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ESSENTIAL STUDY SKILLS FOR LAW STUDENTS

PART TWO

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INTRODUCTION

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INTRODUCTION

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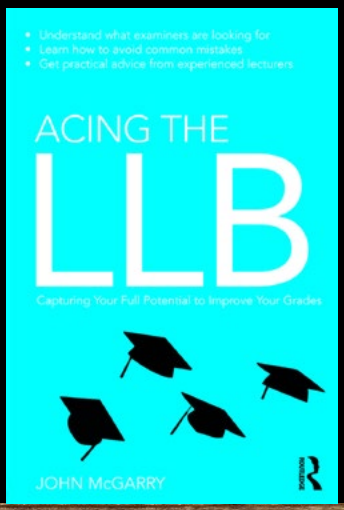

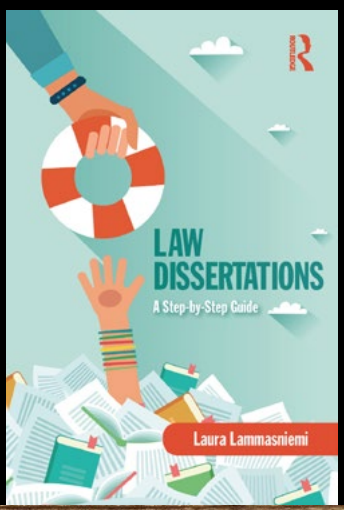

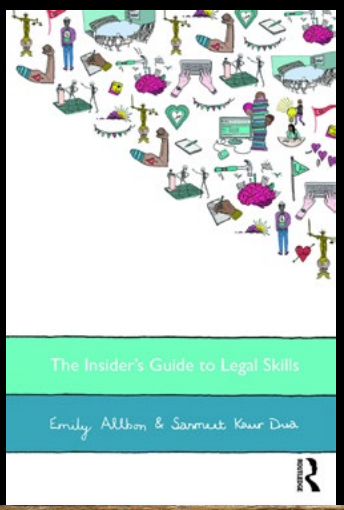

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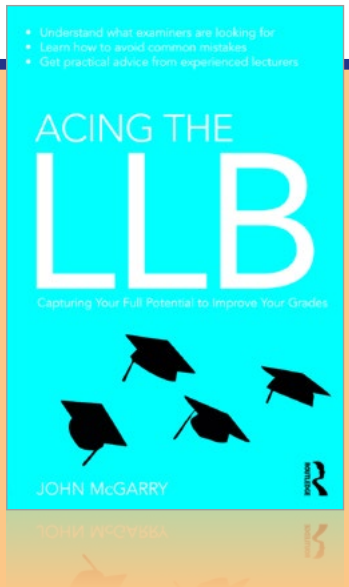
CHAPTER

1

UNDERSTANDING ESSAY QUESTIONS AND PROBLEM QUESTIONS



UNDERSTANDING ESSAY QUESTIONS AND PROBLEM QUESTIONS

John McGarry

Excerpted from *Acing the LLB*

This chapter will introduce you to:

- the basic structure of essay and problem questions;
- the meaning of key words commonly used in essay and problem questions;
- strategies for reading, unpacking and understanding the different parts of such questions and for recognising what it is you are being asked.

1.1 INTRODUCTION

Throughout your time as an undergraduate law student, there are two types of question that you will meet more than any other: essay questions and problem questions. You may come across these in coursework, examinations or, indeed, in any of the assessments to which you are subjected.

Generally speaking, essay questions consist of a statement about law that the students are asked to 'discuss', 'evaluate' or in some other way analyse. Problem questions pose a fictional scenario, and students are asked to advise one or more of the parties about their rights, obligations or liabilities. It is possible to have questions that do not fit neatly into these two categories or that are a combination of both. However, the advice contained in this chapter, and in Chapters 6 and 7, will be useful for all such questions.

As I make clear in the following chapters, one of the common errors made by all students is that they fail to answer the question that has been asked. This chapter attempts to help you avoid that error by enabling you fully to understand both essay and problem questions.

1.2 UNDERSTANDING ESSAY QUESTIONS

As mentioned in the introduction to this chapter, a common error made by students is to fail to answer the question asked. If you are going to avoid making this error, you need to be sure what you are being asked. To help you do this, let's examine five essay questions: a tort law essay question, two public law essay questions, a jurisprudence essay question and a contract law essay question.

1. The 'but for' test provides an easy way for the courts to determine causation in negligence, but it has often proved inadequate and may lead to injustice in complex cases.
   Critically analyse this statement.

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2. Constitutional conventions are sometimes described as binding rules of constitutional behaviour. They do not, though, always operate as such in practice. Evaluate this statement.
3. Any fair-minded observer would agree that feminism was necessary in the nineteenth century, and even in the 1960s and 1970s. But all the battles have now been won, and feminism is no longer necessary.
   Critically discuss with reference to feminist jurisprudence.
4. Discuss whether a valid contract always requires consideration.
5. Explain how the courts have interpreted the phrase 'public authority' as used in the Human Rights Act 1998.

The format of the first three questions is fairly typical of essay questions: there is a statement, proposition or assertion about a particular aspect of law, followed by an instruction that the statement must be critically analysed, evaluated, critically discussed or examined in some other way. Such statements may be written by the lecturer, or they may be quotations from, say, academics or judges.

The format of the fourth question is different, but, in effect, the same components are present: there is an implicit assertion about the law – that valid contracts always require consideration – and an instruction, in this case to discuss the statement.

The fifth question is a little different again. There is still an instruction, in this instance to 'explain'. However, there is no assertion or proposition – the instruction is simply to explain (in this example) the way in which the courts have interpreted a particular legislative provision.

We will look at unpacking the statement part of such questions below. First, it is worth considering the instructing words typically used.

1.2.1 THE INSTRUCTION

There are various instructions used in questions of this sort, including those shown in **Table 1.1**. These words are obviously different, but they are similar and are often, in essence, asking students to do virtually the same thing: to consider – in a scholarly, balanced and academic way – the truth or correctness of the statement given.

Table 1.1 • Instructions used in questions

Discuss	Evaluate	Anaylse	Describe	Explain	Compare and Contrast

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Excerpted from *Acing the LLB*

Let's look at the meaning of these different instructing words. At first glance, the words seem to divide into two basic types:

- words that are asking for a mere description or explanation ('describe', 'explain' etc.); and
- words that are asking for more depth of analysis ('discuss', 'evaluate', 'analyse', 'compare and contrast').

However, even where the instruction falls into the more descriptive category, students should still include some critical analysis in order to gain the higher marks.

So, to use the fourth question above as an example, students should do more than simply explain the way in which the courts have interpreted the words 'public authority' (though they must make sure they do this). To get the higher marks, they should also provide a critical analysis of the courts' decisions in this area, drawing on judicial comments (including from minority judgments), the work of academics and their own informed opinion (see Chapter 6, Section 6.5, for more advice on how to do this).

The instructions that you will commonly meet as a student may be interpreted as shown in **Table 1.2**.

Table 1.2 • Instructions and their interpretations

Discuss	You are expected to consider conflicting arguments with regard to the statement in the question. So, in Question 4 above, you are expected to consider arguments that consideration is always a necessary requirement of a valid contract against arguments that, at least at times, it is not necessary
Evaluate	This means that you should make an assessment of the validity of the statement given. So, in Question 2 above, you are being asked to consider the merit of the assertion that constitutional conventions always operate as binding rules. You would do this by considering the assertion itself against any contrasting arguments
Anaylse	Here, again, you are being asked to examine the validity of the statement given. For example, in Question 1 above, students are being asked to consider – in a balanced, informed way – whether the 'but for' test provides an easy way for the courts to determine causation in negligence cases, whether it has proved inadequate, and whether it leads to possible injustice
Describe	If you are asked to 'describe', you are being asked to give an account of something. For instance, a question that asks you to 'Describe the development of the neighbour principle since *Donoghue v Stevenson*' is asking you to give an account – a description – of the development of that principle. However, bear in mind that a simple description is not sufficient to secure the higher marks: a good essay should also include some critical analysis of the way in which the principle has been developed by the courts

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Explain	'Explain' is similar to 'describe' in that students are being asked to give an account. However, the word implies that more than a simple description is required. To use Question 5, above, as an example, students are not being asked simply to describe how the courts have interpreted the phrase 'public authority'; they are being asked to give an account of the courts' underlying rationales for their interpretations
Compare and Contrast	Here, you are being asked to consider the similarities and differences between two or more things
Critically	Often, a question will not ask students simply to 'discuss' or 'analyse'; rather, it will ask them to 'critically discuss' or 'critically analyse'. The word 'critically', here, does not mean criticise in the sense of finding fault with. Rather, students are being asked to make an objective judgment of all sides of an argument. The instruction to be critical is often included to comply with the requirement that second- and third-year students (or their part-time equivalents) produce a more critical analysis than first-year students. However, my advice is that, regardless of their year, students should always aim to provide some critical analysis to get the higher marks

In summary, your answer must do what the instruction in the question asks of you: if the question asks you to 'explain' or 'discuss', you must ensure that you do this. However, your answer should also be scholarly, balanced and critical.

1.2.2 THE STATEMENT

The next thing to consider is what it is you are being asked to discuss, analyse or critically evaluate.

It may seem like a statement of the obvious, but, in order to provide an answer that is relevant and does address the question (which you must do), you need to know what it is you are being asked. The following advice is given with coursework questions in mind; it can be easily adapted, however, to exam questions:

You should begin, unsurprisingly, by reading the question – a few times. Indeed, you should familiarise yourself with the question as early as possible.

My advice, though, is that, with coursework questions, you should not begin to work out what the question is asking in any serious way until you have covered the subject matter of the question in class. The reason for this is that you are unlikely to have the basic understanding necessary to prevent you going down a wrong route (which you may find hard to discount later). Moreover, when the subject matter of the question is covered in class, the lecturer may make specific reference to the question or explain something that gives you a new perspective on it.

Once the subject matter of the question has been covered in class, you should begin to deconstruct the question: to work out what is being asked. You should do this over a period of time and while engaging in some initial reading of your lecture notes and

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textbooks. An obvious starting point is to identify the particular subject matter of the question; this should be quite easy.

For instance, let's look again at one of our example questions from above, Question 1:

> The 'but for' test provides an easy way for the courts to determine causation in negligence but it has often proved inadequate and may lead to injustice in complex cases.
>
> Critically analyse this statement.

The question obviously concerns the 'but for' test as a test of causation in negligence cases.

Note! The question is not asking students to describe at length the law of negligence or tort law in general – it is specifically asking about the 'but for' test as a test of causation.

Next, you should ask yourself whether the question contains any sub-questions. For instance, in this example, there are at least three assertions that may be critically analysed:

- that the 'but for' test provides an easy way for the courts to determine causation in negligence cases;
- that the 'but for' test has often proved to be inadequate in complex cases; and
- that the 'but for' test may lead to possible injustice in complex cases.

Your answer should, therefore, seek to address – to critically analyse, as instructed – these three propositions.

There are also at least three sub-questions in Question 3 above:

> Any fair-minded observer would agree that feminism was necessary in the nineteenth century, and even in the 1960s and 1970s. But all the battles have now been won, and feminism is no longer necessary.
>
> Critically discuss with reference to feminist jurisprudence.

The three sub-questions are:

- whether a fair-minded observer would agree that feminism was necessary in the nineteenth century;

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- whether a fair-minded observer would agree that feminism was necessary in the 1960s and 1970s; and
- whether all the battles have been won, and feminism is no longer necessary.

Again, when answering a question like this, you should address all three parts of the question. It is obvious, though, that the third sub-question – that all the battles have been won, and feminism is no longer necessary – is the most controversial part of the question and should, for that reason, form (by far) the main part of any answer.

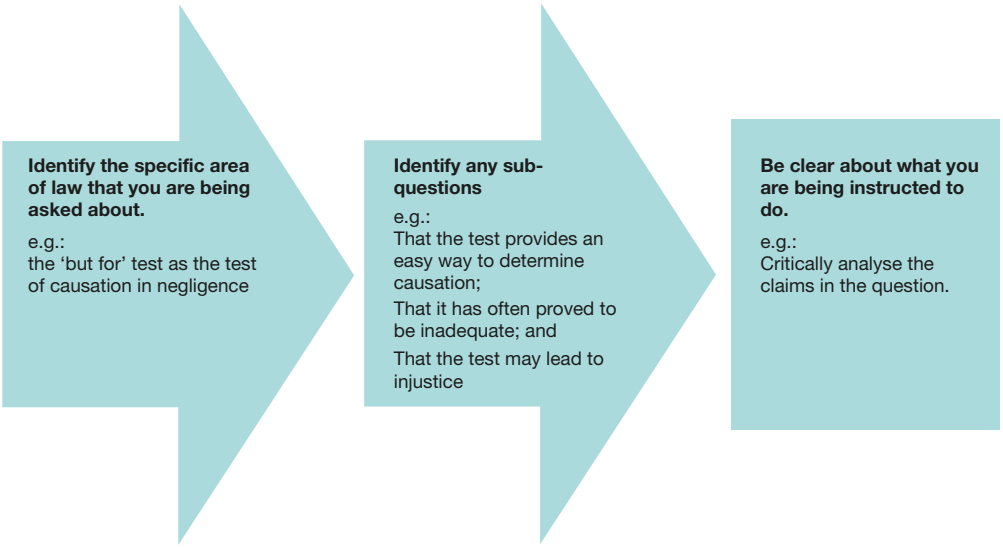

Figure 1.1 • Steps to work out what an essay question is asking

When unpacking questions, you need to be careful not to read into the question assertions that are not there (but that you might wish were). For instance, in the past, I have set students questions on constitutional conventions similar to Question 2 above. Over the years, I have had many students attempting to answer a sub-question (which has not been present) about whether the UK has a constitution. This part of their answer is irrelevant, and it not only fails to earn them any marks, it also creates the overall impression that they do not fully understand and cannot distinguish the relevant from the irrelevant.

So, in brief, when working out what an essay question is asking, you should take the steps shown in **Figure 1.1**.

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Excerpted from *Acing the LLB*

1.3 UNDERSTANDING PROBLEM QUESTIONS

Problem questions are used extensively to assess law students, usually in coursework and examinations. Problem questions commonly consist of a fictional scenario where a number of (frequently unlikely) events befall various characters; you will often be asked to provide legal advice to, or comment on the legal liability of, one or more of the parties in the scenario. As above, the following advice is particularly relevant for answering coursework questions but can be easily adapted for examinations.

Table 1.3 presents an example of a typical problem question.

