Disclaimer:¹

We will be using examples from several areas of law. I have never been involved with the teaching or examining of Tort, Criminal Law or Constitutional Law. I do not have access to the course materials. Our focus here is on legal writing. To succeed in your classes, I recommend attending your lectures and tutorials, consulting your class materials, and trying sample questions which you should discuss with each other and, if possible, with your Court Directors.

¹ Hey, we’re lawyers – we like disclaimers
**Answering Essay Questions**

When you start the essay (and even when prepping for your exam), ask yourself what is important in the law in that area. Is it:

1. Legal history?
2. Legal theory?
3. Legal reform?

In all essays, make sure that you give definitions and examples.

**The Historical Essay**

The historical essay is often the easiest – you give an evolution of a doctrine. However, in order to gain marks, you will still require a critical analysis – have there been any opponents of how the doctrine evolved?

**The Legal Theory Essay**

The legal theory essay requires you to explain why the law takes the particular shape and form that it does. While some history might be important, this essay will focus more on analysis of a particular doctrine, often by in-depth discussion of a few cases, giving an explanation of why the courts came to certain results.

**The Legal Reform Essay**

The legal reform question requires knowledge of the gaps in the present law. Sometimes you will be asked whether the present law should be reformed. Other times you will be asked whether a current or proposed reform fills the necessary gaps and whether it raises any new problems.
Exam Tips:

What does “Critically Discuss” mean?

“Critically discuss” means that you have to pull apart the statement, explain each section, and analyze whether the statement has any merit. You must state whether you agree with the statement or not.

Make sure you know what the question is about

Remember that in exams, you may be tested on your ability to remember what was taught in class. So while some essay questions provide a roadmap, some don’t. This is why it is difficult sometimes to pick up past papers and answer questions. For example, this question is pretty straightforward.

“There has for centuries been a presumption that Parliament did not intend to make criminals of those who were in no way blameworthy for what they did.” Per Lord Reid in *Sweet v Parsley*.

Critically discuss this statement with reference to the law of strict liability.

Your course director could well have given that same question as:

“There has for centuries been a presumption that Parliament did not intend to make criminals of those who were in no way blameworthy for what they did.” Per Lord Reid in *Sweet v Parsley*.

Critically discuss this statement.

Or

Critically discuss *Sweet v Parsley*

Or even:

“There has for centuries been a presumption that Parliament did not intend to make criminals of those who were in no way blameworthy for what they did”
Critically discuss this statement.

(Leaving you to recognize which case it came from)

One of the benefits of doing practice questions is that you have your textbooks, coursenotes and internet available to quickly check on sources of quotes. It can be incredibly helpful to copy the statement into Google to see where it is from.

Where to start your practice questions?

- With your textbook and lecture notes.
- Write an outline
- Write a sample essay
- Edit
- Edit
- Edit

What NOT to do: Do NOT pull an essay from online and memorize it for reproduction in the exam.

- Chances are your other classmates have done the same – the examiner starts to notice when many people write the same answer
- It might not be the best answer – get your own C instead of copying someone else’s!
Answering Problem Questions

There are helpful acronyms FILA and IRAC. These are essentially the same and are meant to remind you to use a structure in your answer that assists your reader.

F.I.L.A = Facts, Issues, Law, Application
I.R.A.C = Issue, Rule, Application, Conclusion

In class, I usually express this as
F.I.R/L.A.C = Facts, Issue, Rule/Law, Application, Conclusion

It is important to remember that you do not have to rewrite the facts given, that “Rule” means more than just “A section in a statute”, and that you must give a conclusion. You must also remember to consider both law and facts from all angles – there are always at least two sides.

- Facts: (no need to repeat what is given in question)
- Issues: (can be done in subheadings)
- Rule/Law: A mini-essay on the relevant law of the area (evolving doctrine, different interpretations of statute, conflicting precedents). *Always state the principles clearly.* You must take care to give a proper introduction, highlight any ambiguities, and explain which test you will be using.
- Application: Applying the test described above. No new law to be introduced in this section. Careful examination the facts from each point of view.
- Conclusion: Summarizing the results of your Application section and saying which side has the stronger argument.

Facts

(a) Start with the facts. Read the problem carefully several times. Don't skim read. You must have a precise understanding of the facts, since facts determine the relevance of any legal points you make later. *Fact identification and organisation is an important legal skill.* If it helps, draw a quick diagram to explain the facts and the parties.

