

LEGAL WRITING SKILLS

FIFTH
EDITION

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A GUIDE TO WRITING ESSAYS AND
ANSWERING PROBLEM QUESTIONS

STEVE FOSTER



 Pearson

FIFTH EDITION

Legal Writing Skills

A Guide to Writing Essays and Answering Problem Questions

Fifth Edition

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To William Roy Foster (1953–2017)

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Preface

Many students find the transition between A level and undergraduate study quite daunting. Good marks, even passes, are no longer guaranteed simply by learning and mentioning all the relevant points. They are now expected to write with greater clarity and precision, to employ sounder grammatical and writing skills, to research and refer to a variety of primary and secondary sources and to be critical and analytical in their work. Furthermore, as law undergraduates, students are expected to write with an air of legal professionalism, to support their arguments with legal authority and to employ solid referencing and citation skills. In practice, it is these aspects of undergraduate study that pose the greatest test to students, and I have received consistent feedback from lecturers on this: ‘students find it difficult to write clearly, access appropriate sources, reference properly, dissect and answer the question and take a logical and critical approach to their answers.’ There is also increasing pressure on students to achieve higher marks in their undergraduate assessments – and their overall degree – and the acquisition of the above skills is essential if that is to happen.

The main aim of this book is to identify good research and writing skills, particularly in the preparation and submission of assessments in law. Throughout the book, the text identifies the key characteristics of good (and bad) techniques in writing law assessments and prepares you for the submission of assignments. The text is relevant to many legal skills and method courses, and students are referred to the skills taught on such modules, such as using a (law) library, reference and citation skills and other general and specific study skills.

In particular, the text offers clear and simple advice to both those students who find the handling of legal materials difficult – and who find the task of preparing and writing law assignments daunting – and those who want to gain extra marks by writing *better* – perhaps *the best* – essays. The text takes the student through the entire process of researching, writing and presenting law assignments, from the early stages of research and planning to the presentation of the work itself. It provides practical advice on how to make the best of lectures, seminars and textbooks during your programme, thus enhancing your chance of success in assessments. It also shows you how to research and plan assessments; how to write clearly, simply and in an appropriate legal style;

how to conduct effective research and employ legal reasoning and critical thinking; how to cite and use legal authorities; how to avoid plagiarism; how to explain and apply legal principles and materials; and how to compile proper and appropriate bibliographies. With respect to plagiarism, the book stresses the benefits of employing proper referencing, and the rewards that students can obtain from good practice in this area. The text now adopts the full and new OSCOLA style of referencing; a slight variant on the style adopted in the previous editions.

The text is aimed at all levels of students, primarily those on undergraduate courses, joint law courses (e.g., Law and Business, Law and Economics, Law and Politics), professional courses such as GLD and ILEX, but also those studying A level and GSCE law. In addition, postgraduate law students, particularly those whose first degree is not in law and who will need some assistance in preparing and writing law assessments, may also use the text.

Since the publication of the first edition of the text, I have had time to reflect on the content of the original in the light of both my teaching practice and the suggestions of students and staff at Coventry and other academics and students who have provided useful and constructive feedback and criticism. Accordingly some changes and additions have been made to both the second, third and fourth editions and the present fifth edition. As with the fourth edition, the book is now divided into four parts, consisting of nine manageable chapters so as to make the information more digestible and easy to follow; although the order of the chapters has changed slightly to accommodate a more logical pattern of learning skills'. Part 1 includes basic guidance on note-taking, the employment of proper grammar, and some brief guidance on critical writing and how to write first-class assignments, to be supplemented with detailed examination of these skills later in the text. As with the previous edition, the chapter on postgraduate assessments, which appeared in the first and second editions, has now been placed on line; although some of that chapter on enhanced research and writing skills is included in Chapter 9.

As with the fourth edition I have included some more specific advice on the planning and structure of law assessments, and more guidance on analytical and critical writing skills, legal reasoning and legal research. I would be very pleased to receive any feedback on the book, including suggestions of what else could be included in the text.

I would like to thank everyone at Pearson for their help during the writing of this book and their assistance on the layout of the text. Also, thanks go to a number of anonymous referees who provided useful suggestions on how to

Preface

improve the previous edition of the text. Special thanks go Owen Knight, who has helped me through all four editions of the text to the present Pearson team, and to Angela, who allowed me to reproduce some of her postgraduate coursework. The book is dedicated to our three children – Tom, Ben and Ella – and to my late brother, Roy.

Steve Foster

Introduction: How to use this book

This book is intended to assist with your law studies, particularly in relation to the research, planning and presentation of your assessments. Each part of the text covers separate, although often interlinking, skills and should be consulted at appropriate stages of your course. The book needs to be consulted regularly: do not just read it – or one of its chapters – once and then hope that the advice sticks. In particular, the rules about legal referencing and citation are many and complex and you will need to revisit Chapter 7 on numerous occasions.