Table 1.3 • Example problem question

Leo Sprog is the MP for Ormsborough West. He is in the process of introducing a private members' Bill in Parliament that would authorise the building of new houses on land in Ormsborough that was previously designated as green belt land. The passing of the Bill would enable Shark Developments, who own the land, to build a new housing estate. The Bill is opposed in Parliament by the MP for Ormsborough East, Arthur Brick. Barry Shark, managing director of Shark Developments, states, in the course of a telephone conversation with Leo Sprog: 'Our main opponent in this matter is a hypocrite and a philanderer. He didn't object when houses were built by Dodgy Housing plc, but then he has shares in that company'. During a debate on the Bill in the House of Commons, Leo Sprog ignores the rules on parliamentary language and accuses Arthur Brick of being a hypocrite. He repeats this accusation in a letter to the local paper, *The Ormsborough Star*, which has recently written a number of articles critical of Mr Brick. Arthur Brick is happily married, though he had an affair with his secretary 15 years previously. He has never owned any shares in Dodgy Housing plc. Advise Arthur Brick of any legal claims he may have.

This is quite a basic example of a problem question, and yet it contains the elements often found in such questions: it is a fictional scenario made up of a number of events and characters, and you are asked to advise one of the parties whether he has any legal claims.

Problem questions often end with an instruction or a question, for example:

- Advise Arthur Brick of any legal claims he may have.
- Advise Kevin of his liability in negligence.
- What contractual claims does Martin have?
- Describe any criminal offences that have been committed.

This instruction or question is the rubric and is, in essence, the question that you must answer.

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Excerpted from *Acing the LLB*

Let's look at some initial advice with regard to problem questions.

1.3.1 READ THE QUESTION

You should read the question several times to make sure that you are fully acquainted with all its aspects. You may find it useful to read the question out loud (only do this with a coursework question: reading aloud in examinations will not endear you to your fellow students or the invigilators).

TIP BOX

Reading problem questions aloud will make you feel silly but it will also help you become completely familiar with all aspects of the question, which will help you identify any sub-issues when reading your lecture notes and textbook.

1.3.2 AN INITIAL WORKING ASSUMPTION

The fact that problem questions are fictional allows you to make an initial working assumption (which you may modify): that all the information you are given is important and relevant, and that you are being given this information so that you may comment on its legal implications.

Let me illustrate my point here by asking you to imagine you are working as a solicitor in a local practice. One day, a client comes to see you because they believe a local builder they have contracted to do some work on their property has not completed the work to a sufficient standard. During the course of your interview with them to elicit the facts, they tell you that:

- they are particularly 'stressed' that day because one of their children has been unwell in school;
- they decided to undertake the building work after a family holiday in Spain;
- the builder was recommended by a friend; and
- their car is due for a service.

Part of your job, as their solicitor, will be to filter out all the legally irrelevant facts from the legally relevant, so that you can provide them with the appropriate advice.

The same is not true with problem questions. This is because all the information in the question has been deliberately provided by its writer, who knows the area of law

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Excerpted from *Acing the LLB*

with which the question deals. This is why you may begin with the assumption that all the information in the question is given for a reason.

So, in the above question, which (as I'm sure many of you will have guessed) concerns defamation:

- it is relevant that some assertions made about Arthur Brick were in writing and some were spoken, because this allows you to identify the spoken words as slander and the written words as libel and to advise accordingly;
- it is relevant that, during the course of the telephone conversation between Barry Shark and Leo Sprog, Mr Shark does not name Mr Brick, because this allows you to discuss the issue of whether it may be inferred that Mr Shark's remarks can only be taken to refer to Mr Brick;
- it is relevant that Leo Sprog makes the same accusation in the House of Commons and in a letter to the local paper, because, in defamation, different rules apply to statements made in Parliament to those that apply to other statements;
- it is relevant that one of the accusations against Arthur Brick (that he is a philanderer) may be true (because he had had an affair with his secretary), as this allows you to make the point that one cannot be sued in defamation for statements that are true; it is also relevant that Mr Brick's affair was 15 years in the past, as this may allow you to (briefly) discuss whether it is still true to claim that he is a philanderer; and
- it is relevant that the potential defamatory claims about Mr Brick have been made to third parties (i.e. to people other than Mr Brick), because this satisfies the requirement that a defamatory statement has to be published in order to lead to liability, which means it has to be communicated to people other than the person defamed.

Moreover, given that the facts of problem questions are carefully chosen, you should ask yourself why you are being told particular facts. For instance:

- If you are being told someone's age, or details about their mental or physical health, ask yourself whether this is relevant.
- If money is mentioned, is this in itself, or the particular amount referred to, legally significant?

Of course, it may be the case that some of the information in a particular problem question is not relevant; it may be a red herring; it may also be there to allow other parts of the question to work (the fact that two of the characters in the above question are MPs is there to allow a statement to be made in Parliament, and the

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mention about parliamentary language simply acknowledges that the accusation made by Mr Sprog in the Commons would lead to a rebuke by the Speaker) or for some other reason (I sometimes include material in my questions to make a joke at my colleagues' expense).

Even with these qualifications in mind, it is still a good idea to adopt, as an initial working assumption (which you may modify), that all you are being told in the question is relevant, so that you should address it in your answer.

1.3.3 WHAT ADVICE?

As already mentioned, problem questions often ask you to 'advise' a particular party or do something similar. It is important to remember that the advice you give here is likely to be different to the advice you might give in real life.

So, in real life, you might advise a client that they may have a claim in defamation but that it is not worth the stress, time and expense it would take to pursue it. You might even be tempted to try to give moral advice and, for instance, in an answer to a family law problem question, suggest that the main protagonist should end his affair and return to his family.

You should not be tempted to do these things when answering problem questions. You are being asked to advise one or more of the characters in the problem question about their legal position and you should ensure that you do this.

I should also say that you have to do more than simply provide the minimal advice that the rubric of the question seems to allow. So, for instance, with regard to the above problem question, the rubric instructs you: 'Advise Arthur Brick of any legal claims he may have'. You could, of course, obey this instruction by writing nothing more than: 'I advise Arthur Brick that he has two potential claims in defamation: one against Bill Shark and one against Leo Sprog'. Such an answer appears to comply with the direction in the rubric, and it would be correct as far as it goes. It is, though, very far from sufficient and would get you an extremely derisory mark, if it received a mark at all.

In answers to problem questions, you must fully demonstrate to your marker the legal reasoning you have employed, and the authorities you have relied on, to arrive at your conclusions. In short, like in answers to mathematics questions, it is not enough to give the bare answer; you must also show your working out (i.e. how you have arrived at the answer).

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Excerpted from *Acing the LLB*

In doing this, you must also deal with those matters that do not give rise to legal liability and that have been included in the question for you to demonstrate your understanding. For instance, in the answer to the question above, you would not simply advise Mr Brick of the claims that he has, you would also deal with the claims that he does not have but that the question suggests are a possibility: e.g. you would be expected to explain why he does not have a claim against Leo Sprog for the comments made in the House of Commons.

1.3.4 UNPACKING THE QUESTION AND IDENTIFYING THE ISSUES

Apologies for stating the obvious, but, before beginning to answer any problem question, you need to identify the issues to which it gives rise. Often, the issues and their significance will be obvious. However, if you are struggling to recognise them, you may find it useful to adopt the following systematic approach, or something similar (as ever, for exams, you have to adapt the following approach accordingly because of the constraints of time).

You may begin by listing all the characters and organisations in the question, noting their various acts or omissions and using this to help you identify the legal significance of their conduct and the potential liabilities or claims that they may have.

Deconstructing the question in this way will help you ensure that you are fully aware of all its aspects and identify all the issues to which it gives rise.

Start by listing all the characters and organisations. **Table 1.4** shows all those from the example question in Section 1.3.

Table 1.4 • Characters and organisations from sample question

Leo Sprog	Parliament	Shark Developments Ltd
Barry Shark	The Ormsborough Star	Arthur Brick

Next, list the actions or omissions that each of them has done and, alongside each of these, identify, if you can, whether their behaviour is likely to be neutral in terms of legal effect or, if it has legal significance, what that significance is. Also, if it seems as though the conduct would give rise to a legal liability, make a note of who would be the potential claimant (or victim in criminal cases), and who would be the potential defendant.

Identifying the legal significance of the actions in the question in Section 1.3 would look like **Table 1.5**.

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Excerpted from *Acing the LLB*

Table 1.5 • Actions and their legal significance

Action or Omission	Neutral, claimant and defendant
Leo Sprog introduces a Bill into Parliament	Probably neutral (i.e. this gives rise to no legal liability) – Mr Sprog, as an MP, is perfectly entitled to do this
Arthur Brick opposes the Bill	Probably neutral
Barry Shark makes a statement to Leo Sprog over the telephone	Defamatory statement; Barry Shark – potential defendant; Arthur Brick – potential claimant
Leo Sprog makes a statement in the House of Commons	Defamatory statement; may be protected by privilege; Leo Sprog – potential defendant; Arthur Brick – potential claimant
Leo Sprog writes a letter to *The Ormsborough Star*	Defamatory statement; Leo Sprog – potential defendant; Arthur Brick – potential claimant
The Ormsborough Star has recently been critical of Arthur Brick	Neutral (on the facts given, there is nothing to suggest that the paper has acted unlawfully)

It's probably worth noting here that you need to have a broad general understanding to get you this far, so that you can identify which acts or omissions are likely to give rise to any liability, and who the potential claimants or defendants are.

The best way to have gained this broad understanding will be to have attended all lectures and seminars. This is because such attendance will provide you with a good working knowledge, thereby allowing you to begin to identify the issues.

WORK SMARTER

Attending all lectures and seminars will mean that you are better able to spot the issues which arise in any particular problem question.

Attendance at all classes may also be important because your lecturer may make direct reference to the question, or to a particular aspect of it, in the class, and you will miss this if you do not attend.

If you have missed classes, or you are struggling to identify the significance of the different acts and omissions, then you need to read through the lecture notes that appear to be relevant for the question to acquaint, or reacquaint, yourself with that area of law.

It is also worth noting that some acts or omissions may have legal significance, but that they may not, in themselves, give rise to any liability. So, in a contract law problem question, part of the question may be devoted to establishing whether a

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Excerpted from *Acing the LLB*

contract has been formed (e.g. whether there is an offer, acceptance, consideration and an intention to enter into legal relations), but the part of the question that is concerned with whether, say, an offer has been made will not give rise to liability in itself until there is a possible breach of the contract, though it will have legal significance. For example, imagine a contract law problem question begins as shown in Figure 1.2.

Kinsella's, a local store, places the following notice in its shop window on Monday morning:

Free glamour make-over for the first 100 customers purchasing a Windy 2000 SuperStyle Hair Dryer.

Clare sees the notice and immediately goes to the nearest ATM (cash machine) to draw out the money to purchase the dryer.

Figure 1.2 • Information for contract law problem question

There are two parties mentioned in the question so far – Kinsella's and Clare – and they have performed the actions shown in Table 1.6, with their following significance.

Table 1.6 • Actions and their legal significance

Action or omission	Legal significance, claimant and defendant
Kinsella's places the notice in its window	Offer or invitation to treat
Clare goes to cash machine to obtain money	Probably neutral

That is, the notice has legal significance in that it is either an offer or an invitation to treat, but it does not in itself give rise to legal liability. However, questions such as these almost invariably end with a possible breach of contract, and it will be necessary to establish whether the notice amounted to an offer when considering whether there has been a breach. That is, although the notice may not give rise to legal liability in itself, it will form part of a claim that legal liability has been incurred by one of the parties.

As well as noting the conduct of the various characters, and the legal implication of their conduct, you should also make a record of any other contextual facts given – e.g. ages, dates, intoxication, environment – and, where possible, the significance of

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John McGarry

Excerpted from *Acing the LLB*

these facts. For example, **Table 1.7** shows what we could record with regard to the question in Section 1.3.

Table 1.7 • Facts of the question and their significance

Fact	Significance
Leo Sprog and Arthur Brick are both MPs	This probably has no legal significance; it merely provides the context for one of the parties to make a statement about another in the House of Commons
Shark Developments Ltd owns the land on which the houses are to be built	This probably has no legal significance; it simply provides some background context for the question
Arthur Brick is happily married but had an affair 15 years ago	This has significance for whether there would be a defence of truth (formerly justification) against a claim that it was defamatory to call Mr Brick a 'philanderer'

The significant acts, omissions and other contextual facts that you have identified will be the issues on which you are expected to provide legal advice. It should also be apparent at this stage which area or areas of law the question is concerned with. Often, a question will be focused on one overarching area of law that you have studied; so, in the example question in Section 1.3, the overarching theme of the question is defamation, and all the particular issues that follow are aspects of the law of defamation.

However, sometimes question writers may mix themes, so that, for example, a tort law problem question may contain issues of, say, negligence, statutory liability, nuisance and defamation.

Once you have identified the issues with which the question deals, you should begin to read the relevant parts of your lecture and seminar notes to begin to ascertain what the law requires with regard to each of them. While doing this, you should take note of anything that is relevant and why you think it is relevant (it is important to note why a particular thing may be relevant at the moment you think of it, because you may forget later on, when you need to use it).

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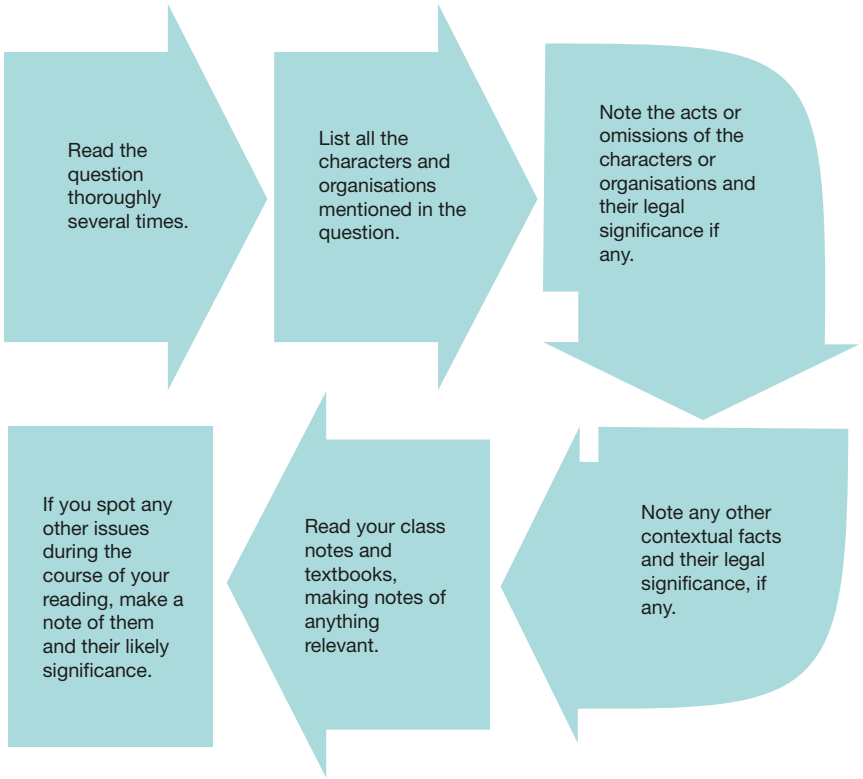

Figure 1.3 • Unpacking the question and identifying the issues

You should then undertake a similar exercise with the relevant parts of your textbooks, making a note of anything you feel is relevant, why it may be relevant and (importantly) where you have read it.

