

General guidance on answering legal problems

The purpose of the exercises on this Online Resource Centre is to give you some working examples of how a lawyer has to approach the material available and what sort of use can be made of it. There is no "right" answer to any of the points raised. However, we can offer some general guidance on answering legal problems/writing legal assignments.

- **Preliminary matters you need to note which concern all legal problems set at academic stage:**
 - (i) There is always a potential problem of proving the facts (a question of evidence). With such questions, however, unless you are actually studying the law of Evidence, this is not something you need to worry about. All these questions are asked on the idea that the facts can be proven; so if you start examining all the problems of proof you will not be answering the question.
 - (ii) The question might ask you to discuss X's possible guilt. It could ask something different e.g. "what possible defences may she have to a charge of murder?" or "For what crimes might X be charged?" Although covering similar ground, these questions raise slightly different points (the last one in particular) and it is that question that should be answered specifically.
 - (iv) In problems based on contract, negligence and other civil matters it is quite common for the examiner to ask you to advise **one** client on his or her potential liability. If this is so, structure your answer to do this and do not just describe the legal position generally.

It is vital, when dealing with problem questions, to actually address the problem raised. However banal or obvious this seems, the major failing of law students when answering problem questions is to fail to attempt to solve the client's problem.

- **How are law questions marked?**
 - (i) Any answer to a legal question must contain authorities (generally cases or legislation but also the published views of other academic and practitioners). Marks are always given for cases etc -as long as they show something. A list of cases alone is not enough - there must be some comment/application.
 - (ii) There is an ongoing debate across education about how to define exactly what constitutes a First Class mark or a bare pass.

Each university (and subject area) adopts similar guidelines, **but there are variations. You need to check with your own university's**

regulations to see how each category is defined. As a basic guidance only we would suggest that the lines are drawn in the following way (these are adapted from a variety of sources e.g. "Benchmarking standards" issued by QAA and other bodies).

First Class (70% +)

An answer which builds upon a full, extremely accurate and well-structured exposition of the subject area. Where appropriate the answer will contain sophisticated criticism or originality. With coursework in particular there should be a clear and rigorous analysis of source materials and authorities, and a sustained, detailed consideration of alternative arguments. Within the relevant word limit or time constraint the student will therefore demonstrate an ability to be concise without losing detail.

First class answers are not perfect answers but they are ones that are exceptionally good for undergraduate level and most guidelines tend to focus on a student excelling in at least one and probably several of the following criteria:

- Comprehensiveness and accuracy
- Analysis and critical evaluation
- Clarity of argument and expression
- Integration and use of a wide range of materials
- Evidence of wider reading
- Insight into the theoretical issues

Excellence in one or more of these areas should be in addition to the qualities expected of an upper second class answer.

Upper Second Class (60 - 69%)

A critical and perceptive piece of work with an extensive and authoritative deployment of source materials. A sustained development of the theme or analysis of the problem. Conclusions are reached by confident manipulation and synthesis of materials and authorities. A mature and developed style of writing with a precise attention to detail and physical presentation.

This class of answer covers a wide band of students and some will only just fall short of a First Class mark. These are highly competent answers and would typically contain the following qualities:

- Accurate as regards all key areas
- Reasonably comprehensive
- Well-ordered and structured
- Evidence of some wider reading
- Contains a sound grasp of basic principle
- Demonstrates a good understanding of relevant details
- Succinctly and cogently presented

- Displays evidence of some insight

The upper second class answer should have addressed all the key issues. The work should be well ordered, major and minor issues spotted and legal argument accurately and comprehensively addressed. An accurate conclusion must summarise the work undertaken.

Lower Second (50 - 59%)

An accurate and ordered exposition of the subject area with proper use of source materials, both primary and secondary. A logical development of the theme with conclusions which show a clear understanding of the topic. Consistent and correct use of authorities and sound physical presentation.

An acceptable level of competence is required. Quality indications of such requirements are:

- Generally accurate
- Provides an adequate attempt to locate the subject within the dissertation field
- Clearly presented
- Little development of the arguments
- Contains some errors/omissions

A lower second class answer may be an answer which is good in parts but there is insufficient attention to detail or one which displays only average analytical ability.

Third Class (40 - 49%)

An adequate exposition of the subject area with either insufficient or partially inaccurate use of authorities. An ill-defined structure and development of the theme is evident, with little or no criticism. Not always lucid. Poor physical presentation (re coursework) and inattention to detail.