Part 1 of the text on general essay technique and presentational skills will help you come to terms with the sort of skills you need to display when undertaking an undergraduate course and when writing assignments for such courses. This part, consisting of Chapters 1 and 2, should, therefore, be read as soon as possible into your course because the content will help you reflect on the expectations of a law course and of your teachers. It will also help you identify any particular weakness or concern that you might have at this early stage of your study. Note, some aspects – such as research, critical thinking and legal reasoning will be dealt with in detail in subsequent chapters

Part 2 of the text (Chapters 3, 4 and 5) provide, respectively, detailed advice on critical thinking and employing legal logic in assessments so as to obtain higher marks, good and bad technique in writing assessments, and the technique required for answering problem questions. In particular:

Chapter 3 highlights good practice in terms of employing appropriate sources and in using critical thinking and legal logic to get better marks.

Chapter 4 gives examples of good and bad essays and offers specific guidance on how – and how not – to answer questions, highlighting common mistakes made by students and providing examples of poor and inappropriate presentation.

Chapter 5 deals with the technique required for answering problem questions, which you may receive at an early stage via seminar questions in subjects such as contract law, and which are often given as coursework and examination questions. Consult this chapter immediately after digesting the

more general information in Chapters 1–2 as problem-solving is an essential skill for law students..

These chapters should be fully digested before you submit your first essay or problem-based assignment and then should be revisited after you have received feedback from your marked script.

Part 3 of the text (Chapters 6 and 7) deals with the research and use of legal material in writing law assessments, and legal citation and referencing in your assessment. Chapter 6 includes detailed guidance on how to conduct your research and both these chapters can be consulted at an early stage of your study, but will be particularly useful when you receive your first coursework assignment, whether it is in the form of an essay or problem question.

Finally, **Part 4** (Chapters 8 and 9) gives guidance on preparing for and writing examinations in law and explores the skills required for more advanced assessments. Chapter 8 will be of most use during the run-up to and the period of the examinations; however, it should be consulted as soon as possible into your studies. This will give you an indication of the skills that you will need to complete law examinations and, most importantly, it will show that succeeding in examinations is tied to good practice in your law study and your other assessments. Chapter 9 relates to extended and advanced assessments, including work at levels two and three of your degree, case notes, and dissertations. The chapter on extended essays may be useful to first-year students who have been given an extended essay to submit; generally, though, the chapter will be of most use in the second and third years of your undergraduate course (especially if you are required to submit a dissertation). This chapter should be consulted at the appropriate stage of your studies, but it may be looked at earlier to give you an idea of the standard of skills expected later on in your course and to allow you to practise and display these advanced skills as soon as possible. The chapter should be read alongside the earlier chapters in the text on legal research and using critical analysis and legal reasoning for it is in these assessments that those skills are particularly useful. The chapter on Postgraduate Assessments has been taken out, but some of its content has been included to enhance the current Chapter 9.

The book should help you adjust to your undergraduate study of law, particularly at the early stages, but do not dispense with it after your first term or first year. You should use and enhance these skills throughout your programme and hopefully the book will assist in this respect. Never underestimate the rewards of employing good writing and legal skills in your assessments; this can often make the difference between an average mark (or degree classification) and a good, or very good one. Good luck!

1

Preparing and writing law assignments

Part 1 Preparing and writing law assignments

This part of the text addresses basic essay writing skills, including how to prepare and present law assignments. It begins by addressing basic but important matters such as time management, engaging with the legal area, the module and the module leader, and ensuring that the work that you have been asked to submit reflects the skills expected of you and represents your best work. Specifically, Part 1 gives advice on and covers the following matters:

- What to do when you get the assessment.
- Using notes and other sources to assist assessment performance, including a brief explanation of research techniques.
- The presentation of assessments including guidance on writing style and avoiding grammatical, spelling and typographical errors.
- Avoiding plagiarism.
- How to address and show a true understanding of the question.
- How to write critically and achieve first-class marks.

All these areas are illustrated by examples of good and poor skills and common errors made by students in the presentation of their work and their study patterns.

NOTE

Good students who engage in good study practices produce good essays, and poor essays are generally the product of poor student practices such as poor time management, lack of preparation and planning and a general failure to engage with their studies.

1

Writing law assessments on undergraduate courses

Many students find it difficult to make the transition between A level (and other sub-degree courses) and undergraduate study. In particular they find that different and more enhanced skills are needed for the preparation and writing of assessments.