During the course of your reading, you may recognise some further issues inherent in the question that you did not spot in your earlier analysis. If so, record these, their likely significance and, if applicable, who the probable claimant or defendant is.

Unpacking the question in the systematic way outlined above will help you to fully understand it and to understand what the law requires with regard to each of its parts.

1.3.5 WHERE THE LAW IS NOT CLEAR

It is almost inevitable that it will not be clear what the law requires with regard to at least part of the problem question. This will be intentional: the question writer will

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Excerpted from *Acing the LLB*

want to test your ability to construct a convincing argument on what the law is likely to be and, in this way, separate the better students from the less good.

Where a question does contain a 'grey' area, it is likely that your lecturer will have made reference to it in class.

As a student writing an answer to such a question, you need to identify that the law is unclear and then argue that it would probably be found to be X or Y. In making this argument, you can draw on persuasive authority including: *obiter dicta*, minority judgments, judgments from other jurisdictions and academic opinion.

TIP BOX

Where the law is unclear, do not be afraid of being bold and of making a convincing argument, supported by the most persuasive authorities you have, that the law should be taken to be one thing rather than another.

1.3.6 ACCEPT THE FACTS

It may be that the question, or a part of it, seems extremely far-fetched. You should not, though, query the facts of the question; they have been chosen by the question writer to test you on particular aspects of the law, not for their plausibility. Given this, you should accept and address the facts as given and not be tempted to argue that such things would probably not happen.

Likewise, you should not be worried about whether the facts, as presented in the question, could be proved: you might think that it would be difficult to prove that X had long harboured a grudge against Y, but, if the question states that this is the case, then, as far as you are concerned, it does not need to be proved. In the above defamation question, you might wonder whether, in real life, Mr Brick would ever become aware of the telephone conversation between Leo Sprog and Mr Shark. However, this is not real life; you have been told of the conversation so that you can comment on its legal significance.

Further, do not be tempted to introduce your own facts or suppositions to make the question more like one that you would prefer to answer.

1.3.7 AMBIGUITIES IN THE QUESTION

It is sometimes the case that a question is ambiguous on a particular point; that is, it is not clear whether, on the information given, one thing happened or not.

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Excerpted from *Acing the LLB*

Such ambiguity may be deliberate on the part of the question writer, because he or she may want students to consider what the law requires for each of the alternative positions.

So, in the example problem question in Section 1.3, it is not clear whether Mr Shark has explicitly named Arthur Brick during the course of the telephone conversation, even if he does not do so in the excerpt given in the question. This allows you to make the point that, if Mr Brick is explicitly named, there is likely to be a claim in defamation, whereas, if he has not been expressly named, Mr Brick must rely on the rules of inference in order to make any claim against Mr Shark.

Similarly, it is not clear whether the newspaper publishes the letter sent to it by Mr Sprog. Speculating on this again allows you to consider the legal position if the letter is published (that the Ormsborough Star may also be liable in defamation) against the position if it decides not to publish.

There are two things to bear in mind here. First, make it clear to your marker what assumptions you are making with regard to any ambiguities; for instance, in answer to the above question, you could write something along the lines of:

> It is not clear whether, during the course of his conversation with Leo Sprog, Mr Shark has explicitly named Mr Brick as he does not do so in the section of the conversation provided in the question. If Mr Shark has expressly named Mr Brick as the person he refers to as a 'hypocrite' and 'philanderer' then . . . However, if Mr Shark has not explicitly named Mr Brick during the conversation then …'

Second, you must be careful here not to invent facts that are not present, explicitly or by implication, in the question. So, for example, it would not be relevant to consider the position had Mr Shark made his accusations directly to Mr Brick, because this is not something that is present in the question, nor is it something that may be naturally inferred as a possibility.

1.3.8 SIMILAR REAL-LIFE CASES

Sometimes, the facts of a problem question will appear to match, or be very similar to, a real-life case that you have studied. If this happens, you should be careful not to assume that the problem question and real-life case are identical. This is because it is likely that the question writer has included a fact in the question that differs from the real-life case in an important way. This is to allow you to recognise

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the significance of the difference and to demonstrate that you fully understand the case law and understand which aspects of the real-life case are significant for the outcome.

For example, consider the simple problem question in **Figure 1.4**.

> Adam, the farmer, writes to Clare of Clare's Wool Shop on 1st September offering to sell her some 'surplus wool' at a 'discount price'. Adam's letter concludes: 'please call in to see me if you would like to take me up on that offer'. Clare is unable to call in and see Adam but she posts a letter to him on 3rd September stating that she 'would like to purchase all Adam's surplus wool as she already has a customer who she has promised it to'. The letter is lost in the post and does not arrive at Adam's farm until 8th September. However, after not hearing back from Clare for a week, Adam has already sold the wool to Joe's Jumpers.
>
> **Advise Clare as to whether she has a claim in contract.**

Figure 1.4 • Simple problem question

At first glance, the scenario described in this question seems very similar to that in the well-known contract law case *Adams v Lindsell* (1818) 1 B & Ald 681 – there is an offer to sell wool and an attempt to accept this offer by post. The question writer has even called one of the characters Adam! Given this, it would be easy to conclude that the answer here is the same as in *Adams v Lindsell*, and that the postal rule should apply, so that Clare accepted Adam's offer, and formed a contract, as soon as she posted the letter.

There is, though, a significant difference between the scenario in the above question and *Adams v Lindsell*, which your marker will expect you to recognise. In the real-life case, when making their offer, the defendants had stated 'receiving your answer in course of post', i.e. they made it clear that the offer could be accepted by the post. In the above question, Adam states that Clare can accept the offer by calling in and seeing him. That is, whereas the defendants in *Adams v Lindsell* had stated that their offer could be accepted by post, Adam has made it clear that his offer should be accepted in person, and so he should not be bound by the postal rule.

In short, where part of a problem question looks very similar to a real-life case, you should be cautious before assuming they are the same, and that the result in the real-life case should apply to the problem question.

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John McGarry

Excerpted from *Acing the LLB*

1.4 FINAL WORDS

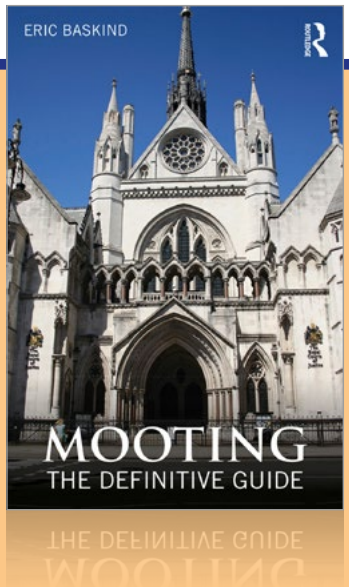
The advice given in this chapter should be read in conjunction with that given in the following chapters, particularly Chapters 6 and 7. Of course, some of the more time-consuming methods I have described to help you unpack a question would be unsuitable in an examination scenario, because of the constraints on time. You should, though, find that – even in examinations – the techniques I describe above will provide you with an insight into how you may ensure you fully understand, and so are able to fully answer, the question being asked.

CHAPTER

2

LAWYERS' SKILLS:

PREPARATION, PRESENTATION AND PERSONAL SKILLS



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Eric Baskind

Excerpted from *Mooting*

INTRODUCTION

A good advocate is someone who is well organised and able to present their arguments effectively in a clear, logical and persuasive manner. Good advocacy skills are essential, not just for mooting, but also for later when appearing in court in your professional life.

Advocacy is also an excellent life skill as it provides confidence in one's ability to communicate skillfully and effectively, and thereby extends beyond the moot court and professional practice.

In short, your role as an advocate is to structure your client's case to form cogent legal arguments and to make persuasive representations to obtain the best possible outcome.

PREPARATION

> *Mooting tip*
>
> The three golden rules of advocacy are preparation, preparation and preparation.

Preparation is essential. To be an effective advocate, you must prepare your case thoroughly. Thorough preparation will ensure that you know your material inside out. You will not be able to persuade a court of the merits of your case unless you have a substantial grasp of the material.

You should keep in mind the words of Benjamin Franklin who said: 'By failing to prepare, you are preparing to fail.' Winning or losing a case – or a moot – often turns on the extent and quality of the preparation. In terms of advocacy, the noted American trial lawyer, Louis Nizer, explained: 'Preparation is the be-all of good trial work. Everything else – felicity of expression, improvisational brilliance – is a satellite around the sun. Thorough preparation is that sun.'

Your preparation should start as soon as you receive the moot problem (although you should make sure that you are familiar with the moot rules even before the moot problem has been published).

You should discuss the moot problem with your teammate at the earliest possible opportunity. This will help identify the relevant issues and ensure that you work seamlessly as a team. This is an extremely important point as a moot could be lost

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simply because one of the mooter's submissions contradicts or otherwise damages those of their teammate.

Practising your submissions is an excellent way of preparing for your moot and will also help to identify any weaknesses which you will then be able to address. You should practise your moot submissions out loud and preferably in front of an audience. Doing this several times will help familiarise yourself with your arguments. You should also get your audience to ask questions and critique your submissions. You may also find it helpful to record your submissions, preferably with video as well as audio, as watching and listening to your own performance can be helpful in eradicating annoying habits such as littering your speech with 'you know' or 'erm' or twiddling with your hair.

Mooting tip

When reading cases, and other material, you will come across words or expressions that you are unfamiliar with. For example, in *Koufos v Czarnikow Ltd (the Heron II)* the House of Lords observed that certain facts were found by the 'umpire'; in *Hadley v Baxendale*, Alderson B stated that the maxim '*dolus circuitu non purgatur*' did not apply; and in *Liesbosch Dredger v SS Edison* it was stated that 'the wrongdoer must take his victim *talem qualem*'. Whenever you come across something that you don't understand, it is good practice to look it up. Not only will this give you a far better understanding of the law in general terms, but the judge might just ask you a question which in some way touches upon the meaning of such a term.

BE EXTREMELY CONVERSANT WITH BOTH THE FACTS OF THE CASE AND GROUNDS OF THE APPEAL

It ought to go without saying that you must be thoroughly conversant with every aspect of your case. One of the most common mistakes made by mooters is not reading the moot problem with sufficient care or not understanding the key issues. There are four main aspects to any moot that you must thoroughly understand:

- the factual matrix
- the parties
- the legal issues and the grounds of appeal
- the strengths and weaknesses of the case.

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Eric Baskind

Excerpted from *Mooting*

The factual matrix

Unless you have a thorough grasp of the facts of the moot, you will not be able to argue your ground of appeal. Sometimes the facts can be very complicated and it might be beneficial for you to write them down in a different order to the way in which they are presented in the moot problem. This is often helpful where there are several events that took place over a period of time; seeing them in chronological order might make it easier to see precisely what happened, and when. Similarly, the facts may refer to numerous parties who may, in some way, be connected. In such a case, you might find it helpful to present the parties diagrammatically to illustrate how they might be connected, and the relevance, if any, of any association.

Whichever way you decide to analyse the facts, one thing is clear: they are absolutely sacrosanct. They may be unhelpful or extremely inconvenient to your case, but there is nothing you can do about them. You should treat the facts as though they have been determined by the court below: they are the facts you have been given and you must present your case based on them.

You must also avoid speculation. It might be tempting to speculate so as to present the factual matrix in a way that lends greater support to your case, but you must refrain from doing so. It is highly likely that any attempt at speculation will open a line of questioning from the judge that will not be helpful to you. Nor should you invite the court to speculate on the facts as that is not the purpose of a moot. You must remain faithful to the facts of the case, and apply the law to them.

Mooting tip

Although you must never misrepresent any aspect of your case, you should craft your submissions in such a way that you put them over in the most attractive and persuasive way possible.

Do not expect an appellate court to overturn findings of fact from the first instance court. As already noted, not only are the facts of the case not subject to the appeal, but an appellate court will exercise the greatest restraint before overturning findings of fact made at first instance. This was explained by Lord Hoffmann in *Piglowska v Piglowski*.

> First the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies

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also to the judge's evaluation of those facts. If I may quote what I said in *Biogen Inc v Medeva plc* [1997] RPC 1:

> 'The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'

The second point follows from the first. The exigencies of daily courtroom life are such that reasons for judgment will always be capable of having been better expressed.

The parties

You must first identify the parties and understand which side you are representing. It is not unheard of for students to prepare the wrong side's case. Once you have identified which party you are representing, you will then need to decide which person takes which ground of appeal.

The legal issues and the grounds of appeal

Before considering the grounds of appeal, you must identify in which court the moot is to take place. This is usually stated in the heading. If it isn't, then you should be able to work it out from the procedural history of the case. For example, if you are told that the appeal relates to directions given by the trial judge to the jury in a criminal case, you can assume with confidence that the appeal will be heard in the Criminal Division of the Court of Appeal.

In England and Wales, it is usual for the moot court to be either the Court of Appeal (either Civil or Criminal Division) or the Supreme Court. To reflect the different legal system and court structure in Scotland, the moot court in a Scottish moot is either the Inner House of the Court of Session, the High Court of Justiciary or the UK Supreme Court.

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Excerpted from *Mooting*

Moot problems typically end by listing the grounds of appeal. If the problem does not specifically spell them out, they should be apparent from the findings and judgment of the lower court from which the appeal is brought. It is of paramount importance that you do not deviate from the grounds of the appeal or attempt to argue anything that is outside of these grounds.

The strengths and weaknesses of the case

You will get a much better understanding of the case if you are able to identify its weaknesses as well as its strengths. This will enable you to see the case from the position of your opponent.

You should also consider how you would argue the case if you were on the other side as this will help you to identify the kind of questions a judge is likely to ask. We will consider how to anticipate and deal with judicial interventions in Chapter 7.

THE USE OF SCRIPTS AND NOTES TO AID YOUR SUBMISSIONS

One of the main concerns of students when preparing for their moot is what they should have in front of them when they get to their feet to address the court. Everyone will have their own preferred way of preparing for the moot, although it is worth bearing in mind from the outset that a good advocate does not make his submissions reading word for word from pre-prepared notes.

