

# How to write law essays & exams

*Fourth Edition*

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# An introduction to writing law essays and exams

## 1.1 Why the need for a special approach to law essays and exams?

Most people who choose to study law are bright, motivated, and hard-working. They know that law is a very competitive field, and they are prepared to do whatever is necessary to do well. Why, then, do so many able and intelligent students fail to achieve the marks they deserve in their university or professional examinations? Once they have left their studies behind, why do so many find their first years of legal practice so difficult? The answer is simple: they have been given insufficient guidance regarding how to demonstrate their knowledge of the law in written form. By the time they reach vocational training and legal practice, they are assumed to have been taught the requisite skills and so find themselves in even more trouble as they struggle to produce professional quality work without knowing the rudiments of legal writing and analysis.

Students are not to blame for the current state of affairs, but they are the ones who suffer as a result of it, both in terms of their health – which can be affected by overwork and stress – and their careers. Good legal writing in essays and examinations leads to good marks at university and vocational school, and good marks lead to good jobs. If a student is unfortunate enough not to be able to guess what constitutes effective legal writing or to have a lawyer in the family who can give some helpful advice, then that student will find it difficult to compete at the top level.

Fortunately, good legal writing skills are not a matter of luck or genetic predisposition. Effective writing techniques can be learned. Once you have mastered those skills, you are more likely to receive good marks at university. You will also find the transition to professional writing easier than it otherwise would have been.

You might wonder why, if good writing is so important, it doesn't appear on the syllabus. Quite simply, no one feels that it's their job to teach good writing. Schools believe that 'legal writing' is beyond their competence and that they have enough to do teaching basic writing skills. Universities believe that students should have already acquired basic instruction in good writing by the time they arrive at university and the duty of a university lies in teaching the substantive law, not in teaching writing and analytic skills. Of course, this approach ignores the fact that students come unprepared to the study of law, since it is qualitatively different from the study of other A-level subjects. Professional schools also take the view that they should not have to spend their time teaching writing, except to the extent that their courses introduce the specialised forms of writing (such as pleadings, legal opinions, etc) undertaken by legal practitioners.

While this kind of mutual finger-pointing presents one type of problem, there is a deeper issue, namely that most teachers and educational institutions don't know how to teach legal writing. Because most legal academics were never offered any special assistance in this area, they don't know how to instruct their students. Therefore, the feedback that's given on written work tends to focus on either substance (ie missed cases or statutes) or on style (ie misplaced commas, passive voice, etc). While these sorts of comments are very helpful, they don't help students learn how to structure an argument or how to present information in an effective manner. The CLEO method is intended to help you learn how to analyse questions in law, particularly problem questions, and write strong, effective, well-structured essays in response.

## 1.2 Hallmarks of a good essay in law

It is difficult to produce a first-class essay if you don't know the criteria examiners use when marking your work. Every university or vocational school has its own guidelines which describe what constitutes a first-class, second-class and third-class essay or examination. If those guidelines are not made available to you as a matter of course, you should ask to see them so that you can know the standard by which you are being judged. If you know what you are aiming to achieve, you are more likely to succeed.

However, there is some consensus in the academic community about what constitutes a good essay in law. For example, most instructors would agree that the basic elements of a first-class essay include:

- close attention to the question as it is asked;
- detailed knowledge of the topic addressed, as well as a deeper understanding of the context in which that topic exists;



### NOTE

A first-class essay stands out on a variety of levels.

- superlative coverage of the question, including both breadth and accuracy, with no or almost no significant errors or omissions relating to the law at issue;
- identification of at least some of the less obvious points of law;
- outstanding clarity of structure, argument and writing style;
- excellent use of supporting information and ideas;
- use of more than one possible line of argument; and
- presentation of theoretical arguments concerning the subject, significant critical analysis and thoughtful personal perspective on the debate.

It may seem that it is impossible to demonstrate all these qualities within a single essay and, indeed, this is a very high standard of performance. However, most people fail to achieve first-class marks not because they are deficient in their understanding of the subject matter, but because they do not present their knowledge of the law in the best possible light. The CLEO method of legal writing and analysis is designed to teach you how to integrate elements of a first-class essay into your work so that you can win full marks for your understanding of the substantive law.

As you would expect, a good second-class mark falls slightly below the first-class standard and includes most of the following qualities:

- attention to the question as it is asked;
- a good and relatively detailed knowledge of the topic addressed, as well as a good understanding of the context in which that topic exists;
- good coverage of the question, including breadth and accuracy, with few significant errors or omissions relating to the law at issue;
- strong organisational structure, argument and written style;
- good use of supporting information and ideas;
- use of more than one possible line of argument; and
- some degree of familiarity with theoretical arguments concerning the subject and a significant degree of critical analysis.

A low second-class mark falls slightly below a good second-class mark in most or all areas of achievement and includes the following attributes:

- attention to the subject matter asked but not necessarily precise treatment of the particular question as it is asked;
- satisfactory knowledge of the topic addressed as well as understanding of the context in which that topic exists;



#### NOTE

A good second-class mark falls slightly short in some or all of the various areas of evaluation.



