerPoint or a flip chart to highlight the main points you wish to make. At the conclusion of your presentation summarize what you have said. Second, try to pace your presentation; delivered too fast you will lose your audience, too slow and their attention will wander. Third, it is best to deliver the material as if you are talking naturally, rather than reading a prepared speech. This is difficult if you are not confident of remembering your material. It is possible to use postcards for the main points you wish to make and hold these in your hand as an aid memoire. By not over-relying on notes you can maintain eye-contact, which makes your presentation more interesting for your audience and allows you to gauge if your explanation is being understood. Attempt to vary the pace of your delivery and add emphasis where appropriate. Fourth, do not make your explanations too detailed; sometimes less is more. Rather than go for detail try to extract some general points and supporting examples. Of course, this approach depends on the subject-matter of the presentation. Fifth, use PowerPoint for the presentation of tables, statistics or diagrams.

Examinations

Examinations are an opportunity to demonstrate what you know but more importantly what you understand. Knowledge is a prerequisite for examination success but it not the only or most important element. What an examiner is looking for in a script is an understanding of an area of the law as it applies to the question asked. An ability to analyse the questions set, choosing and explaining relevant law, and then demonstrating how such law relates to the requirements of the questions is needed.

Your examination may take the form of a closed book or open book examination. The difference is that in a wholly closed-book exam no materials, such as notes and textbooks, are allowed in the exam room, whereas an open-book examination allows materials to be taken into the examination. A halfway house occurs where a statute book only may be taken into the examination. The type of exam will determine your approach to preparing for the examination. The difference from a markers perspective is that with a closed-book exam *some* credit may be given for knowledge of the law, whereas with an open-book exam credit will not be given for knowledge alone, the emphasis is on analysis and use of the law.

Preparing for examinations

An obvious key to examination success in law, which applies to all subject areas, is that you must know the relevant law and that this must be apparent in your answers. Unless you are possessed of a photographic memory, there is no avoiding the difficult process of committing large bodies of legal material to memory (of course, the approach for open book exams is different). The process is made easier if you adopt good working practices throughout your study of the English legal system module, such as carrying out post-lecture consolidation of your notes as described above and spending some time each week or fortnight refreshing your knowledge by re-reading your notes. Nonetheless, it is probably unavoidable, in the weeks leading up to the examinations, that you will have to spend a significant amount of time reading and re-reading your notes to ensure that you have instant recall of the concepts, detail, and sources of several topic areas in the examination room. Don't think that an open-book exam is a passport to a revision free run up to the exam. While there is no need to have a flawless recall of the detail of the law you must understand your material and be able to locate material readily. The trap for the unwary is that sifting through notes or books looking for a source or trying to understand a point relevant to a question set takes time and open-book exams will be subject to a time limit. Again some mastery of your materials is needed which, in turn, depends upon effective revision.

Try to be systematic in your revision by drawing up a revision schedule which allows you to cover all your modules equally and allows time for consideration of examination technique, i.e. how to answer the potential questions.

There are a number of simple matters that may be dealt with prior to the examination which will take some of the stress out of the examination situation:

- First, ensure that you know where the examination is to be held; if you are unfamiliar with the location visit it before the date of the examination.
- Second, be aware of the requirements of the examination e.g. how many questions must be attempted; what is the duration of the examination; and is there a compulsory question or is there a free choice of questions to answer?

- Third, calculate what length of time you may spend attempting an answer to each question required.
- Fourth, check to see if the examination is a closed book exam or one where materials are permitted in the examination. Is it possible to take a statutes book into the examination?

Students often spend an inordinate amount of time seeking to question spot. While it is unrealistic to recommend that you should not do this, it should be approached with caution. Some guidance on the likely content of the English legal system paper may be found by looking at where emphasis has been placed in the lecture and seminar programmes during the course of the year. It would be an unusual approach to teach certain areas but then to examine different ones. Past exam papers may give some indication of likely question areas, but remember that the emphasis of the module might have been different in previous years. However, some topics are so important that it is highly likely that there will be an exam question on this subject. For example, if the English legal system syllabus includes legal method it would be improbable that no question on statutory interpretation or on the doctrine of judicial precedent would feature in the exam. If you are to question spot be aware that you need to revise a sufficient number of areas to allow you to attempt answers to all the questions required. If four answers are to be written it is a risky strategy to revise only four areas. Not all of the areas may feature in the examination paper. Even if the four areas appear in the questions asked they might not be in a form that you can answer. In consequence, if you do question spot and tailor your revision accordingly, build in a margin for the 'unexpected'.

The examination

Effective preparation should ensure that you can concentrate your efforts on writing the requisite number of answers. You must use the time available effectively. Practising writing essays under exam conditions prior to the exam should alert you to what it is possible to write within the allotted time. Obviously, effective time management will avoid the trap of failing to attempt all the questions required by the instructions. Success or failure in an exam may rest on a last answer; remember in a four answer exam paper it is easier to get 40% out of 100% than out of 75%. Should you be running out of time then, as a last resort, at least indicate your understanding of the final question in note form. You will not achieve full marks but may do enough to make a difference to your final result.

Another aspect of time management is directing your effort according to the weighting of marks within the exam paper and/or within questions. Should the exam paper contain a compulsory question this may carry, say, 40% of the marks; in which case you should use 40% of the allotted time in producing an answer. Equally, if a question is in two parts and the marks split is part (a) 60% and part (b) 40% obviously a larger proportion of time should be spent on part (a).

Post-examination

Once you have finished your examination, try to forget about it. Unless this is your last examination do not be tempted to hold a post-mortem with your friends and fellow students. There is nothing to be gained from this process; indeed the opposite is quite true. In general, students are not in the best position to assess their performance in the heat of the examination room and discussion of such may unnerve and divert the further effort required for forthcoming exams. Put thoughts of the examination to one side and concentrate on your remaining exams.

Once you have received your results, whether you have, hopefully, passed or failed there will always be something to learn about your performance. You should receive some form, or forms, of feedback on your paper; it is important to reflect on what the good points of your examination performance are and where you could improve. Generic feedback on the content of answers may be given to you in written form or otherwise be available on the e-Learning website for your module; you may get your exam paper returned to you. Whatever form the feedback takes seek to learn from it and to carry forward this guidance into the next year of study. If you feel unclear, make an appointment to see your module tutor who will be able to analyse your examination performance and provide advice on what needs to be done to improve.

Further Reading

Wilson, S. and Kenny, P, *The Law Student's Handbook*, Oxford University Press, (2008)
Strong, S.I, *How to write law essays and exams*, 2nd edition, Oxford University Press, (2006)