(b) Accept as true those facts that are given. Do not worry about how unlikely they might be.

(c) Identify any important missing facts.
(d) Do not assume facts which are not given.
The above is sound advice from Poole on Contract Law.²

**Issues**

Let the facts guide you in identification of the relevant legal issues i.e. what is it that the person(s) in question wishes to know?

Consider the order in which you wish to deal with the issues raised by the facts and bear in mind the need to present points in a coherent and logical way. For example, imagine you are working on the Jack and Jill case. First you see if Jack’s fall was caused by negligence or criminal activity. Then you see if there was damage caused by the spilled water. Then you see if Jack suffered loss as a result of his head injury. Sometimes it is helpful to draw a table or diagram.

<table>
<thead>
<tr>
<th>Jack’s fall</th>
<th>Negligence?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Criminal Activity? Did Jill push?</td>
</tr>
<tr>
<td>Spilled water</td>
<td>Loss? Nuisance?</td>
</tr>
</tbody>
</table>

Be thorough. It can be helpful to write a quick outline to make sure that you have captured all of the parties and all of the permutations and combinations, especially in a Torts question.

Tito and Mia, his classmate, had been to a party where they had both drunk too much. Tito offers Mia lift home after the party. She accepts. On the way there, Tito runs a red light and collides with a bicycle ridden by Omar. Omar is wearing dark clothing and his bicycle has no lights. As Mia gets out of the car to assist the fallen Omar, a car driven by Kashawn some 10 miles per hour above the speed limit strikes her. Both Omar and Mia are taken to hospital where Omar is given a penicillin injection to which he proves allergic and suffers a severe reaction. Mia is given two paracetamol pills and sent home but a thorough examination would have revealed that she had suffered serious internal injuries. She is now a quadriplegic.

Advise Omar and Mia.

Listing all the possible party vs party combinations:

- Can Mia sue Tito? (Tito is drunk.) (Mia is also drunk)
- 2. Can Mia sue Kashawn? (10 miles per hour above speed limit) (Mia is drunk, walks into street)
- 3. Can Mia sue hospital? (no thorough examination) (no contributory negligence)
- 4. Can Omar sue Tito? (Tito is drunk, runs red light) (Omar has dark clothing, no lights)

Deal with one issue at a time

The legal issues involved will determine the order in which you deal with principles and their application. The order and organisation of your lecture materials and course texts should guide you on this. (We will return to this.)

Avoid "jumping around" between issues and mixing discussion on different issues. Do not move on to a further issue until you have said all that is required to be said about the first identified issue.

If there is more than one issue and/or if advising more than one party, you will need to deal with each separately.

Law/Rule

Make sure you give a little introduction – do not jump straight into whatever tests you identify. Assume that your reader is a lawyer who is not familiar with that particular area of law. You do not have to be too simplistic, but you must state the principle clearly.

For example: do not start like this:

<table>
<thead>
<tr>
<th>Negligence: Jack v Jill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did Jill owe Jack a duty of care?</td>
</tr>
</tbody>
</table>

Better to start like this:

| Negligence is a failure to take reasonable care to avoid causing injury or loss to another person. |
There are four steps in proving negligence.

Cite supporting authorities. Always give reasons for your views and authority for legal principles and rules.

If the legal position is unclear/ambiguous then explain the nature of the uncertainty and suggestions on how it might be resolved - including your own view of the most likely approach to be taken by a court. **In other words, this is a mini-essay on the law.**

This is more than just stating a Rule. You need to explain whether it falls under one of the categories above. It is important to remember, however, that your mini-essay must be brief and to the point – you are answering a problem question and not an essay question. You will need time to discuss the other issues. However, do not be too brief as you still need to mention all of the critical points.

Here is an example.

*Alvin and Kira lived together for six years from 2002 until August 2008 when Alvin died. Alvin was still married but was separated from his wife. He did not have any children. He did not leave a will. Kira consults you wanting to know whether she qualifies as Alvin’s spouse for the purposes of the Succession Act. If she qualifies, then she is entitled to inherit 2/3 of his estate with the remainder going to Alvin’s next-of-kin (in this case, his brothers). If she does not qualify, then his entire estate goes to his brothers. His brothers feel very strongly that she does not qualify as spouse.*

**Weak Answer**

**Issue:** Does Kira qualify as his spouse under the *Succession Act*?

**Law/Rule:** The Rule under section 2(3) of the Barbados *Succession Act* Cap 249 is that
references to the word ‘spouse’ include a single man and single woman who have lived together for more than five years where single includes widowers and divorcees

Application: Alvin was only divorced for four years before he died, so they did not live together for five years as a single man and woman.

