

General guidance on answering essay and problem questions

The two main types of questions you will encounter in the study of law are essay questions and problem questions. This section of the ORC will provide you with a number of essay questions and problem questions and guidance as to how they should best be answered. This document will discuss what skills these types of questions aim to assess and offer some general hints and tips on how best to approach these questions and what pitfalls should be avoided.

This guidance is meant to accompany the practice questions and model answers found on the ORC. It should be noted that, as regards the model answers, footnotes are used to cite relevant sources. In an exam situation, you would not be expected to cite sources in this way. The footnotes are included in the model answers simply to make you aware of the sources discussed.

Essay questions

What is an essay question?

Essay questions can come in a number of different forms, including:

1. You may simply be asked to critically evaluate an area of the law, or a specific case or statutory provision (for example, 'Critically evaluate to what extent the Consumer Protection from Unfair Trading Regulations 2008 have improved the protection afforded to consumers').
2. You may be asked to compare and contrast two areas of the law, or two cases, statutory provisions etc (for example, 'Compare the legal protection provided by the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999').
3. You may be provided with a quote or other statement and will be asked to assess its validity (for example, "'The doctrine of equity in mistake provides valuable flexibility to the law and the Court of Appeal in *Great Peace* were wrong to have abolished it." Discuss').

Whatever type of essay question you are required to answer, it is important that you understand what skills an essay is assessing. Essays will aim to assess your:

- **Communication skills:** you may be required to clearly and succinctly articulate complex legal arguments. Too often, students studying the law feel a misplaced need to write in a pompous and long-winded manner. Whilst your writing should be formal, it should also be clear and structured. Remember, it is easy to make a simple topic sound complicated, but it takes real skill and intelligence to make a complex topic sound simple.
- **Analytical skills:** the key skill being assessed in an essay is your ability to analyse and critically evaluate the subject matter of the essay. A good essay will never simply require you to state what the law is – you will need to discuss the strengths and weaknesses of the law and evaluate the law's effectiveness. You should always present both sides of any argument, but if you feel that one argument is stronger than another, you may say so, provided that you can back up your contention.
- **Research skills:** in order to write a good essay, you will need to engage in legal research. You will need to back up all the statements of law and arguments you make with appropriate authority. Back up statements of law with the relevant case or statute (not the textbook where you read the legal statement). Textbooks are useful, but tend not to be overly analytical – in-depth analysis comes from researching and incorporating academic commentary found in journal articles and monographs.

- **Ability to construct an argument:** lawyers need to be able to construct convincing arguments that can persuade others. You may feel that a particular piece of law is unsatisfactory and will want to create an argument that persuades others that your view is correct.

General hints

- Before you start writing anything, make sure that you understand what the question is asking you. Some students find that writing a quick essay plan in which the principal issues are set out is of considerable benefit.
- Structure your essay clearly. A good essay will consist of three elements, namely:
 1. **An introduction:** the introduction should set out what the question is asking you to do and how you propose to answer the question posed by the essay.
 2. **The main bulk:** the main bulk will consist of your legal arguments. It is this part of the essay that gets you the vast majority of your marks. Your legal arguments should be coherently ordered and should flow well into one another – a good essay should not read like a series of unrelated points.
 3. **A conclusion:** you should draw together the arguments you have made in the main bulk of the essay and, if possible, reach a reasoned conclusion. It may be the case that the arguments submitted for both sides are balanced and you cannot conclude one way or the other – this is perfectly acceptable.
- **ANSWER THE QUESTION!** One of the most common complaints is that students do not in fact answer the question posed. As stated above, a good essay will require you to analyse the law, not simply to state what the law is. If you simply state what the law is, you have not answered the question. Similarly, a good essay question will not require you to tell us all the law you know in a particular area – it will focus on a specific aspect of the law. Too many students include masses of irrelevant information or write everything they know about a topic simply to show off what they know, but the irrelevance will not get you any marks, and will detract from what you should be including.
- Incorporate academic opinion. This is another major weakness of many essays. Back up your legal arguments with the appropriate authority. Textbooks are acceptable, but journals often provide more authoritative and impressive authority.¹ Always cite the original source, not the source that cited the original source (for example, if you are stating what the law is, cite the relevant case or statute, not the textbook where you discovered what the law was).
- Use appropriate authority. Cases, statutes, textbooks, journals, certain reports (for example, Law Commission reports) and reliable websites are sources of appropriate authority. The following are not sources of appropriate authority and should never be cited in a legal essay (or problem question):
 1. Websites that lack appropriate weight and validity (notably Wikipedia). You need to be very cautious and selective when citing material derived from a website.
 2. Your lecture notes.
 3. Study aids such as the *Nutshells* series or the *Law Express* series. Whilst these sources may be of use for revision purposes, they should not be cited as legal authority.
- Never write in the first person in a legal essay (or problem question for that matter). Too often, students will state in their own opinions by stating 'I think that...' Using the word 'I' should be avoided as it indicates you are merely stating a personal opinion. Instead of saying 'I think that ...'