A third class answer is one which demonstrates some knowledge or understanding but may be weak in any or more of the following area:

- Descriptive only
- Omits an attempt to answer the problem/hypothesis
- Misses discussion of key points/issues
- Contains important inaccuracies
- Covers material sparsely
- Makes assertions which are unsupported by evidence

A fail clearly does not even make it to the bottom of the "third class" category. Apart from lack of knowledge many students fail because they fall foul of some of the points made below.

- **Questions You Do Not Want The Reader To Ask When They Have Read A Sentence, Paragraph Etc Which You Have Written:**

So?

Why did you say that?

On what legal authority is that argument based?

What else is there (e.g. case law or statutes)?

- **Dangerous Phrases That Look Like Your Friend:**

Therefore...

Thus...

It follows...

As can be seen....

Surely...

It is obvious that...

This seems unfair...

Clearly...

Why are these dangerous? In themselves they are not, but usually there is little or no substance to justify them. For instance, say you read the following passage:

The law of negligence demands that there must be a direct link between the accident and the injury or damage suffered. We have seen that Adam and Berni were involved in an accident in which Berni says Adam failed to slow down approaching the junction and that Berni has suffered a broken leg from the collision. Therefore (or "Thus", or "Clearly", or "Surely" etc) Adam is liable to compensate Berni for all her injury.

There is a superficial air of logic about this, until you analyse it. What does the "therefore" relate to? The first sentence is a general proposition (generally correct as it turns out). But after that all we really know is that Adam and Berni had a collision. We do not know whose fault it is (presumably this is being disputed). And even assuming Adam was negligent (and there are a number of other factors to consider before making that judgment), we do not know if Berni contributed to the accident in some way so that Adam would not be liable to pay for *all* her injuries.

Here is another example:

We know from the facts that Berni shot Adam at close range and that he died of his wounds. Surely she is therefore guilty of murder.

The one word - "Surely" - betrays such a lack of knowledge in terms of both dealing with evidence and the law on homicide that this sentence is quite frightening in its stupidity. Even a non-lawyer would be able to see that Berni may not have meant to fire the gun or she may have fired it in self-defence. Once you have studied Criminal Law you will also see that there may be other technical reasons why she is not liable for murder. So, the use of the word "surely" is very dangerous: it pretends that there cannot possibly be any other answer and, in doing so, reveals a complete inability to think (never mind to think like a lawyer).

- **Openings To Be Avoided:**

"X is clearly liable"

Really? So why was the question asked?

Saying everything about the area of law when most is irrelevant.

The classic "shotgun" approach

Saying nothing; simply listing cases.

The "I've learned all this so I must pass" approach.

- **Incorrect Citation Of Cases:**

X will be liable for his offer: see *Carlill v. Carbolic Smoke Ball Company*.

So, exactly why should we see Carlill? Does it cover X's case as well?

No reasoning present here.

The case of *Carlill* will apply here.

But I'm not going to tell you how!

An offer to the world can be binding (*Carlill*) and so the advert will be valid.

When will the offer be binding? Did Carlill really lay down a principle for all adverts?

The law on offer and acceptance demonstrates that the terms must be clear: *Carlill*; *Boots*; *Fisher v Bell*. Thus, X will be bound (see also *Partridge v Crittenden*)

The "I've learned all this so I must pass" approach again (but with more cases).

- **Useless Citation Of Statutes (same comments apply as with cases):**

S.3 is clear....or S.3 applies to this case ...

This must be read *eiusdem generis* so the [item in question] is part of s.3...

This is a conclusion, not an argument

There are three rules of interpretation: the literal rule, the golden rule...

Not this old one again! Where does this actually get the writer?

"Judges use the rules of statutory interpretation to interpret statutes. That would apply here."

A real quote from a student essay.

"Judges must apply whichever rule of interpretation applies..."

Another real quote

(Often these are just mere slips of the pen (or mind) which we all make and are quite forgivable in an examination - less so in coursework where the student has had plenty of time to get these things right.)

"You can use Hansard to understand a statute if the statute is not clear:

Pepper v Hart."

Yet another real quote, this time demonstrating a lack of care or understanding. This one is more worrying because the student believed he/she had explained the position when in fact he/she had really shown a complete lack of attention to detail and analysis.