



HOW TO WRITE BETTER LAW ESSAYS

4TH EDITION

STEVE FOSTER

How to Write Better Law Essays

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Fourth Edition

How to Write Better Law Essays

Tools and techniques for success
in exams and assignments

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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 author identifies the key characteristics of good (and bad) techniques in writing law assessments and prepares students for the submission of their assignments. The text is related 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 to students on how to make the best of lectures, seminars and textbooks during their programme, thus enhancing their chance of success in assessments. It also shows them how to research and plan their 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. Students can access the companion website at www.pearsoned.co.uk/fosterlawessays to carry out skills

exercises and to answer examples of advanced assessments. Further, 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 GDL and CILEx, but also those studying A level and GCSE 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; and there is a specific chapter on postgraduate assessments available online (Chapter 10).

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 and third editions and the present, fourth edition. As with the third edition, the book is now divided into four parts, consisting of nine manageable chapters so as to make the information more digestible and easier to follow for the reader. Part 1 of the text includes some basic guidance on note-taking, the employment of proper grammar (along with appropriate examples and exercises on the companion website), 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 online; although some of that chapter on enhanced research and writing skills is included in Chapter 8.

For 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. The website includes new exercises on writing style and other skills, which are added to those available in the previous editions. 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 improve the previous edition of the text. Special thanks go to Owen Knight, who has helped me through all four editions of the text, 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.

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 4 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, 5 and 6) deals, respectively, with the research and use of legal material in writing law assessments, legal reasoning and critical thinking and writing in your assessments, legal citation and referencing, and good and bad technique in writing assessments, including how to avoid plagiarism. The new Chapter 4 includes detailed advice on critical thinking and employing legal logic in assessments so as to obtain higher marks, and Chapter 3 now includes more guidance on how to conduct your research. 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. Chapter 6 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. In particular, the chapter highlights good practice in terms of employing appropriate sources and in using critical thinking and legal logic to get better marks. 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 7 and 8) gives guidance on answering problem questions and preparing for and writing examinations in law. Chapter 7 deals with the technique required when answering problem questions, which you may face 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 1–6. 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.

Finally, **Part 4** (Chapter 9) explores the skills required for more advanced assessments, including work at levels 2 and 3 of your degree, case notes and dissertations (guidance on assessment at postgraduate level is now included on the website). The chapter 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). These chapters should be consulted at the appropriate stage of your studies, but they 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 Assignments (now Chapter 10) has been removed, but is available on the accompanying website and some of its content has been included to enhance this current Chapter 9. Chapter 10 is available online only at www.pearsoned.co.uk/fosterlawessays

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!

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. The underlying point stressed in this part is that *good students, who engage in good study practices produce good essays*, and that *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.

Chapter 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.

- You may be writing academic essays for the first time.
- Alternatively, you may have some experience in this area, but 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.
- Lecturers on undergraduate courses insist that you employ sound essay writing skills, including good grammar and spelling.
- You are expected to follow strict rules on citation and referencing of sources and the avoidance of plagiarism.
- You are expected to undertake individual research and to read beyond your lecture notes and basic textbooks.
- The secondary sources are more advanced than those you encountered at A level and adopt a more academic and lengthy style.
- You are required to use legal materials (such as cases) in an appropriate and convincing manner.
- The questions 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

This last 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.

4 Part 1 · Preparing and writing law assignments

The above points reflect the nature and level of undergraduate study. Many students find the experience of submitting coursework at this level quite daunting. These skills can be acquired, or refined, quite quickly, although they are mostly learnt 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.

- Learn to be independent in acquiring knowledge and in your research.
- Take advantage of any guidance the university and law school provide with respect to writing style, referencing and presentation of work (such as house style guides).
- 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.

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. Doing that on a sub-degree course will probably ensure a pass or good pass, but not on your undergraduate law programme.

■ Some common complaints

The lecturers who **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. 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 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 before submission for spelling and typographical errors and for poor grammar. 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 writing ‘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 chapter 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, but nevertheless they should not be ignored. Students often neglect to follow 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 when writing assessments: 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. Although it is quite usual, and to some extent acceptable, to type up your essays close to the submission date, what is unacceptable is to leave the research and planning to the last minute. In that case you will leave yourself insufficient time to acquire the relevant