¹ Throughout *Card & James*, reference is made to relevant journals, and prominent cases often have case analysis boxes next to them providing a link to a useful casenote.

you could state 'It could be argued that ...' Better still, find an academic who makes the argument and cite their name (for example 'Roach has argued that ...').

Problem questions

What is a problem question?

Your study of Business Law may be the first time that you have come across problem-style questions, so it is worth explaining what problem questions are and why they are used so widely in, and are so important to, the study of law. A problem question is simply a fictional situation in which one or more legal disputes arise and the student's task is to discuss the legal issues involved and, if possible, indicate how the disputes are likely to be resolved.

Simply having a thorough knowledge of the law is not enough. Students also need to be able to take their knowledge of the law and apply it to a wide range of facts. Problem questions test a student's ability to apply the law to the types of factual situations that can arise in practice. These situations are often similar to decided cases, but they usually differ in notable respects, so that students cannot simply apply existing precedent – they will also have to be able to discuss how precedent should (or should not) be applied to novel situations.

We noted above that, in order to answer an essay question well, you will need to know what skills an essay is designed to assess. The same is true for problem questions. Whereas essays are designed to test a student's ability to discuss and critically evaluate the law, problems questions are more concerned with assessing a student's ability to apply the law to practical situations. However, this does not mean that critical evaluation has no role to play in problem questions. It may be the case that you will be applying a case or statutory provision that has been criticized, or you may feel that a particular case should not be applied to the facts of your problem. In these cases, briefly evaluating and explaining why the current law would produce an unacceptable outcome will gain you marks.

General hints

- Read the question through in its entirety. Too often, students read part of the question and, as soon as they encounter an issue they recognise, they start writing without appreciating how later facts can affect the legal issues.
- As you read the question, make notes in the margin identifying legal issues, or the names of relevant cases that have similar facts to the problem question. Highlight material facts.
- Make sure you understand which legal topic(s) the problem question relates to. In *Card & James'*, the problems come at the end of the chapters, so you know which topic they relate to, but in an exam, there may be no hints as to which topic a problem will relate to. It is common for students to fail to recognize the relevant legal topic and apply completely irrelevant law to the facts of the problem.
- Do not think that a problem question will only discuss one area of the law. In reality, legal disputes often involve several different areas of the law, and problem questions are no exception. It is perfectly permissible for a problem question to contain legal issues from different areas of the law. For example, an act of negligence may also constitute a breach of contract, so you would be expected to discuss liability in both tort and contract.
- Follow the instructions given. Often, a problem will instruct you to provide advice to a particular party, or to base your answer around a particular area of the law. If this is the case, stick to what the question instructs you to do. For example, a question relating to product liability could involve a breach of both the Sale of Goods Act 1979 and the Consumer Protection Act 1987. If the question instructs you to discuss liability under the 1979 Act only, then stick to the 1979 Act. Answer the question and avoid the temptation to show off irrelevant knowledge.

- Even if you are advising one party, you will still need to provide both sides of any argument. Remember, a lawyer needs to do more than be aware of the strengths of his argument. He also needs to know the weaknesses, so he can counter them should his opponent raise them. If you are advising a party who has a weak case, you will want to inform them of this, but you can only do this if you are aware of both sides of a legal argument.
- As a general rule, the *ratio* of a case is more important than its facts. Often, students will discuss a case and state, in unnecessary detail, the facts of the case. In the majority of cases, this is not required and you will not need to bring up the facts of a case. However, if the facts of a case are similar to the facts of the problem question, or if they differ in a notable respect, then briefly providing the facts may be of aid.
- If you need to apply a statutory provision to a problem, you will first need to explain what the provision states. Explain what the provision states briefly and clearly. Often students will copy whole sections of statute, but this is rarely required. An examiner will be much more impressed if you can succinctly (but accurately) state the content of a statutory provision, than if you copy it out at length. By all means, quote parts of statute if you feel it adds weight to your argument, but such quotes should not be overly lengthy.
- Do not feel that you have to provide a conclusive 'answer.' In fact, you may not be able to answer the question conclusively at all. Problem questions often have no single correct answer and the facts involve will usually contain a number of grey areas that prevent you from reaching an absolute conclusion.

Further, you may not be provided with enough facts to provide an answer. There is nothing wrong with stating what facts are missing, and hypothesising what the outcome would be if certain facts occurred.