Few people are able to stand up and speak for 15 or 20 minutes without any notes in front of them, and this is not an approach that is recommended for mooting. Even those people who are blessed with good memories will be assisted by having some notes in front of them even if those notes just contain case names, citations, page and paragraph numbers, and the like. Whichever approach you take, it should go without saying that the more prepared you are, the better you will be able to present your submissions without being over-reliant on a script. Using a script, especially for those who have little experience of mooting or public speaking, might appear attractive. This is because you will have in front of you a prepared script that you can refer to without the risk of 'drying up'. You will not have to worry about forgetting any part of your submissions or getting the order wrong. Any awkward phrases or expressions will be right in front of you in a script which you will have spent a lot of time preparing and agonising over each word.

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Eric Baskind

Excerpted from *Mooting*

AVOID READING FROM A PREPARED SCRIPT

Although writing out your speech word for word might *appear* to provide you with the greatest level of comfort, you should not do it. Having a prepared script in front of you runs the risk of shackling you to a rigid speech and will result in you reading it out. Mooting requires flexibility and a prepared script doesn't allow you to adapt your submissions as events unfold during the moot. Reading from a script is always frowned upon by judges and will adversely affect your mark, and ultimately your team's chance of winning the moot.

Even if you have a very good memory and feel confident in your ability to memorise your speech word for word, having it in front of you will present too much of a temptation to read from it. This is bound to lead to problems and often results in a dull and stilted performance.

Put yourself in the position of the judge or indeed anyone who has to listen to a speaker who hardly looks at anything other than the pages of a script they are holding. This hardly inspires confidence in their ability as an effective advocate or someone who is in control of their brief.

Mooting tip

You should not try to memorise every word of your submissions. Attempting to do so will only increase your stress and nervousness, especially if the sequence of the words you had planned to use goes wrong or, as is highly likely, the judge asks you a question which interrupts the flow of your prepared speech. It is far more important to know your submissions than your speech.

Being over-reliant on a script will also make it more likely that you will struggle if the judge asks you to address him on a point that you had intended to deal with later in your submissions. Taking a mooter away from their prepared script is a tactic often used by judges. You can, of course, inform the judge that you were intending to deal with the point he has raised later on in your submissions, and you might be fortunate enough for the judge to allow you to do so. But, and this often happens, the judge might want you to deal with the point there and then. Flicking through your prepared script to find the appropriate place is awkward and gives a very poor impression of your ability to deal appropriately with judicial interventions as and when they arise. Even if you find the correct place in your script, you will still be tied to reading from it, which, although it may be in the same area as the question you have been asked, is unlikely to hit the question square on.

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Excerpted from *Mooting*

Another problem with a prepared script is that it puts you at a disadvantage if the judge wants you to move on. There could be many reasons why a judge wants you to do this; for example, he may indicate that he is happy with your submissions on a particular point and would rather you address him on something else, or, conversely, he might indicate that he cannot accept your submission and, given the limited time available to you, suggests that you move on to your next point. Being tied to a script will significantly impair your ability to do this.

Mooting tip

The exception to the above is when you are quoting from a passage in a judgment or other text. In these circumstances, you should read the passage rather than trying to commit it to memory. Doing this has the following advantages. First, it will ensure that you recite the passage accurately. Second, it will help distinguish your oral submissions from text that you are quoting. Finally, it will also give you a moment or two to gather your thoughts, especially while the judge is finding the text referred to.

In summary, the problems with reading from a prepared script are numerous and cannot be over-emphasised. They include:

- lack of eye contact with the judge
- appearing 'wooden', unnatural, flat or monotonous
- speaking too quickly
- appearing to speak *at* the judge rather than *to* him
- difficulty in responding smoothly to judicial interventions
- losing your place when taking your eyes away from the script
- difficulty in moving to different parts of your argument if directed to do so by the judge
- difficulty in adapting your submissions to suit any situation that might arise
- a lack of flexibility in your approach
- adopting language and a style more suited to written rather than spoken work.

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Eric Baskind

Excerpted from *Mooting*

Mooting tip

Think about a subject that you are really interested in and knowledgeable about. This could be anything from football to the works of Shakespeare. Now, imagine meeting someone and telling them about it, and that other person asking you some probing questions about the subject. You would soon lose that person's interest if what you were telling them was read from a sheet of paper and you referred to that same sheet of paper when responding to their questions. Now, imagine how more engaging you would be if you had a decent conversation about the subject, perhaps referring, when necessary, to some notes, but without reading from a pre-prepared script. There is little difference between this example and doing the same during a moot. Spontaneity and flexibility are extremely powerful tools in oral argument.

Having explained the pitfalls of preparing a speech word for word, there are certain tactics you can deploy if this remains your preferred choice. First, do not read the script when addressing the judge. Instead, memorise key sections of it so you can recite them unaided. You might find it helpful to highlight the key sections in your notes. Whether you use a script or not, you will need a thorough grasp of the material so that when questions come from the Bench you are familiar enough with the material to be able to respond seamlessly and competently. You will also need to be able to find your way back to the part you had reached in your speech should your answer necessitate you moving to a different page. A good way of doing this is to keep a highlighter pen or small post-it note on your desk so you can mark the place you were at and return to it easily.

Although the prepared speech route is not one that many people would recommend, it is certainly not without its followers. For example, John

Kelsey-Fry QC, an eminent barrister with a reputation for meticulous preparation, has described his method of preparing advocacy as follows:

> I type out every single word of my speeches including the apparent ad libs and asides. You write in the spontaneity. The first rule is that you've got to go into court knowing the case better than anyone else … I avoid lawyers' words at all costs and will rewrite a speech ten times until it fits.

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Excerpted from *Mooting*

NOTES – A BETTER, MORE PROFESSIONAL APPROACH

Students who moot with notes in front of them perform consistently better than those who have prepared a full script, even if they don't intend to read from it. How you plan your notes is very much a personal choice and with experience you will soon find what works best for you.

The benefits of using notes are numerous:

- you will have a prepared outline of your submissions in front of you, leaving you to make your submissions with the flexibility needed as the arguments develop.
- your notes will be your plan and running order, containing key subheadings and whatever other outline material you might find helpful.
- you will not be tied rigidly to a prepared script. Notes give you the greatest amount of flexibility when developing your arguments, and this flexibility can be especially helpful when dealing with judicial interventions.
- you will have much less material in front of you, which will assist considerably when locating a specific point in response to a question from the Bench.

How you prepare your notes is a matter of personal choice and experience. You can include anything that will assist you when you are on your feet. This might include:

- outline running order
- key issues
- case names and citations
- brief facts of cases
- names of judges and decisions
- any preferred form of words or expressions.

You should treat your notes as an aide memoire to remind you of the running order and the key points you wish to make. When practising, you should try to reduce your notes to a minimum so that you do not have too much scripted paper in front of you.

COUNSEL'S NOTEBOOKS

Counsel's notebooks are ideal for preparing your notes. A counsel's notebook is a blue-covered book containing bound, white ruled and margined micro-perforated paper for easy removal of pages. They are the preferred choice for lawyers and are inexpensive and widely available from larger stationers.

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Excerpted from *Mooting*

CARDS AS NOTES

Some mooters prefer to write their notes on postcard-sized cards which they hold in their hands when addressing the court. The cards are placed in running order and the mooter moves through each one in turn until they have completed the pile. If this works for you, then that is good, but it is not an efficient way of dealing with your notes and not something you would expect to see advocates using. Cards are too easily dropped, thereby losing their running order, but even if you manage to keep hold of them, it can be rather clumsy and distracting continually having to turn them over.

If, however, cards are your preferred choice, it would be far better to place them on the lectern and turn them over as discretely as possible.

SKELETON ARGUMENT WITH NOTES

Many mooters prefer to use an enhanced version of their skeleton argument as their notes. This is typically done by copying the text of your skeleton to which you can add your notes. Highlighting the words from your skeleton will help distinguish this text from the remainder of your notes.

OTHER METHODS OF PREPARING NOTES

It is important for you to find a method of preparing your notes that you feel comfortable with and are able to use. There is no such thing as the 'best approach': it is just a matter of finding what works best for you.

Some mooters find flow diagrams and mind maps particularly helpful, especially during their research and preparation stage, as they can help identify the relationship that the different points or submissions have to each other. They also have the advantage of providing a visual image of the issues, which some people find helpful. If you find that flow diagrams or mind maps don't work for you, then consider making a numbered or bulleted list of points which you can follow and expand upon during your submissions.

Mooting tip

Whichever way you decide to organise your notes, you must practise your submissions. The more you are able to practise, the more fluent you will become and the less reliant you will be on notes. You should also see a marked improvement in your confidence.

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Excerpted from *Mooting*

STRUCTURING YOUR SUBMISSIONS

The skillful structuring of your submissions is key to a successful moot. Your submissions should contain the following elements which we will now consider in turn:

- introduction
- individual submissions
- concluding submissions

INTRODUCTION

Before addressing the court with your individual submissions, it will be helpful for you to explain how you will be dealing with the appeal. This provides the court with a helpful roadmap of your submissions.

The following example is based on the cross-respondent's submissions from the moot on pages 254–256:

> My Lord, I will be making three submissions which are set out in the skeleton argument and which your Lordship will find behind Tab x of the bundle. First, damages are the primary remedy for a breach of contract, and specific performance should not be awarded where an award of damages will suffice. Second, the software and tablet designs are not unique for the purposes of specific performance. Third, it is not practicable for the court to grant specific performance in relation to the software and tablet designs, as this would require constant oversight to ensure the order was enforced.

The above introduction lays down a helpful and solid base from which you can now build your submissions.

INDIVIDUAL SUBMISSIONS

Once you have provided the court with the roadmap of your overall submissions, you can then move on to your individual submissions. A useful way to structure these submissions is to use the following plan which can conveniently be referred to by the mnemonic 'PASA' (**P**roposition, **A**rgument, **S**upport, **A**pply).

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- **Proposition:** What is the point you are looking to make? What do you intend to demonstrate in your submission?
- **Argument:** How are you going to explain this?
- **Support:** Where is the legal support for your submission? You will need to identify the appropriate legal principle or rule of law that you intend to advance in support of your submission. From there, you can then identify and apply the authority or authorities that underpin such legal principle or rule of law in support of the submission.
- **Apply:** How will you apply the above to the moot problem? You will need to apply the above principles/authorities to the facts of the moot problem and to the specific submission within the ground of appeal.

Mooting tip

It is important to appreciate that there are other ways of presenting your submissions, and your own style of advocacy might suggest an amalgamation of these steps or even taking them in a different order. What is important is that your submissions follow a logical format.

We discussed PASA in brief in Chapter 4 in relation to preparing your skeleton argument. We will now consider its application in more detail. Using the PASA method, let us now consider the cross-respondent's submissions again from the moot on pages 254–256. Please refer to this moot when considering the following submissions.

Mooting tip

Before doing so, however, you must understand the *legal* basis for your appeal as well as the grounds of the appeal itself. By way of example, if your moot is based on criminal law, you should know that the sole ground for appeal against conviction by the defendant is that the conviction is 'unsafe'. Therefore, when preparing for a criminal law moot, you should keep in mind the meaning of 'unsafe' for this purpose. This will avoid any embarrassing silences if, for example, the moot judge were to ask you whether, notwithstanding your submissions, the conviction is nevertheless safe. You should also note that the titles of the parties change from how they were referred to at first instance. In a civil case, the parties start out as claimant and defendant (or, in Scotland, pursuer and defender), but on appeal the party seeking to challenge the lower court's ruling is known as the

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appellant and the party who is responding to the appeal and seeking to maintain the decision of the court below is known as the respondent. In a criminal case, the prosecution is brought in the name of the Crown (or occasionally by bodies authorised to commence proceedings) and the accused is known as the defendant. As with civil cases, the titles of the parties on appeal are appellant and respondent.

The cross-appeal states:

> Whether Pear Ltd should be entitled to specific performance of the new software and tablet designs.

Using the PASA method:

Proposition: What is the point you are looking to make? What do you intend to demonstrate in your submission?

Immediately before setting out your **P**roposition, you should provide a brief outline of where you are going with it. For example:

> My Lord, the appellant submits that an award of damages is the appropriate remedy for a breach of contract. The test for triggering the exceptional award of specific performance is not satisfied in this case for the following reasons. First, specific performance should not be awarded where an award of damages would be sufficient. Second, the software and tablet designs are not unique for the purposes of specific performance. Third, it is not practicable for the court to grant specific performance in relation to the software and tablet designs, as this would require constant oversight to ensure the order was enforced.

The above sets out your argument in a nutshell and leads nicely to the main substance of your argument.

Argument: How are you going to explain this?

The explanation is an amplification of the above. For example:

1. The remedy for a breach of contract is an award of damages. Specific performance is an exceptional remedy and will only be considered where an award of damages is not an adequate remedy. In the instant appeal, damages will be an adequate (and therefore appropriate) remedy.

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2. A court will not make an order for specific performance unless the goods are unique. There is nothing in either the software or tablet designs that is unique for the purposes of specific performance.
3. A court will be reluctant to make an order for specific performance where supervision or oversight is needed. The specific features in the contract are likely to require judicial supervision and oversight.

Support: Where is the legal support for your submission?

This is where you take the judge through the authorities that you say support your arguments. Whenever you refer to an authority, you should explain to the judge its relevance to the ground of appeal. You can introduce this part of your submission as follows:

> My Lord, the relevant test was set out in the case of ...

You can then follow on with the specific details. For example (following the three points outlined above):

1. In *Cohen v Roche*, McCardie J explained that where the goods were ordinary articles of commerce, possessing no special value or interest, and no grounds exist for any special order for delivery, the judgment should be limited to damages for breach of contract as this constitutes an adequate remedy.
2. Just as the Hepplewhite chairs in *Cohen v Roche* were held to be ordinary Hepplewhite furniture with no specific unique properties, so too are the software and tablet designs. Similarly, in *Whiteley Ltd v Hilt*, Swinfen Eady MR explained that the power vested in the court to order the delivery up of a particular chattel is discretionary and ought not to be exercised when the chattel is an ordinary article of commerce and of no special value or interest, is not alleged to be of any special value to the claimant, and where damages would fully compensate.
3. In *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd*, Lord Hoffmann explained that specific performance is not appropriate when the continued supervision of the court is necessary in order to ensure the fulfilment of the contract. His Lordship went on to explain that 'continued supervision' does not mean a judge or other officer of the court literally supervising the execution of the order, but rather takes the form of rulings by the court, on applications made by the parties, as to whether there had been a breach of the order such that there is a possibility that the court will have to give an indefinite series of such rulings in order to ensure the execution of the order. This is undesirable. Accordingly, it is not appropriate for the court to grant specific performance in relation to the software and tablet designs.