Conclusion: Kira cannot qualify as his spouse.

Unfortunately, things are not this straightforward and this answer would not gain you full marks. There are usually ambiguities in the law and further ambiguities in the facts, and the lecturer is likely to try to test you on as many as possible. Your job is therefore to see how many of those ambiguities you can spot, and to write down all of the arguments and counter-arguments before coming to a conclusion.

Here the facts are straightforward (Alvin and Kira lived together for more than 5 years). So check to see if there is an ambiguity in the law. How have the courts interpreted section 2(3)?

**Stronger Answer**

**Issue:** Does Kira qualify as spouse under the *Succession Act*?

**Law/Rule:** The Rule under section 2(3) of the *Succession Act* Cap 249 is that references to the word ‘spouse’ include a single man and single woman who have lived together for more than 5 years where single includes widow(er)s and divorce(e)s. The Act is self-contradictory given that section 102(4) provides for legally married spouses to lose their succession rights after 5 years separation. In addition, it is not in line with the *Family Law Act* Cap 214 which does not require persons to be single to be considered as spouses. In the recent case *Smith v Selby* Alleyne J of the Barbados Supreme Court attempted to interpret the *Succession Act* more broadly to bring it into line with the other legislation. He was criticized by both the Court of Appeal and the Caribbean Court of Justice in the same case for judicial legislating.
The appeal courts expressly said that to treat a separated man as single would be to go beyond the boundaries of the legislation. Nevertheless, the Caribbean Court of Justice, departing from the Court of Appeal, held that the parties could qualify as spouses if they were both single at the time of death. Following the CCJ’s interpretation, the test for qualifying as spouse is now a two part test – a) did they live together for five years and b) were they both single at the time of death.

Application: In the present situation, applying the two-step CCJ test, Kira and Alvin lived together for more than five years but the answer to second question is no. And while the gates have opened slightly so that more persons can qualify than previously, they have not opened so wide as to include Kira.

Conclusion: Kira cannot qualify as his spouse.

Avoid Jumping Back and Forth
One thing I want to highlight to you is that you should try not to mix the Rule/Law section with the Application section. Looking back at my answer, you will see that I do not refer to Alvin or Kira in the Rule/Law section. This is a statement of the law which applies to all situations and not just the current situation. It is when I move into my Application section that I discuss the current situation. I try not to introduce any new law in this section – just to refer to the law that I have already introduced in the section above.

Application
Assess what the likely decision would be on this issue.

Note that there is often no right answer in legal problem questions because examiners often use issues where there are ambiguities in the law. Remember to show how the facts are relevant to both sides.
Make sure you identify any detailed factors or formulae that a court might take into account (remember the hijab case?)
Remember that if there are major questions of fact omitted from the problem you should point these out and explain their relevance.

Sometimes when students are given legal tests, they only give one answer to each test. Eg where the test is “Is the matter of great public importance?” the student might answer:

“The matter is of great public importance because it touches on the bombings which were of national significance and because it relates to the administration of justice. This test favours GNN.”

Do not forget that each test is essentially an “issue” or arguing point. You should explore the arguments on both sides as much as possible. After you look at it one way, you should ask yourself if there is anything that Dr. Forensi’s lawyer can find to say.

GNN will argue that the matter is of great public importance because it touches on the bombings which were of national significance and because it relates to the administration of justice. However, Dr. Forensi can argue that his name is not a matter of public importance. In other words, GNN’s goal could have been accomplished without referring to him personally.

**Conclusion**

Remember to advise any and all parties that you are asked to advise. Make sure you do not introduce new arguments or ideas. Give the results of your Application by incorporating key facts.

For example, a **weak** Conclusion would be: “I advise GNN that they can succeed because they passed Tests 1, 4, and 7”.

A better answer would be: “Although the matter was one of great public importance and GNN took steps to verify the source of the data, the fact that they did not print Dr. Forensi’s side ... Etc”
Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that every word tell.