TIPS FOR UNDERGRADUATE ASSESSMENTS

Here are some observations and tips for undergraduate assessments:

- You may be writing academic essays for the first time, or you may have not written essays of any substantial length (essays on undergraduate courses range from 1,250 words to 4,000 words, with 1,500 to 2,000 words being the norm).
- You may have little or no experience in answering problem questions and applying legal principles to hypothetical scenarios.
- You will need to employ sound essay writing skills including good grammar and spelling, and will be expected to follow strict rules on citation and referencing of sources and the avoidance of plagiarism. Take advantage of any guidance the university and law school provide to you with respect to writing style, referencing and presentation of work (such as house style guides).

- You will be expected to undertake individual research and to read beyond your lecture notes and basic textbooks; in particular, secondary sources will be more advanced than those you encountered at A level and will adopt a more academic and lengthy style.
- You will be required to use legal materials (such as cases) in an appropriate and convincing manner in order to support your answers.
- The questions will tend to be more analytical and less descriptive and often ask you to take a critical approach.
- Lecturers may give little guidance on how to answer the question – you will be expected to find out the answer yourself.
- Lecturers do not generally allow you to bring drafts of your essay for correction before submission; you have to get it right on submission.

NOTE

The above point comes as a shock to many students, who expect the lecturer to guide them to a good or perfect answer through a series of submitted and returned drafts. Although there will be plenty of help available, the undergraduate student is expected to work out the answer and their approach to it for themselves.

- Learn to be independent in acquiring knowledge and in your research. Ensure that you read as much legal material as you can, including books, articles, cases and legal newspaper reports.
- Take your legal skills/method courses very seriously. They are the key to your success on the law programme, and to better marks in your assessments in substantive law subjects – there is little point in knowing all the principles and cases in contract if you do not know how to use and present those sources effectively.

The above points reflect the nature and level of undergraduate study. These skills can be acquired, or refined, quite quickly, although they are mostly learned by practice and will not be perfectly honed until the final years of study. Although you are not totally on your own, you will be expected to show an element of independence that you might not have been asked to display previously.

NOTE

Many students complain that they got a lower mark than their fellow students, even though they included the same sources and raised the same issues. Simply including the same sources and raising the same issues as other students on a sub-degree course will probably ensure a pass or good pass, but not on your undergraduate law programme. You will need to show an understanding of the material and clearly explain the source and information in the context of the question.

SOME COMMON COMPLAINTS

The lecturers *that set and mark your work* have many common complaints regarding the standard and style of student work. It is important that you do not give the lecturer the opportunity to identify these shortcomings in your work because you will invariably lose marks or risk failure.

COMMON COMPLAINTS FROM LECTURERS

Here are some of those complaints (gathered from staff at the author's university and from staff at other law schools who reviewed this text):

- Students do not answer the set question; instead they answer the question they set themselves.
- Students do not plan their answers and do not think about what they are going to say next.
- Students do not structure their answers and fail to deal with the issues logically and in order.
- Students write in an inappropriate and casual style, not suitable for the submission of law answers: 'I think Frank might have a good chance of winning his case,' rather than 'Given the existing case law in this area, the possibility of Frank succeeding in his action appears strong.'

- Students do not check their work thoroughly for spelling and typographical errors and for poor grammar before submission. Some sentences do not make sense and need rephrasing before submission.
- Students make lists of relevant points rather than writing in prose.
- Students do not cite cases or other legal sources properly, referring, for example, to ‘the Carlill case’ or ‘it’s in the Theft Act that . . .’
- Students do not understand and explain cases properly, and do not, or cannot, highlight the significance of the case. Instead they cite cases for the sake of it, regardless of whether it is relevant to the point they are making or the facts they are applying it to.
- Students do not reference their work properly and are often guilty of plagiarism, whether they intended to cheat or not.
- Students do not include a bibliography, or cannot construct their bibliography in an appropriate manner.

This and subsequent chapters address these issues, giving advice on how, and how not, to present your work and how to avoid these criticisms, and thus how to get the best possible marks.

NOTE

Most of the following advice applies to writing assessments in coursework and in examinations. However, some of the skills expected in coursework, such as referencing and layout, are not expected in examinations. In addition, you will need to display further and different skills in examinations. This matter is referred to again throughout this and subsequent chapters (**specific guidance on examination questions is given in Chapter 8**).

SOME BASIC POINTS

Let us start by identifying some basic points with respect to writing and researching your law assessments. Some may seem obvious to you, particularly if you are studying at undergraduate level. Students often ignore these rules to their detriment; whatever level you are studying at, the lecturer and marker will

expect you to display these basic skills. This chapter highlights the disadvantages of ignoring these rules: you *will* lose marks if you do not follow them.