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Excerpted from *Mooting*

Finally, once you have properly introduced the authority and explained its relevance to your argument, you are then ready to take the judge to the specific passage or passages in that authority upon which you seek to rely. The following examples demonstrate how to do this:

> A: 'Would your Lordship please turn to Tab x of the bundle where, at page y, your Lordship will find the judgment of Lord Justice Jones. The relevant passage can be found half way down the page, starting with the words …'
>
> or
>
> B: 'May I refer your Lordship to the judgment of Lord Smith, which can be found behind Tab x of the bundle, at page y. The relevant passage can be found on page z of the judgment, about half way down the page, starting with the words …'

Mooting tip

You must wait until the judge has found the relevant passage before you start to read from it. If the passage to which you wish to refer is lengthy – for example, more than eight lines in length – you should ask the judge whether he would like you to read it out aloud. If the judge indicates that he would prefer to read it for himself, you should remain silent while he does so. The judge might ask you to point out any specific parts of the passage that you wish him to concentrate on.

The advantage of reading out the passage to the judge is that you can place your own emphasis on the parts that are especially important.

Apply: How will you apply the above to the moot problem?

You should tie in the principles to which you have just referred to the specific facts of the appeal or to the specific point you were addressing. Using the Cohen v Roche case from the above moot as an example, you might do this by explaining:

> My Lord, just as the Hepplewhite chairs in *Cohen v Roche* were held to be ordinary Hepplewhite furniture with no specific unique properties, so too are the software and tablet designs in the instant appeal …

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Excerpted from *Mooting*

CONCLUDING SUBMISSIONS

Depending on the amount of time you have available to you, you should draw your submissions together with a conclusion. This might just be a few concluding sentences that draw together the key points of your case.

There remain two final matters to deal with:

1. Each speaker should conclude their individual speeches by asking whether the judge needs any further assistance from them. You can do this by saying: 'Unless I can be of any further assistance to your Lordship, those are my submissions.'
2. The final member of each team to speak should also close that team's submissions by informing the judge of the remedy you are seeking. For example: 'For the reasons explained in our submissions, we invite your Lordship to allow/dismiss the appeal.'

PASA AND INDIVIDUAL AUTHORITIES

Using *Cohen v Roche* as an example, this is how to use the PASA method when dealing with the individual authorities that you wish to rely on during your submissions.

PROPOSITION

> My Lord, specific performance should not be awarded where an award of damages would be sufficient.

ARGUMENT

> The remedy for a breach of contract is an award of damages. Specific performance is an exceptional remedy and will only be considered where an award of damages is not an adequate remedy. In the instant appeal, damages will be an adequate (and therefore appropriate) remedy.

SUPPORT

> In support of this submission, I refer your Lordship to the case of Cohen and Roche reported in the first volume of the 1927 Kings Bench law reports at page 169. In this case, McCardie J explained that where the goods were ordinary articles of commerce

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> possessing no special value or interest, and no grounds exist for any special order for delivery, the judgment should be limited to damages for breach of contract as this constitutes an adequate remedy.

At this point, you should refer the court to any specific passages from the case that supports your argument.

APPLY

> My Lord, just as the Hepplewhite chairs in *Cohen v Roche* were held to be ordinary Hepplewhite furniture with no specific unique properties, so too are the software and tablet designs in the instant appeal …

SIGNPOSTING OR ROAD-MAPPING

We discussed above the benefits of providing the judge with a so-called roadmap at the outset of your submissions. Signposting (or road-mapping) is a technique that helps judges follow your submissions more easily and should start at the very beginning of your submissions by explaining how you intend to structure them. An example of a good roadmap is as follows:

> As your Lordship will see from the appellant's skeleton argument, I have [three] submissions to make in support of the first ground of the appeal. First, that … ; second … ; and third … Turning now to my first submission …

There are two further signposting techniques that you should be aware of: these are 'linking' and 'separating'.

LINKING

Linking is where you tie two or more points together. The most obvious points you will want to tie together will be a rule or principle of law and an authority from which you contend that rule or principle derives. Having stated the rule or principle of law, you can then proceed to link it to the authority. For example: 'In my submission, this rule [or principle] derives from [state the authority].' Alternatively, you might prefer: 'In support of this submission, I will refer your Lordship to [state the authority].'

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Excerpted from *Mooting*

SEPARATING

Although the point at which you end one submission and start the next one is usually clear, it is often helpful to state expressly that this is what you are doing. A typical way of doing this is to pause once you have completed one submission and say: 'My Lord, my next submission/point concerns …' or 'My Lord, I now turn to my next submission …'.

Mooting tip

An argument will be much more persuasive if you explicitly state what you intend to achieve rather than leaving it to the judge to draw his own conclusions. This is usually best dealt with under the proposition stage in PASA.

PERSUASION

One of the best ways of persuading a judge of the correctness of your submissions is to gain his confidence. In order to do this, you must be able to demonstrate that you are both credible and reliable. In simple terms, if the judge is unable to trust your judgement, he is unlikely to be filled with much confidence in your submissions to the court. As to reliability, you must know your case inside out and know your way around the bundle.

Guidance on matters that will help you put your case over in an effective and persuasive manner is provided throughout this book and it is worth reminding yourself that there is little more certain to infuriate a judge, which in turn will damage your credibility and ability to persuade the court, than misrepresenting any aspect of your case.

MAKING YOUR SUBMISSIONS PERSUASIVE

A persuasive argument is one that is logically made and easy to follow. It should explain what you are attempting to do and the legal basis for doing it. It is often said that first impressions are important, and this applies equally to mooting. It is, therefore, important that the judge forms a good impression of you from the start. Not only is the court more likely to find your submissions persuasive if you come across well, but you will also score more highly on style and presentation.

You will find a sample judge's score sheet on page 223. This will give you a good indication of what judges look for when marking a mooter's performance and

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determining the winner of the moot. It is important that your submissions are well structured and follow a logical path of progression.

Mooting tip

Although many legal concepts can be quite complex, the art of a good advocate is to explain them in as straightforward and simple a manner as possible. With simplicity comes persuasion.

In Chapter 4, we discussed, for the purpose of preparing your skeleton argument, how to make your written submissions persuasive. Very similar principles apply in making your *oral* submissions persuasive. We also explained that you should use your skeleton argument to give structure and coherence to your oral submissions. Referring back to your skeleton argument as you progress through your oral submissions is generally helpful as it assists the judge in following your overall approach and progress. Your skeleton argument and oral submissions must work seamlessly together; any discordance between the two is likely to be picked up by the judge. In order to avoid such discordance, it is important not to prepare your skeleton argument and oral submissions in isolation from each other.

Mooting tip

You will have seen from the above that there are four stages to the PASA method. It is important to appreciate that there are other ways of present ing your submissions, and your own style of advocacy might suggest an amalgamation of these steps or even taking them in a different order. What is important is that your submissions follow a logical format.

EFFECTIVE SPEAKING – 'CONNECTING' RATHER THAN 'PRESENTING'

To be an effective speaker, you will need to focus on the points and themes of your submissions rather than the specific words you may wish to use. We have already discussed this above, and it is important to re-emphasise that mooters who are tied to a prepared script will find it extremely difficult to persuade a judge that they have an adequate grasp of their brief.

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Mooting tip

Rather than focusing on 'presenting' your submissions to the judge, you should instead focus on 'connecting' with him. This will make your submissions far more natural and persuasive. At best, 'rules will carry [judges] into the neighbourhood of a problem and then [they] must get off and walk'. By connecting with the judge, you will stand a far greater chance of taking him with you on your journey.

ADAPTABILITY

You must remain ready to adapt your style to the specific circumstances as they unfold during the course of the moot. There are many aspects to this, including:

- Find out what you can about the judge and his approach to judging moots. Do you know anyone who has seen your judge judging a moot? Where possible, try to adapt your style to reflect any particular known preferences of your judge.
- When a judge indicates a preference in respect of submissions generally, you should adapt your presentation and style accordingly. For example, if the judge indicates at the start of the moot that he has read the papers and is familiar with the facts of the various cases that the parties will be referring to, then, subject to the exception noted on pages 186-187, you should not ask whether you should provide a summary of the case facts.
- If you are the respondent, you will have had the benefit of witnessing how the judge interacts with the appellant. You can then adapt your own style to what you have learned.
- Always keep the word 'adaptability' in mind. Listen for any cues from the judge and adapt accordingly.

EYE CONTACT

Your eyes can be very powerful as a means of non-verbal communication. We discussed above that one of the benefits of not reading from a pre-prepared speech is that you will be able to make appropriate eye contact with the judge(s). A mooter who hardly lifts his eyes from the papers makes it virtually impossible to engage properly with the judge. This has a significant knock-on effect in terms of reducing the quality and effectiveness of the arguments. This is no different to lecturers trying to engage their students if they do no more than read from their notes with their heads down instead of interacting with the group.

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Excerpted from *Mooting*

One of the benefits of making appropriate eye contact with the judge was noted in the previous paragraph. But what does 'appropriate' mean in this context? First and foremost, your level of eye contact, as well as your general demeanour, should be enough to demonstrate to the judge that you are not reading from a script. This will also help you to pick up any facial or other expressions that might indicate that the judge is either with you or against you on a point and enable you to moderate your argument accordingly. Appropriate eye contact will also enable you to identify when the judge is about to intervene – something that you are unlikely to notice if your head is buried in your papers. This is little different to any other kind of conversation, where the other person's body language and general demeanour will indicate when they are going to speak. The difference here is that when the judge speaks, you don't: you should never speak over the judge as you might do in ordinary conversation. Finally, it is worth reminding yourself that staring is rude, and this is no different if your stare is fixed on a moot judge or anyone else.

Overall, it is important for you to engage the judge and to carry him with you as your submissions progress, something that you will find difficult to do unless you maintain appropriate eye contact. Maintaining appropriate eye contact will also make it very difficult for the judge not to concentrate on what you are saying.

Maintaining appropriate eye contact will also enable you to see when the judge is making notes. Two points arise from this. First, you should ordinarily wait for the judge to finish writing before starting your next point. Second, knowing that the judge has made a note of something you have said indicates that he found the point worthy of note. Together with his body language and especially any questions he asks, this might help you to work out whether he is with you or not on the particular point. Experienced mooters will appreciate how important it is to gain some insight into a judge's thinking and to moderate their approach accordingly.

Finally, where there is more than one judge on the Bench you will need to maintain appropriate eye contact with all of them, remembering that each one of them will have a say when it comes to deciding the winner.

Mooting tip

Another advantage of maintaining appropriate eye contact with the judge is that you will be able to see what he is doing and gauge whether he is following your submissions. The judge's own body language will often give away whether he is following you or whether he appears to be lost, in which case you might need to

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repeat or rephrase your point. Any reactions from the Bench, such as affirmatory comments, nods or other gestures, will enable you to maintain or amend your submissions accordingly.

YOUR VOICE

It is important to remember that you will need to be heard by a number of people which will require you to project your voice appropriately. The volume of your voice will depend to a large extent on the size of the moot room. Some moots take place in real courtrooms which can be quite considerable in size. Whatever you do, you must appreciate the difference between projecting your voice and shouting; the latter is something you must avoid doing!

No matter where the moot is held, moot rooms vary in size and it is likely that the Bench will be some distance away from you. It should go without saying that your voice needs to be heard clearly by the judge(s). Again, you should practise this with your colleagues, in rooms of varying sizes, to make sure that you are able to adapt to different settings. Getting to the venue in plenty of time will enable you to get a good feel for the room and its layout, and will assist you in judging how loudly you will need to speak in order to be heard.

It is important that the judge finds your submissions attractive and persuasive, which is virtually impossible if he has difficulty hearing them. It is also important for your opponent to be able to hear you; otherwise, they will have difficulty in responding to your submissions.

INTONATION

Intonation refers to the way a person alters their voice as they speak, typically by the tone of their voice rising and falling and in varying the volume of their speech. Intonation is not used to distinguish the meaning of words per se but it can serve to indicate differing attitudes and emotions and to distinguish different aspects of speech, such as statements and questions. It is also useful for focusing the listener's attention on important elements of the spoken message as well as helping to regulate conversational interaction.

Most importantly, it puts feeling into your words and makes what you say more interesting, expressive and compelling. Without it, your voice can be monotonic,

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making it very difficult to engender any kind of enthusiasm. Reading from a pre-prepared script will often result in this kind of boring presentation that lacks any kind of feeling or genuine enthusiasm.

It can be a good exercise to listen to different people being interviewed on television to hear the difference between a good speaker and a poor one. See what you can pick up from this to improve your own speaking style.

> *Mooting tip*
>
> Although variation in your tone can be very engaging, you should avoid being over-theatrical as this can be distracting as well as annoying.

ACCENTS

Do not worry if you have a regional accent. Whether or not you have one, make sure that you speak clearly and in a manner that is appropriate and shows respect to the court. Do not be put off if your opponent has so-called posh accents. Speaking with a posh accent and being able to moot well are not the same.

DIALECTS AND SLANG

The UK has a rich landscape of regional dialects. It is, however, important to avoid them unless they form part of the moot and need to be repeated during your submissions. Consider the following sentence: 'Happen the appellant was suffering from an abnormality of the mind.' In this example, the word 'happen' is used to mean 'perhaps' or 'maybe' and might be heard in certain parts of Yorkshire or Lancashire. Its use is inappropriate in a courtroom. The same applies to the use of slang expressions.

POLITENESS

In any courtroom setting, the aim of the advocate is to win the case for their client. The same applies to mooting. Although our process is adversarial in nature, you must remain polite and respectful at all times both to the judge and to your opponent. You might feel irritated by something the judge or your opponent says, but you must remain calm and composed. You should never interrupt your opponent during their submissions, no matter what they do. Instead, take a note of anything you wish to bring to the court's attention and do so when it is your turn to speak. If the judge wishes you to speak out of turn, he will invite you to do so.

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Excerpted from *Mooting*

NON-VERBAL COMMUNICATION, BODY LANGUAGE, POSTURE AND GESTURES

Your body language is an important part of your overall communication process. Entire books have been written about body language, which you might wish to read, but, for present purposes, the key to an effective advocate's body language is congruence: an advocate must match their body language to the rest of their communication so that there is no imbalance between the two. Consider the following points:

- If you display a lack of confidence in your body language, you will find it very hard to be persuasive.
- If you slouch in your chair or stand unattractively, you will give the impression of sloppiness and inattention.
- Take care when employing gestures. You should use gestures to emphasise key points of your submissions. Any overuse of gestures will have the effect of making those that are really important less effective. Gestures should be purposeful without being over-theatrical.

> *Mooting tip*
>
> Always remember that you are in full view of the judge whenever you are in the moot room, whether you are speaking or not. Do not make a poor impression.