— William Strunk Jr. in “The Elements of Style”

Structure

Structure” refers to the way the document flows. It includes the following elements:

- Introduction gets reader’s attention
- Introduction articulates thesis
- There is a roadmap
- There are appropriate transitions
- Argument is presented clearly and logically
- There is a good balance between description and analysis for each section

• There is overall structure
• Sections and paragraphs are well structured

Here is a screen shot of an essay that was submitted to me by a former student. It was fairly typical for that assignment.
I gather that several of you write such long paragraphs because you were taught that the ideal essay is 5 paragraphs long.

Do not confine yourselves to this structure.

To quote a writing guide from Bakersfield College:

“The five-paragraph template is the essay equivalent of training wheels. You should be able to keep yourself steady on your own now--it is time to lose the training wheels. An essay can have any number of main points, and you may expand on a main point across more than one paragraph.”

Including Cases

There are different ways to mention a case in your essay.

1. Quickly citing a principle with just the case name.
2. Expanding a little bit on the legal principle
3. Detailed description of the facts

Make sure that you choose the best method to illustrate the point you are making.

Answering the Question Asked

Do not do this

**Write an essay on the characteristics of whistling frogs.**

**Answer 1**

Frogs are small, four legged amphibians. They eat flies, just like lizards. Lizards are reptiles with a long body and tail, four legs, and spiny skin. They are found across all continents except Antarctica, and in island chains. They range from tiny geckos to the Komodo dragon. (I’m sorry, I only studied lizards.)

Or this

**Write an essay on the characteristics of whistling frogs.**
Answer 2
A frog ... Frogs ... Adult frogs ... Baby frogs ... Frog eggs ... Frogs live ... Frogs have ... Whistling frogs usually live in trees.

Remember that your audience is a lawyer who is not familiar with the topic. Make sure that you explain and illustrate the rules. Sometimes this can be done by just adding a sentence or two of context.

For example, some concepts/cases are so familiar that very little explanation is needed:

“The defendant treated the plaintiff like Cinderella.”

Other times, you need to explain a little more.

“The appellant chased the respondent like Inigo Montoya”

Your reader might not know who or what that is. This is better:

“The appellant chased the respondent like Inigo Montoya, a fictional character from the Princess Bride who was engaged on a lifelong quest of revenge.”

Sample Rubrics

Problem Question 2 (25 marks)

<table>
<thead>
<tr>
<th>Law</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue 1 (4)</td>
<td></td>
</tr>
<tr>
<td>Accurately describes the rules using relevant authorities</td>
<td></td>
</tr>
<tr>
<td>Explains which rule is most important and why</td>
<td></td>
</tr>
<tr>
<td>Issue 2 (4)</td>
<td></td>
</tr>
<tr>
<td>Accurately describes the rules using relevant authorities</td>
<td></td>
</tr>
<tr>
<td>Explains which rule is most appropriate and why</td>
<td></td>
</tr>
<tr>
<td>Issue 3 (2)</td>
<td></td>
</tr>
<tr>
<td>Accurately describes the rules using relevant authorities</td>
<td></td>
</tr>
<tr>
<td>Explains which rule is most appropriate and why</td>
<td></td>
</tr>
</tbody>
</table>
### Application
- Properly applies formula or reasoning based on stated rules (2)
- Highlights relevant facts/characteristics on both sides of any argument (2)
- Gives thorough examination of facts (2)
- Properly excludes irrelevant facts (2)

### Conclusion
- Clear conclusion/answer (2)

### Presentation (only for LMRW2 – in other classes there are few or no points awarded for this)
- Essay is structured with logical progression including:
  1. law and facts are not mixed (2)
  2. paragraphs have a topic sentence and are not too long
  3. subheadings are used if necessary
- Ideas are communicated simply and essay contains few excess words (1)
- Uses complete sentences, proper grammar and accurate punctuation and quotation marks (1)
- All sources are properly cited (1)

### Essay Question (20 marks)
- Accurately describes the area of law, including, if relevant, history, competing rules and recent developments (16 marks)
- Usually course director has a checklist of the principles/authorities which must be included eg
- Defines key terms (2 marks)
- Mentions first leading case (2 marks)
- Mentions criticisms of first leading case (4 marks)
- Mentions recent case (4 marks)
- Explains why the recent case differs from the leading case (4 marks)
- Engages with the topic and properly answers the question asked (4)

Good luck!