#### NOTE

A low second-class mark conveys some understanding and analytic skill but lacks detail and insight.

- acceptable coverage of the question, with reasonable breadth and accuracy, though possibly marred by some substantial errors or omissions relating to the law at issue;
- a reasonably organised structure, argument and written style; and
- satisfactory use of supporting information and ideas, albeit with a weak or deficient theoretical or critical approach.

#### NOTE

A third-class mark signifies an essay that demonstrates a minimal understanding of the question and issues.

Finally, a third-class or passing mark demonstrates significant shortcomings in most areas of evaluation and includes:

- discussion of the relevant area of the subject, even if there is a lack of attention to the question as it is asked;
- some knowledge of the topic addressed as well as some understanding of the context in which it was placed, despite some weakness in accuracy or breadth and possibly including significant errors and omissions in the law relating to the issue;
- some structure, argument and ability to express one's thoughts; and
- some ability to use supporting information and ideas, even if they are somewhat unclear or inappropriate and offer little theoretical or critical analysis.

#### WRITING TIP



*Make a list of all the qualities of a first-class essay. Compare this list with your finished work before you hand it in. Have you fulfilled the criteria necessary to earn top marks?*

Knowing your examiners' criteria is the first step in achieving higher marks, but you must move on to the second step, namely learning how to meet those criteria. This book teaches you how to do just that. For example, the CLEO method of legal writing described in this book will provide you with a strong structural and analytical framework for your arguments. By presenting your ideas in an organised manner, you demonstrate the kind of clarity of thinking and expression that examiners appreciate. This book will also teach you how to identify relevant topics of discussion, compile the best possible supporting material and craft sophisticated arguments that contain detail, insight and relevance to the question asked. Finally, the CLEO method will teach you how to present your ideas quickly and efficiently, which will give you more time to write your answers and thus increase the breadth and depth of your discussion.

#### NOTE

CLEO primarily addresses problem questions, but can also apply to 'discuss' questions and legal practice.

### 1.3 What is CLEO?

CLEO is a four-step method of legal analysis and writing that provides a practical and proven method of answering law school essay and examination questions. The CLEO technique focuses primarily on problem (ie 'fact pattern') questions but is equally applicable to

'discuss' questions and legal practice. Each of the four steps requires you to exercise a different kind of analytical skill. If you implement the CLEO method in your essays, your marks should improve dramatically, since you will be showing the examiners precisely those qualities they want to see.

For example, in the first step of a CLEO analysis, you identify the **claim** at issue. Here, you show how you can spot legal controversies, construct multiple lines of argument and respond to questions as they are asked. The second step in the CLEO system involves the presentation of the applicable **law**. In this section, you identify the relevant legal authority regarding each of the legal issues discussed in the first step of your essay. The 'L' step allows you to demonstrate the depth and breadth of your legal knowledge as well as the quality of your legal reasoning skills. CLEO's third step requires you to **evaluate** the facts of the problem in light of the legal authority presented in the second step. Here, you illustrate your powers of analysis and persuasion as you discuss the extent to which the facts in your particular question live up to the general legal standard identified in your discussion of the law. CLEO's fourth step requires you to identify the **outcome** of your argument. In so doing, you finally weigh up the different strands of legal thought, decide which of your arguments are most compelling and introduce any relevant theoretical points, to the extent you have not done so already. If you adhere to this analytical framework, your overall structure and arguments will be clear and easily understandable, thus increasing your reader's comprehension throughout.

The CLEO system is not a panacea: it cannot replace time spent attending lectures and reading up on the law. Nevertheless, it will help you to present your knowledge in the best possible light. If you read the four chapters describing the CLEO system (chapters three through six) carefully, you will gain an excellent understanding of the ways to craft a legal argument and support it with legal authority. Read chapter seven to learn how to adapt CLEO to 'discuss' questions, then go on to chapter ten to see further examples of CLEO essays and obtain additional hints on how to formulate your responses.

Writing good essays involves more than a sound analytical structure, however. You need to understand the substance of the law before you can analyse it, which is why this book contains a chapter on how to read, understand and summarise legal materials (see chapter two). Once you know the law and how to structure your arguments, you need to be sure not to obscure your thoughts with poor writing. For that reason, this book includes a chapter containing various tips on legal writing (see chapter eight).

Finally, this book recognises that many, though of course not all, law students intend to go on to practise law. After spending several

**NOTE**

CLEO provides a four-step framework for analysis and stands for: Claim; Law; Evaluation; and Outcome.

years perfecting your CLEO essay style, it would be unfortunate if CLEO were only applicable to academic law. However, because the CLEO method is built on a litigation model (more on that in subsequent chapters), it is eminently adaptable to legal practice. Therefore, when you are ready to begin your pupillage or traineeship, you can consider the tips contained in chapter nine.

Having set out the basic outlines of the book and of the CLEO method, it is time to move into the substantive discussion. The following chapter will therefore focus on the first skill set a law student needs to acquire: the ability to read, understand and summarise legal materials.

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