It is important that you make a good impression and hold and present yourself professionally.

WHEN SEATED

- Do not fidget or play with anything on the desk.
- Do not slouch in your seat or do anything annoying such as kicking your feet.
- Look as though your interest in the proceedings and are following the case as it advances.
- Ensure that your phone is turned off. Do not use it to text, no matter how discreet you think you are being.
- If you need a drink, water is the only acceptable refreshment. When drinking, sip from a glass rather than gulp from a bottle.

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Excerpted from *Mooting*

WHEN STANDING AND MAKING YOUR SUBMISSIONS

- Do not fidget.
- Do not slouch over the lectern.
- Do not stand so rigidly that you look a solider on parade.
- Stand in front of the lectern and do not move around the moot room as you often see advocates doing in the movies.
- Do not fiddle with paperwork, pens or hair, or do anything that might be considered annoying.
- Although some hand and arm gestures can often make submissions appear more effective and expressive, do not overuse them or act in an over-theatrical manner.
- As noted above, if you need a drink, water is the only acceptable refreshment. When drinking, sip from a glass rather than gulp from a bottle.

Remember that the judge can see you. You want to make a good impression at all times.

THE PACE OF SPEAKING

Many mooters, especially when mooting for the first time, speak far too quickly. Not only does this make it more difficult to present your case clearly and effectively, but it also makes it more difficult for the judge to keep up with your submissions. As noted above in relation to your voice, it is important for the judge to find your submissions attractive and persuasive, and this is virtually impossible if he has difficulty following them. In short, speaking too quickly is not appropriate in a courtroom setting and gives a poor impression of your performance as a mooter.

Good speakers speak at a pace that enables them to pause for breath whenever needed and to make effective use of these pauses. Pausing can serve a number of useful purposes, including:

- enabling you to catch your breath
- to give emphasis to a particular point
- to provide a natural pause between the end of one point and the start of the next
- to allow the judge to find the passages that you are referring to
- to allow the judges to take notes.

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Excerpted from *Mooting*

The best way to judge whether your pace is appropriate is to ask someone to listen to your submissions – preferably one of your tutors or someone who is experienced in mooting or public speaking.

> *Mooting tip*
>
> If you think that speaking quickly will discourage the judge from intervening and asking you questions, think again. Mooting is all about dealing with judicial interventions, and no moot judge will be deterred from asking questions because of the speed of your submissions.

SPEAKING FLUENTLY

You must avoid using 'fillers' such as 'er' and 'um' during your submissions. The odd one now and then might go unnoticed, but not when they are littered throughout your submissions. Speaking more slowly, and taking more pauses when you speak, can help you avoid these annoying fillers and will make your submissions more professional.

You should also avoid the annoyingly growing trend of starting your sentences with the word 'so', and never respond with 'no worries' or 'cool'. Similarly, you should never litter your speech with words like 'I mean', 'like' and 'you know'.

APPROPRIATE AND INAPPROPRIATE LANGUAGE

You should avoid the unnecessary use of slang or jargon, unless, of course, these feature directly in the text you are dealing with.

You should also avoid the use of obscene language, again, unless it features in the text you are dealing with and it becomes necessary to repeat it verbatim.

YOUR DEMEANOUR

You must remember that you are representing your client in a court of law and must act appropriately at all times, whether you are speaking or not. You should avoid doing anything that is distracting and disrespectful to the court. The following points should be noted:

- You should stand when the judge enters the court and when he (or the court clerk) indicates that he is ready to leave the court.

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Excerpted from *Mooting*

- You should bow your head when the judge takes his place on the Bench and when he stands to leave the court.
- You should stand when addressing the court.
- You should keep your hands out of your pockets when addressing the court.
- You should stand still when addressing the court and should not fiddle.
- You should avoid fiddling even when seated. Avoid swiveling or leaning back on your chair or placing your hands behind your head.
- You should not do anything while seated that shows disrespect to the court, including texting, fiddling with rings or pens, playing with your hair, picking your nose or ears, biting or cleaning your fingernails or cracking your knuckles. Remember, the judge can see you from the bench.

By all means, take notes while others are speaking and, if it is absolutely necessary to communicate with your partner, do so discreetly, preferably by way of a short note. Never communicate, or attempt to communicate, with anyone else during the moot.

CONTROLLING YOUR NERVES

According to Mark Twain, 'There are two types of speakers: those that are nervous and those that are liars'. So, you are not alone in feeling apprehensive about having to moot.

Mooting, as with any kind of public speaking, can be a nerve-racking experience, especially for those doing it for the first time. However, despite actor and comedian George Albert Jessel's assertion that 'the human brain starts working the moment you're born and never stops until you stand up to speak in public', there are many things you can do to make your presentation less unnerving. The majority of mooters will confirm that their nerves disappear as soon as they get to their feet and start making their submissions. Most even enjoy it!

There are several things that you can do to help you to relax and remain calm during your moot. One of the best ways to overcome your nerves is to try to identify what it is that is causing the stress and then try to deal with it.

The most common fear is getting it wrong. It is perfectly understandable that you should not want to appear foolish when presenting your moot, but this concern is easily addressed. You should remember that you are making your submissions in response to the case that you have been presented with. The law may, or may not, be on your side, but at least it will be arguable. Provided that you don't ask the court to

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do something that the law does not permit it to do, or simply misunderstand the moot problem or the law, there is little that you can do that is 'wrong'.

Examples of these basic errors would include:

- asking the court of appeal to overturn a decision of the house of lords or supreme court
- asking the court to consider points that are clearly outwith your grounds of appeal
- addressing the court on a point of law that is no longer current or otherwise misinterpreting the law
- failing to deal with a case or statutory provision that is relevant to your argument
- misunderstanding the moot problem or grounds of appeal
- failing to deal with the grounds of appeal that you are required to argue
- running your arguments in such a way that they cause damage to your team mate's arguments

With most moots and mooting competitions, you will be given sufficient time to research and prepare your arguments, and therefore you should not fall down on any of these points. Thorough preparation is the key to success.

Avoid being nervous about your nervousness! Unless you openly display your nervousness, no one need know. Nervousness is not something that people can see unless you advertise it.

Mooting tip

Don't kick yourself if you make a mistake. Many people magnify their imperfections yet at the same time diminish all that is good. Most of us make mistakes, and when we do, we recover and proceed gracefully. Your 'mistake' may be nothing more than deviating from what you had intended to say. It may not be wrong: just different and unlikely to be noticed by anyone else unless you make a 'mistake' by emphasising it. Move on with poise. Allow yourself not to be 'perfect'.

BREATHING

Controlling your breathing will help control your nerves. Even if you are not feeling particularly nervous, practising the following breathing exercises before your moot will help relax your body and mind.

LAWYERS' SKILLS:

PREPARATION, PRESENTATION AND PERSONAL SKILLS

Eric Baskind

Excerpted from *Mooting*

- Stand up straight with your feet shoulder width apart. Think about the ground beneath your feet. Feel how secure the ground feels.
- Close your eyes and relax. Now, imagine that you are precariously suspended from the ceiling by a fine strand of thread.
- Pay attention to your breathing. Concentrate on inhaling and exhaling. Inhale through your nose and exhale through your mouth.
- Remind yourself that there is no rush. This is your time to relax and take control.
- Now, make an effort to slow down your breathing. Take 5-6 seconds to inhale through your nose and then 5-6 seconds to exhale through your mouth.
- Take another deep breath and you should be better prepared to moot in a relaxed and confident manner.

Mooting tip

You will benefit more from these exercises if you practise them regularly. Try practising them daily or at any time you feel under stress.

LISTENING SKILLS

The first thing you must learn to do is listen. Do not answer any questions until the judge has finished asking them. Not only might this appear to be rude, but it is far too easy to anticipate a question that the judge hasn't in fact asked.

PROJECTING CONFIDENCE

Good lawyers exude confidence. They always appear to be in control of their brief and in command of the courtroom. A good advocate is often likened to a swan: perfectly calm and unruffled on the surface yet paddling furiously under the surface. Thorough preparation is an excellent way to develop confidence.

Mooting tip

Stand tall, upright, shoulders back, chest out. Although this is not a military exercise, this will help you to exude confidence. And smile. Giving the impression of calmness and confidence goes a long way to being calm and confident.

LAWYERS' SKILLS:

PREPARATION, PRESENTATION AND PERSONAL SKILLS

Eric Baskind

Excerpted from *Mooting*

TONE AND PACE OF SPEECH

You should deliver your submissions in a balanced and well-modulated manner. Your delivery should be neither quiet, dull and monotone nor loud and over excited. Do not rush your submissions, and make sure that you emphasise the parts that are especially important. Make effective use of pauses which can help you to think about your next point before you start it.

Mooting tip

Do not think that you have to speak continuously. Pausing between one point and the next can be a very effective way of breaking up your submissions. It can also help you to gather your thoughts and compose yourself rather than waffle and say the first thing that comes into your head. Making effective use of pausing can also be invaluable when dealing with questions from the Bench as it can give you valuable thinking time. If you need a bit of time to consider a point, then rather than stand there in silence, you might want to say something like 'My Lord, may I please have a moment?' This is what happens in professional practice and, provided these pauses are not too frequent or lengthy, no judge should take offence at it.

WHEN SHOULD YOU START TO PRACTISE YOUR SUBMISSIONS?

Once you are reasonably happy with your submissions, you should start to practise them. Practising will help identify any weaknesses as well as make you more familiar with your submissions.

HOW TO ANTICIPATE QUESTIONS FROM THE BENCH

During your research, you will have given thought to how well your submissions will stand up to judicial scrutiny. This will have involved testing your submissions against hypothetical objections. These are likely to be some of the questions that will also be on a judge's mind and could well result in questions during your moot.

Another way of anticipating judicial questions is to put yourself in the position of a judge and consider what questions you would ask the mooter.

By anticipating possible questions, you will be able to give thought to how you would answer them. Thinking about possible questions is an excellent way of preparing for your moot.

LAWYERS' SKILLS:

PREPARATION, PRESENTATION AND PERSONAL SKILLS

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Excerpted from *Mooting*

You should also practise your moot in front of as many different people acting as judges as time allows. This will give you the experience of working with different judging styles and being able to practise responding to different questions, often put in different ways.

In Chapter 7, we will analyse a range of different questions that a judge might ask and consider how best to answer them in different kinds of situations.

UNDERSTANDING THE RULES OF THE MOOT

Just as a practitioner needs to understand the rules of the court, a mooter needs to understand the rules of the moot. Most moots are governed by a number of rules in common and a sample set of rules is provided in Chapter 9.

Among the most important rules of any moot, and ones that every participating mooter needs to know, are:

- the length each speaker has to deliver their submissions
- whether or not the clock stops during the judicial interventions
- the timescales and rules relating to the various stages leading up to the moot, including the exchange of skeleton arguments and the production of bundles
- the order of speakers
- whether or not there is a right of reply and any rules relating to this.

PRACTISE, PRACTISE, PRACTISE

No matter how much experience you have in public speaking, you must practise your submissions. Practising will improve your performance. You should take every opportunity to practise your submissions in front of as many people as possible. Include fellow students, tutors, friends and even family. Ask for critical feedback and reflect on it. You should also learn to be self-critical. Listen carefully to your own submissions and think about ways to improve them. Put yourself in the position of the judge or your opponent and think about how they might attack your submissions, either in content or clarity. Success is the product of a considerable number of hours of very hard work.

Filming yourself practising your submissions can be very helpful as it enables you, and others, to observe your performance. You may well be surprised about how you

LAWYERS' SKILLS:
PREPARATION, PRESENTATION AND PERSONAL SKILLS

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come across to others. We are often totally unaware of our own annoying habits until we can actually see them for ourselves. The advantages of reviewing a recording of yourself cannot be overstated as it enables you to observe your performance 'warts and all'. The kind of annoying habits to watch out for are those which we have considered above and include:

- speaking too quietly or too quickly
- speaking in a monotone voice and without passion of feeling
- excessive hand or arm gestures
- using fillers such as 'er' and 'um' during your submissions
- starting your sentences with 'so' or using words such as 'like', 'I mean' and 'you know'
- using regional dialect or slang (unless required for the purpose of your submission)
- acting in any way that might appear rude or impolite
- fidgeting or fiddling with pens, paper, hair etc.
- slouching in your seat or over the lectern
- doing anything else annoying such as kicking your feet
- drinking from a bottle

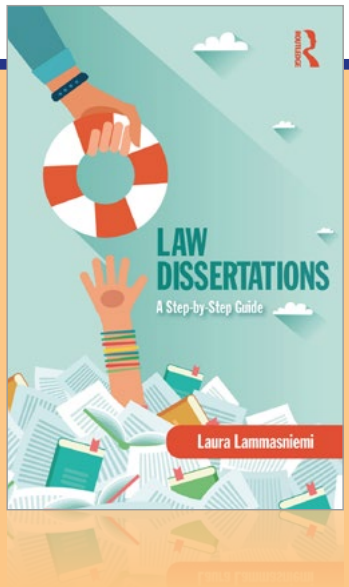
THE FINAL CHECK

You must remain alert to any recent developments or any late changes in the law that might affect your moot. As a final check, it is a good idea to run your cases through one or more of the electronic databases. If you have read widely enough around the subject area of the moot, you should be aware of any cases that are pending a decision of an appellate court. Newly introduced statutes are not such a problem as they do not usually have retrospective effect.

CHAPTER

3

FINDING AND PERFECTING YOUR TOPIC



FINDING AND PERFECTING YOUR TOPIC

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Current stage of writing

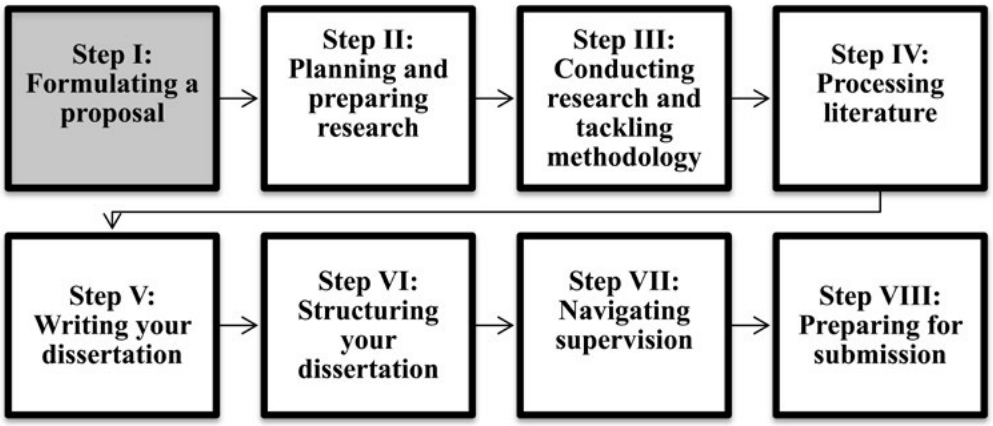

Figure 3.1

In this chapter, you will find:

The first step in the journey of dissertation writing is finding a topic you are interested in. It is this step many students find the most challenging and can struggle with for a long time. Yet it is important to decide on a topic as early as possible in order to maximise research and writing time. There are many considerations to bear in mind when choosing a topic but, most importantly, it must be something that captures your interest. You will spend six months to a year researching and writing on this topic, so it is essential that it is an area you genuinely want to know more about.