Time management

You will have been warned throughout your school and college life not to leave the research and presentation of your assessment until the last minute. Such advice is still (and particularly) relevant to your undergraduate and postgraduate studies, as is advice on basic time management.

Time is very often the main reason why students fail to follow the basic rules of good practice and why they fail to produce good, or even acceptable work: 'I started the planning and research late; when I got to the library the books were gone; I couldn't get hold of my friend in time to get a copy of the coursework instructions; there was no time to revise the work and proof-read as the work needed to be in.'

It is also a major reason for **poor referencing** and **plagiarism**: the student has no time to research and analyse sources and resorts to cutting and pasting from websites.

Provided you have done the necessary research, planned your answer and written out an appropriate draft, it is acceptable to write it up shortly before you submit it – this not only reflects human nature, but also allows you to modify your answer in line with information acquired since you started your original research. This approach is subject to one important proviso – always leave yourself enough time to check over your work and to account for things such as computer failure; few courses accept this as a reason for handing in late. **Never hand in your first or second draft; always submit your final, completed work.**

Respect for the module: engaging with the module and producing your best possible work

Teaching staff expect you to be as engrossed in the subject area as they are. They may be deluded in this respect, but they do not take kindly to students who do not show a desire to submit work which reflects their best effort. This will be reflected in the marking, for they believe that sloppily presented essays with countless grammatical and legal errors are a product of indifference towards the subject and their module.

Your lecturers expect you to have learnt the information and skills that they have taken time teaching you – nothing is more infuriating to them than when a student ignores the advice and information that they have presented in lectures and seminars – for example, when a student omits a recent case or other development that the lecturer has drawn their attention to.

The staff teaching you will normally set and mark your work. Show them that you have attended and listened to their classes and that you have appreciated, even enjoyed, what you have been taught and what you have managed to discover by your research. All these efforts will be rewarded by the lecturer, who will recognise that you have made an effort to engage with the subject, to conduct thorough research, and to take care with the presentation of your work.

Getting on the module leader's 'wavelength', and tuning in to the area of law being studied

The module leader will expect you to display the basic knowledge and skills that they have provided in class, and to approach the subject in much the same manner as they delivered it.

Module leaders have their own styles, their own way of presenting things and their own views regarding the law and its efficiency and possible reform. It is not necessary that you agree with the module leader in all respects, but it is advisable that you are at least aware of and appreciate his or her views and style.

Regular attendance makes the law easier to digest and understand – the purpose of lectures and seminars is to highlight the main issues of the law and its difficulties, and the module leader is trying to help you with these matters. Irregular attendance often leads to gaps in your knowledge and appreciation and thus makes the assessment task more difficult.

Do not make a mistake in an assessment that the module leader has warned you about, or miss something that they have given to you; that will give the impression that you have not attended or listened.

NOTE-TAKING AND USING NOTES WITH OTHER SOURCES

A good set of lecture notes can be invaluable in studying and learning a particular subject and can be used constructively in the preparation of your assessment. The lecture handouts, and the notes you are given in lectures,

provide a good indication of how that subject has been approached and taught and can usefully complement your textbooks in giving you a clear overview of the subject. It is essential, therefore, that you make the most of this resource and realise its potential (and limits) in the learning and assessment process.

TIPS FOR LECTURES AND NOTE-TAKING

- Attend lectures regularly: you cannot hope to build up solid knowledge of the module and a coherent set of notes if you attend irregularly. Inevitably you will miss some lectures, but establish a regular pattern of attendance from the start and keep to it.
- Do not come to lectures late – you will disrupt (and annoy) the class, and miss out on valuable information and the overall sense of the topic that is being covered. This will lead to a fractured set of notes and thus confusion and gaps in your knowledge.
- Ensure that you collect any new handouts distributed in the lectures or online and that at the very least you have a full set of lecture handouts relevant to the assessment task and at the end of the teaching term before you start to revise. Do not just collect the handouts – *read them* and use them in your studies.
- Do not rely on other people’s notes: often there is an organised system where students share out attendance and photocopying duties. This is unwise and unfruitful; each student gets different things from the session and their notes are personal to them. Other students’ notes rarely make full sense, and in fact are often never read!
- Try to familiarise yourself with the relevant topic before you attend the lecture. By reading the relevant chapter from the textbook before the lecture you will be able to follow the content of the lecture more easily and will not be under so much pressure to get everything down.
- Do not try to take everything down. Most lecturers will talk too fast for you to get down everything they say – lecturers very rarely dictate these days. Instead, ensure you get down the fundamental points and the gist of cases etc. If the lecturer uses slides etc., take a note of their content (or download them from websites if they are made available), and supplement them by adding your own notes.