Dissertation topics often come from past life experiences, or from topics and debates that you found challenging during your studies. Some students know from the first year of their undergraduate studies what they want to research for the dissertation, whereas others struggle to find suitable topics until the very last moment. This chapter aims to demystify the process of finding a topic for research, and it will provide tools and questions to help find an area that suits your interests and strength.

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Laura Lammasniemi

Excerpted from *Law Dissertations*

Figure 3.2

3.1 KEY QUESTIONS TO CONSIDER WHEN CHOOSING A DISSERTATION TOPIC

Looking for topics can be exciting but also overwhelming. Law is a socially and politically important aspect of the world and it is constantly changing. Whatever your views or intellectual style, the dissertation offers the potential for conducting significant legal research on an engaging topic. There is no right way to come up with a topic, nor are there ready-made dissertation topic lists within this book or online. While some websites offer sample topics, it is likely these have been too over-researched to be original. Even if you already have a topic in mind, it is best to identify some alternatives, in case the first one proves unworkable. There are two main questions to bear in mind when choosing a topic:

It is paramount that the research topic you choose can hold your interest for the duration of the research. Therefore, the topic that you choose should play to your strengths and to your interests.

Figure 3.3

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The second important consideration is whether you will be able to complete the research project and achieve the objectives you have set out for yourself. It is important to consider here what your capabilities are and how much time you can dedicate to the project, as well as taking into account the research facilities at your institution. If your university library has no content on your particular area of study, you must consider whether you are able to find relevant, high-quality materials to rely on in the course of your research. Also consider the word length you are given; the scope of a 12,000-word dissertation can be significantly wider than, for example, an 8,000-word one.

Even at this stage, it is useful to bear in mind that you are going to be turning your topic into an actual research question, so, as you think about topics, consider also which questions might be posed about them. If there are no probing questions that come to mind, then that is a very good reason for rejecting a possible topic. For instance, the supremacy of European Union law over national law has been settled long ago and while there might be opinions on whether it is desirable, there is no legal ambiguity over it.

TASK

To get started, ask yourself:

Q1. What area of law am I interested in/passionate about?

Q2. What are my strengths (e.g. problem solving, reading academic opinions, soft skills such as interviewing)?

Q3. What am I planning for the future (e.g. postgraduate studies or a career in a specific field of law)?

Q4. How much do I know about the topic? How much background reading will I have to do?

3.2 INSPIRATION FOR FINDING A TOPIC FOR RESEARCH

Future plans

Everyone finds their research topic in their own manner, but most topics are drawn from past life experiences, earlier studies, current affairs, or from developments in law, i.e. 'something new'. However, some students prefer forward-thinking topics. Forward-thinking topics are based on future career or study plans. If you are

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choosing a topic that you believe will help you in the future but have yet to study, discuss first with your tutor whether it is possible to catch up with background reading on the topic.

FUTURE PLANS – INTERNATIONAL CRIMINAL LAW

International criminal law is an important and developing area of international law but rarely dealt with at undergraduate level. At Masters level, most international law LLMs would include a module on international criminal law and some universities offer specialised LLM degrees in the field. If you are planning to do an international law LLM or are seeking work experience in the NGO sector/international law firms, you might want to choose a topic within international criminal law such as development of a particular doctrine or the judicial functions of regional human rights courts in the field, even if this is something you have not yet studied in detail. This would give you material to discuss in application forms/interviews.

This type of research can take many forms and you can shape the project to your strengths; it would, however, require engagement with primary sources of international law such as treaties, and you should be familiar with key international law doctrines before taking on such a project.

Past life experiences and studies

Many students choose a topic for their dissertation that is more personal than the essays they have written in the earlier years of their studies. Overseas students are often interested in conducting a comparative study between the UK and their home country, or mature students want to research issues that might have impacted them in the past, such as family law.

PAST LIFE EXPERIENCES –DOMESTIC VIOLENCE

The law on domestic violence is not condensed under a single statute, but rather governed by a patchwork of civil and criminal statutes. There have been numerous policy and legal interventions in the field in recent years. These interventions, such as criminalisation of coercive and controlling behaviour under the Serious Crime Act 2015, have been introduced to better respond to the psychological aspects and impact of domestic violence. Despite the numerous laws and policy interventions in the field, domestic violence is rife. Many students are interested in domestic violence as a topic for dissertation research, some because of the opportunity

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for intellectual engagement and others as a result of past life experiences. The different aspects of law or policing on domestic violence are important to investigate. Dissertations in the field can focus on a specific aspect of reform such as the introduction of new criminal legislation on coercion and control, or they can take a broader approach, examining for example the effectiveness of policing domestic violence in Black, Asian, and Minority Ethnic (BAME) communities.

Dissertations on a subject like domestic violence normally focus less on the wording of the law and more on the social impact of it, and dissertations of this kind would be particularly suited for students who like to read journal articles and books on the social effects of law.

Often students who opt for a research topic that stems from past experience – for example, perceived injustice experienced at the hands of the police, or even a property dispute – know this is what they want to do from an early stage. If your reasons for choosing a topic are purely personal, please remember that it can be challenging to examine an area that brings to the surface difficult periods from the past, and to receive constructive feedback on writing on such issues. Therefore, you should consider the emotional impact of such a project before settling on it.

Earlier studies

During the past few years, you have studied various core modules such as criminal law and tort law, and possibly a number of optional modules. Hopefully you will have very much enjoyed some of these modules, while others you might have found challenging to engage with. One of the key considerations behind choosing a topic is finding something that you are interested in and that plays to your strengths. If you found yourself falling asleep in constitutional law classes, investigating parliamentary sovereignty in the present-day context is unlikely to maintain your dissertation for the year to come. However, if you were interested in the theory behind the constitutional doctrines, this is your time to explore those concepts further.

EARLIER STUDIES – JUDICIAL ACTIVISM OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union (CJEU) is the highest court in the European Union and ensures that EU law is applied the same way in all member states. The case law from the CJEU has been integral in developing the key legal doctrines of the EU such as primacy of EU law over domestic legislation.

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The CJEU has been influential also in the European integration process, but there are those who argue that judicial activism has gone too far. Many stu dents are interested in EU law, and in particular its relationship with domestic law. Legally, that relationship and the primacy of EU law have been settled long ago by the CJEU. A more interesting – and challenging – dissertation could investigate similar principles from a technical legal perspective, and question how positive judicial activism of the CJEU has been.

This type of research would be particularly suitable for students who have a good grounding in EU law, and interest in reading and analysing case law.

To start doing research on a 'past studies' topic, you should revisit past materials. It might be a while since you have studied these topics. Revisiting old notes, examining materials in your university's virtual learning environment, or browsing old textbooks will bring back the areas you enjoyed – and questions left unanswered.

Current affairs and something new

One of the things that makes law such a fascinating area of study is its ever-evolving nature. Law – all areas of it – is continuously amended, redirected, and rewritten by parliaments, courts, and international treaty bodies. Some statutes, such as the Offences Against the Person Act 1861, might have been written well over a century ago but the way we understand the key provisions in this statute today is completely different from the year 1861, or even the year 2000. The concept of 'bodily harm' discussed in the statute has developed greatly in the last few decades to include, for example, psychological harm and sexually transmitted diseases. The courts' changing interpretations of key legal doctrines are classic and usually worthwhile dissertation topics.

CURRENT DEBATES – LAW ON SAME-SEX MARRIAGES IN COUNTRY A

In recent years, LGBT+ rights have not only been in the news around the world but also the focus of various legal initiatives. Many countries have legalised same-sex marriages in the 2010s onwards and taken strides forward in equality. Simultaneously, some countries around the world have moved in the opposite direction and introduced legal initiatives to explicitly prohibit same-sex marriages, or even same-sex sexual relations. From a legal perspective, these raise a number of questions that can be investigated in undergraduate dissertations. Dissertations can focus on questions such as whether the laws prohibiting same-

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sex marriages/relationships are compatible with international and regional human rights law obligations in the said countries; or whether it is discriminatory not to allow civil partnerships for different-sex couples.

This type of research can take many forms and you can shape the project to your strengths, be they reading technical aspects of law or carrying out academic research on the impact of such laws.

To start doing research on 'something new', you can set aside your textbooks for now and head to the library or the internet to read up on recent legal developments, or even current affairs. High-quality newspapers such as *The Telegraph* or *The Guardian* have legal sections with commentaries on these legal developments. For more detailed and legal analysis of the same issues, please refer to legal periodicals such as *Solicitors Journal* or *New Law Journal*. These all include a short and focused description and discussion on recent developments in specific fields of law.

3.3 BRAINSTORMING

TASK 1

Brainstorming and creating mind maps

After you have read and considered the previously mentioned ways to find inspiration for a topic, it is time to write down some key ideas.

If you have a topic in mind, start by writing key words and then turn these key words into a mind map. Try to develop your mind map at least three levels down from your central legal concept.

EXAMPLE – HUMAN RIGHTS AND RELIGIOUS RIGHTS

Stage 1: Identify key words:

Human rights – religious rights – religious wear – burqa ban

Stage 2: Start building a mind map: level by level.

Those key words could look like **Figure 3.4** on the next page when turned into a mind map. Mind maps are ever changing and expanding; once you have identified the key points, start considering how these points are interrelated, and add information to each part. Through this process of adding information and removing irrelevant

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information, your topic will come into existence. If you have a few possible ideas for a dissertation topic, do a mind map for each of these topics and then follow each mind map through as far as you can. Only by stretching out the sub-questions and individual elements within your wider topic will you be able to figure out which one of your ideas is the strongest.

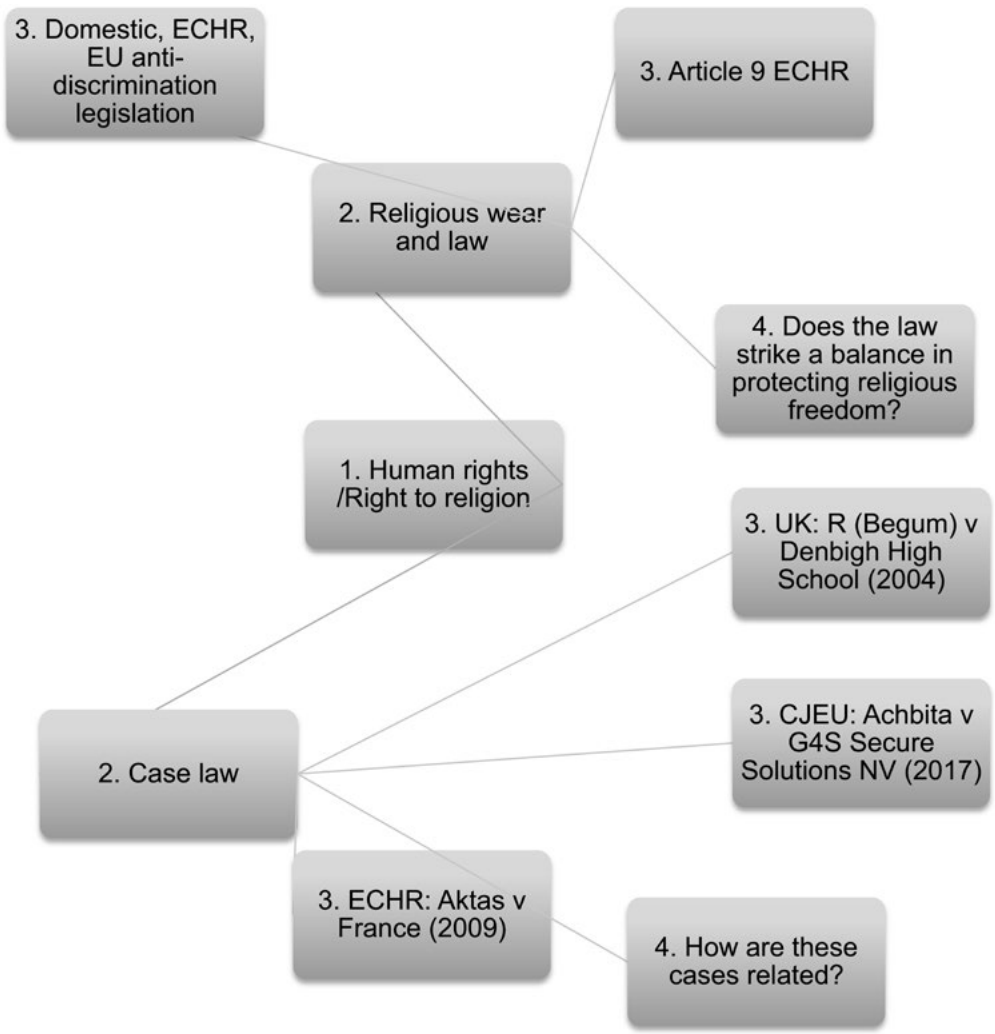

Figure 3.4

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TASK 2

Write a short description

Once you have jotted down your key ideas into a mind map and developed it at least three levels down from the central idea, try writing a short description of the research. The more detailed your mind map is, the easier it will be to write about it.

The description does not need to be longer than a paragraph, but it will help you in the next stage, which is turning your topic into a research question.

SUMMARY

If you can answer all of these questions, you are ready to move on:

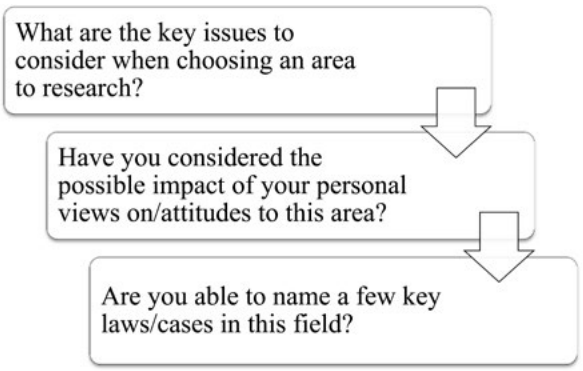
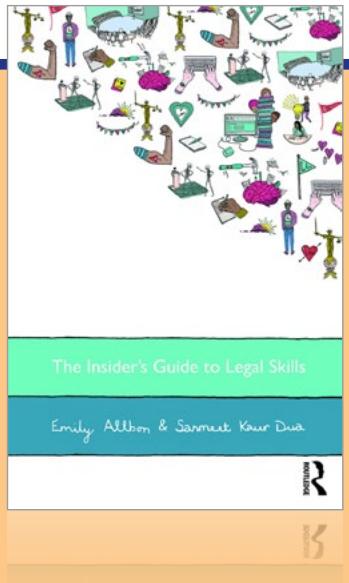


Figure 3.5

CHAPTER

4

EMPLOYABILITY: LEARN TO EARN



This chapter is excerpted from

The Insider's Guide to Legal Skills

By Emily Allbon & Sanmeet Kaur Dua

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EMPLOYABILITY: LEARN TO EARN

Emily Allbon & Sanmeet Kaur Dua

Excerpted from *The Insider's Guide to Legal Skills*

4.1 INTRODUCTION

Bring on the competition! When you started university you might have been told, or indeed realised yourself, that you are not necessarily competing against your fellow classmates. That said, when it comes to the job market, you are certainly competing against each other and you'll need to demonstrate why you should be selected for a particular position as opposed to your competitor. If you have studied the same course and you have almost the same results, how on earth is an employer going to decide who to select? The employer must look beyond your results to what other skills and/or experiences you have. In other words, employers have to decide if you have the 'X' factor for them to consider taking you on.

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You may have the results, you may even have the degree but you may still struggle to make yourself more employable than the next candidate. Every time you have a dreaded assessment, all you'll be able to think about are the words of your lecturers echoing in your ears telling you how important it is for you to do well so that you can be in the running for the best jobs. As frustrating as it is, you will quickly realise that doing well in your assessments is just not enough anymore.

You need to set yourself apart from the crowd so that potential employers take notice of you and ensure you position yourself in the best place that you can in the extremely competitive employment market.

4.2 JUGGLE IT!

So getting good grades is just a part of what you need to do in university life. How are you going to set yourself apart from the crowd and gain these extra skills? You basically need to perform a juggling act and keep a lot of balls in the air. You'll need to focus on your academic development while simultaneously concentrating on your personal and professional development. Since so many students achieve good grades, employers look at what else you can bring to the table and whether this fits in with their work environment. These extras make you more 'employable'. These other things are less prescribed and employers do not really tell you what exactly they are looking for, they know it when they see it. Fear not though – this is a good thing. You then have control over what skills you are going to develop so you can be more original than the next candidate.

4.3 OWN IT!

Wow . . . studying is hard enough! Is this extra stuff just not too much extra pressure? It is very tough to secure that all-elusive training contract, pupillage, graduate scheme or whatever other role you are thinking about, so if you want it you have to take ownership of your employability.

Most universities have a department dedicated to helping students develop their career paths and their employability level. You will find that there is an abundant array of tools and apps out there that will help you manage your personal development which includes monitoring your employability skills. Do not forget however, that your degree may already incorporate personal development planning within your studies directly. A law degree in itself equips you with many skills that

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employers look for but you need to be adept at translating them into skills that employers value and using a personal development tool can help you do just that.

So you need to develop your employability skills in order for you to be able to secure employment and to prepare you for the big bad world out there. The employment process usually requires you to fill out an application form and attend an interview. Sometimes you may even be required to attend two interviews and/or an assessment day. It is therefore imperative that you have everything in your armoury to position you in the best light at every stage. Your employability skills will be pivotal in achieving this.

There is not one particular characteristic that employers are looking for and that is the key thing to remember. Employers will remember you for being different.

THINKING POINT

Put yourself in the position of an employer who is looking to hire someone new. You and your fellow classmate apply for the position. You and your classmate have both studied the same course and achieved almost the same results. You are both confident and interview really well. How is the employer going to decide who to select? The candidate with something 'extra' will no doubt stand ahead of the candidate without. Your classmate has travelled in their summer holidays, undertaken charity work and started to learn Mandarin. You have undertaken some charity work for a portion of your summer holidays. Who would you hire and why?

4.4 LOST IN TRANSLATION?

Have you ever felt that application forms and employers at interviews speak gobbledygook? What is that you're expected to say? Do they speak in a language that you cannot understand? If so, then you need to learn how to speak the employment lingo, developing skills that speak to potential employers in a language that they understand so that they can recognise the value that you can bring to their company.

Remember, employers pay for skills and talent that employees bring to the company and if they cannot see these in you they are unlikely to consider you for a position. These are skills that you take with you from your education environment to your work environment. These skills are sometimes referred to as *transferable* skills.

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Table 4.1 • Examples of transferable skills

Transferable skill	**Translation**
Good time management	Manages responsibilities well, balances conflicting demands on time and prioritises work
Meet deadlines	Punctual, takes work seriously and has the ability to manage workload and time
Problem solving	Unfazed by challenges, logical thinker and resourceful
Organise projects	Has leadership skills, anticipates problems, forward thinking, good time-management skills, good administration skills and can manage/work within a team
Organisation skills	Manages and co-ordinates tasks and others as appropriate, can prioritise and delegate work using own judgment
Work independently	Plans time and workload well, thinks through work objectives, meets targets without supervision, performs delegated tasks and is responsible
Delegate tasks	Prioritises responsibilities, manages time well and recognises strengths in team members
Team player	Appreciates the efficiency of working in a team to achieve common goals, recognises strengths in others, good communication skills, listens well, contributes to achieving targets and is reliable
Effective communicator	Conveys ideas clearly and accurately in a variety of situations both verbally and in writing to own team and external colleagues
Decision making	Makes appropriate decisions when presented with alternatives which suit the situation, thinks logically and can make decisions in a timely fashion
Good researcher	Finds relevant information quickly, asks the right research questions, deciphers and interprets information discerning between reliable and unreliable sources, conveys findings to others
Public speaking	Articulate, confident in speaking to an audience, able to vocalise different lines of argument
Analytical	Processes information to make decisions based on that information, manages a large amount of content to identify important/relevant information within it
Logical reasoning	Thinks clearly through situations to assess the strengths and weaknesses of the information to arrive at a reasoned conclusion, can demonstrate the reasoning behind the conclusion or decision and has confidence to stand by decisions made
Persuasive	Influences others by both the strength and logic of their argument, as well as diplomacy
Plan ahead	Good time-management skills, target based and has long-term vision

While most of you will be able to list an array of such transferrable skills, are you able to convince a potential employer that you actually possess a good grasp of these skills? You must ensure that these abilities do not become lost in translation – you know you have the right skills but do employers recognise that you have them? You

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must be clear on (a) what employers generally understand and look for in a particular skill; and (b) demonstrate with clear examples the use or display of such a skill. Saying that you possess these skills will never be enough. Employers will look for evidence of such skills on paper, i.e. your CV and application form and in person, i.e. in an interview and/or assessment day. Do not just throw these words around willy-nilly in application forms or at interviews thinking that they will be accepted; employers translate these words in a particular way as set out in **Table 4.1** and they want to see evidence of these talents. If you understand the meaning of these skills you will be better placed to offer examples of when you have demonstrated or exercised them and therefore convince an employer that you possess these skills.

So what are some examples of transferable skills that employers look for? **Table 4.1** shows a non-exhaustive list of some of these and most importantly what they understand by these skills. Always think to yourself: '*what can I bring to the company and offer as an employee?*' Be careful to research the career path and the company that you are applying to so that you can match the skills required for the role with the skills that you possess. If these cannot be paired up significantly, you may want to think again about applying for the role as it may not be suitable for you. If, however, there is a good match between the skills you possess and the skills required for the role, then make sure that the employer can see this and that it does not get lost in translation. Offer clear examples of when you have displayed such skills, not simply stating you possess them.

4.5 SELL IT!

Now that you understand the employer viewpoint on such skills, you must turn your attention to convincing an employer that you have such capabilities. Do not dismiss experience and skills gained from even the smallest job: the chances are that you might not have a great deal of experience so you have to wring out as much as possible from the experiences that you have gained. In other words you need to sell it! You have to sell the fact that you have these abilities and that you are prepared to develop these skills further. So for every skill that you are claiming to have, you need to provide specific evidence of it by giving examples of scenarios where you have used or applied the skill. Beware though and be prepared; do not assume that employers will not check. For instance, if you claim to have written a document for a lawyer when you were on work experience, the employer will cross-check this with your CV and ask you questions about it.

EMPLOYABILITY: LEARN TO EARN

Emily Allbon & Sanmeet Kaur Dua

Excerpted from *The Insider's Guide to Legal Skills*

4.6 TAKE IT!

Most law schools will go out of their way to host a number of employer and career events for students to connect with potential employers. These can come in a number of forms. They may be law fairs, recruitment events, talks organised by employers on a particular subject, or they can be talks organised by the careers service on how to complete application forms. These events are not to be missed. You need to take up as many of these opportunities as you can.

These are golden opportunities to learn about particular industries and employers. Such events will help you to better understand and learn what employers are looking for in an employee. Employees at employer events can also give you a little 'insider' information on how to dress up your application form. You may also want to ask the employee representing the company if they would be willing to respond to some questions later on over email. Sometimes you think of something about the company later on, and it would be great to know that there is someone who is able to help you. Does it make sense to miss such opportunities? What is more, you should aim to create a positive lasting impression on the employer, meaning that they may just remember your name when they are sifting through hordes of application forms. This really does demonstrate enthusiasm and commitment to the company, which might be something you can bring up at interview (for example by offering the name of the person that you met at the employer event, and perhaps even explain what you discussed). This type of activity is sometimes referred to as networking, as you are building up a network of contacts.

4.7 APPLY IT!

Ever heard the phrase 'looks good on paper'? Well that is what you have to do when it comes to completing application forms for jobs. Having started to develop your employability skills you now need to sell these skills on paper. No two application forms will look the same nor should they. You are trying to stand out from the crowd and if you are doing this successfully, your application forms should look different to others. There is not enough scope in this chapter to go through what an application form should look like, but there are some top tips that you should use as a guide when completing an application form (see Table 4.2).

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4.7.1 APPLICATION FORM TOP TIPS

Table 4.2

Top tip	Translation
1 Check the deadline for when you need to submit the form	Good time management and working independently
2 Read through the form thoroughly and make sure that you understand what each question is asking before you start filling it out	Planning ahead and organisation skills
3 Use spider diagrams or other such tools to plan each answer or section thinking about examples that will support your assertions	Logical thinking
4 Support each of your assertions with specific examples	Logical thinking and persuasive
5 Re-read your complete form and check for any errors	Good communicator

4.8 WATCH IT!

Watch what you write on social media websites! Oh yes we need a whole section on this one. You should assume that if you are putting something on social media or are connected on social media with something questionable, potential employers and/or their clients may find out. Use your judgment. Remember, employers are not divorced from reality; they too will probably have a social media presence and the resources to carry out their due diligence on potential candidates. They will check how potential candidates have portrayed themselves and their public image. Candidates should have a suitable social media image. Remember, employers will check whether the social media image of a candidate could in any way harm the image of the company. You should consider reviewing your social media profile and be sure that you are happy with this image. Ask yourself whether a potential employer would want to be associated with your social media image.

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THINKING POINT

Put yourself in the shoes of potential employers who have found the following on social media websites:

(i) A potential employee is photographed drunk sprawled on the curb in a photo. The potential employee made sure that they were not tagged in the photo yet the employer has managed to find them.

(ii) A potential employee has noted what they think about the current political party in power.

(iii) A potential employee has posted scathing views about a big corporation – this corporation is a new client of the firm.

(iv) A potential employee with a profile that has not been updated for three years and has had no activity.

Employers do not want you to be out of touch and delete your social media profiles altogether but they want you to think about maintaining the image of the company and not put anything on there that could bring the company into disrepute. In fact, social media use has many benefits, but used wrongly it can have a damning impact on the company's image.

4.9 GIVE BACK!

Your institution will no doubt host alumni events, which can be particularly eye opening. Wait though, what does alumni even mean? Alumnus refers to a former student of a particular institution. So when we talk about alumni we are talking about a group of former students who have attended a particular institution.

Alumni events are those where students who have graduated from your institution come back to talk to current students about their journey: essentially how they got to their current positions. Two things to note: first, alumni who give up their time in this way do so because they have experience and, some might even say, wisdom that they feel it is important to share with the next generation; and second, they have connections with various employers and can guide and advise you on how to make your applications. These events are invaluable since alumni are offering their advice on what they did or would do differently when they were in your position. You would be mad to miss such opportunities.

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4.10 EMPLOY IT!

We then urge you to employ the advice that we have given here in order to make sure that your employability skills are at their best! Yes life at university is hard enough with studying, exams and coursework deadlines, but those who invest in their employability will be those who stand out to employers. It is often said, and will be repeated here, university is not all about study; it is an education both in your subject area and in life!

We finish by helping you to develop an action plan for your employability.

TOP TIPS FOR EMPLOYABILITY

- Do not take your eye off the ball with your studies – achieving the right grades is the first step.
- Become a regular at your careers department.
- Develop your personal development plan and regularly add to it.
- Make a plan for how to develop skills or items on your personal development plan.
- Familiarise yourself with deadlines for application forms.
- Note examples of when you have developed or used a transferable skill that you can later incorporate into an application form.

EMPLOYABILITY: LEARN TO EARN

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Excerpted from *The Insider's Guide to Legal Skills*

CATCHING UP WITH OUR FRIENDS . . .

Ashwin has always wanted to become a solicitor. He has known from the moment that he started his degree that he wants to do everything possible to secure a vacation scheme and thereafter a training contract. Ashwin visits his university's careers department who advise him to keep a record of his personal development. He creates his plan using a template provided by the career's department:

Table 4.3 • Example of a personal development plan

Skill?	**Written communication**	**Verbal communication**
How can I develop it?	Practise through writing for the Lawbore website; submit voluntary coursework for my modules	Apply to participate in more mooting competitions through my Inns of Court
Are there any difficulties?	Need to receive feedback in order to understand how to improve my written skills	Being accepted to participate but the application process would provide me with a further opportunity to practise my written skills
When?	Next 2 months	Next 2 months

Ashwin then refers to some of the application forms that he will be completing over the course of the next couple of months and draws a spider diagram in black of all of the skills that the firms are looking for. Then, in red, he adds examples of things that he has done, which illustrate his grasp of that skill. He then makes short notes on each of those skills. One of those is his written communication skills:

- Written communication:
  - I have developed excellent communication skills though my experience at Friday's Solicitors where I drafted client letters, which were reviewed by my supervisor. I learnt the importance of writing clearly, concisely and the importance of writing unequivocally and I have since then used this advice in my written work at university and adopted this advice when I am speaking in public.