

**LAW STUDENT
SURVIVAL GUIDE**
**9 STEPS TO LAW
STUDY SUCCESS**

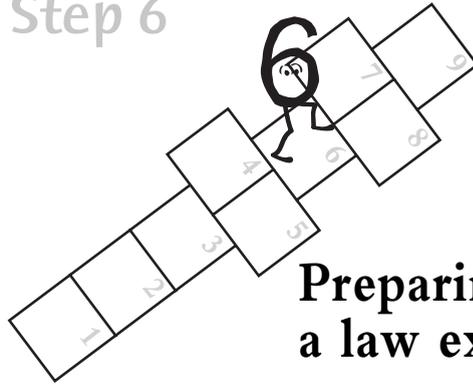
2nd Edition CLAIRE MACKEN

Lawbook Co.



THOMSON REUTERS

Step 6



Preparing for a law exam



When it comes to a law exam, I often think the front cover would be served well by the sensible words on the cover of the *Hitchhiker's Guide to the Galaxy*, written in large friendly letters:

Don't panic!

In my time as a law student, I have seen students hyperventilate on entering the exam room, burst into tears on more than one occasion, throw up, look as pale as a ghost, physically shake and, of course, *panic*.

Why?

- ☹️ A law exam induces *panic* because in most cases there is a need to pass the exam to pass the subject. Although there are many different forms of assessment in different law



schools, in some law subjects law exams are worth from 60% right up to 100% of the assessment. Panic is an understandable reaction when a large portion of assessment in a law subject is based on individual performance in a 2-, 3- or 4-hour session on one single day.

- ☹️ Panic can also be caused by inadequate preparation for the exam and the consequent fear of failure, frustration at not knowing the answer or guilt and regret that you did not study harder or that you have missed examinable issues.
- ☹️ Alternatively, panic can be caused by you putting too much pressure on yourself to achieve, having studied intensely and knowing the intricacies of the subject. You do not want to feel disappointed with a poor result after so much hard work.
- ☹️ Closely related to this last scenario is panic that results from the expectations placed on you by family, friends or colleagues to do well in this particular exam.

This Step of the *Survival Guide* gives you some ideas, hints and tips on succeeding in law exams.

TAKE CONTROL OF YOUR NERVES

So you're nervous about a law exam? Feeling anxious, apprehensive, concerned, scared?

- 1 Remember that you are most certainly not alone. Feeling nervous before completing a law exam is perfectly understandable and normal, and many of your fellow students feel exactly the same way as you.
- 2 Although it is true that some students do fail in law exams, most don't. If you have spent time studying the law subject,



reading cases and understanding the principles of law, it is more likely than not you *will* pass the exam.

3 You could try to think of your nerves in a different way! Rather than feeling nervous, think of the feeling as excitement! In your preparation leading up to the exam, feeling excited (nervous) is a sign that you are motivated to achieve, you want to be productive, learn effectively and perform in the exam at a high level.

If you do have a law exam as a significant component of your law assessment, be “exam-focused” throughout the semester. This approach can make any pre-exam nerves manageable so that you can feel confident in your abilities as a law student. In your studies, project ahead to the arguments you need for the exam situation and, in studying the subject, write study notes that can be condensed to summary notes. All of these techniques are explained in Step 5 of this *Survival Guide*.

In addition you should:

- ☺ Change your study techniques in the weeks leading up to the exam.
- ☺ In the few days before a law exam, *implement simple steps to calm your nerves*, use anxiety constructively and ensure you are in a mental and physical position to perform well on the day of the exam.

This section of the *Survival Guide* will now deal with each of these steps separately.



Reading this too late? How to pre-exam cram

The hints and tips in this Step of the *Survival Guide* are designed for students who have worked throughout the semester, steadily learning the law subject they are studying and preparing summaries of the law and cases in study notes and summary notes.

This learning approach may not be a reality for some law students, for whatever reason. It's (usually) not too late to learn, but you have to be committed to pre-exam cram!

Here are 3 steps to implement:

1 Resolve to fix your study techniques for next semester.

You know that in leaving it too late, you've probably worked *just as hard or even harder* in the weeks before the exam than students who have plugged away all semester. Resolve now to implement efficient and productive learning habits for your next law subject.

2 Implement pre-exam cramming techniques.

See Step 9: Problem "I have too much to do, I don't know where to start" for *specific tips* on pre-exam cramming.

3 Write an intense pre-exam study schedule.

Write a study schedule based on the amount of available study time you have left until the exam. To write a study schedule, use the instructions given in Step 3 of this *Survival Guide* for weekly schedules, adjusting the timeframe accordingly.



*If you are planning to pre-exam cram, you must be prepared to work extremely hard in a concentrated period of time. This means you will have to cancel any unnecessary demands on your time and apportion sufficient time to learn a law subject in a short period of time. Depending on the amount of knowledge you need to acquire, this could mean making time to study for even up to (or beyond) 8 hours every day leading up to the exam, scheduling in times for breaks and rests. Remember though to only allocate 4-hour study sessions as a *maximum* – you are much better off taking a break and refreshing than continuing to study for hours on end and achieving little.*

Instead of writing a weekly schedule based on Monday–Friday of a semester, draw up a schedule for the days remaining until the exam (see example table below). For each of the days you have, schedule in 3–4 hour blocks of study with breaks in between and leaving sufficient time to sleep (8 hours) and eat. Schedule in a break to *get well away from study*, such as a gym session, walk, afternoon off or TV time. *You will need to study to obtain sufficient knowledge to pass the exam, perhaps 8 hours every day.*

Now that you have study blocks, you must write a list of things to do, prioritising them in order of importance. At each study session, tick off your achievements. Leave each intense study session knowing exactly where you pick up study again. Implement study techniques from Step 4 of this *Survival Guide*. It is probably best to avoid this method of learning as it is more stressful than a paced week-by-week approach!



Study planner for exam pre-cramming

Based on 10 days before an exam

Time	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday
6 am	Wake up	Wake up	Wake up	Wake up	Wake up	Wake up	Wake up	Wake up	Wake up
7 am	Study	Study	Time off	Free time	Study	Free time	Study	Time off	Study
8 am	Study	Study	Time off	Free time	Study	Free time	Study	Time off	Study
9 am	Study	Study	Time off	Free time	Study	Study	Time off	Time off	Time off
10 am	Study	Break	Study	Free time	Study	Study	Time off	Time off	Time off
11 am	Break	Study	Study	Free time	Break	Time off	Study	Time off	Study
12 pm	Break	Study	Study	Free time	Study	Time off	Study	Time off	Study
1 pm	Study	Free time	Study	Study	Study	Study	Study	Study	Study
2 pm	Study	Free time	Time off	Study	Study	Study	Time off	Study	Break
3 pm	Study	Free time	Time off	Study	Study	Time off	Time off	Study	Break
4 pm	Study	Free time	Study	Study	Time off	Time off	Study	Time off	Study
5 pm	Break	Free time	Study	Break	Time off	Study	Study	Time off	Study
6 pm	Break	Study	Time off	Break	Time off	Study	Study	Time off	Study
7 pm	Study	Study	Time off	Study	Time off	Study	Time off	Study	Study
8 pm	Study	Study	Study	Study	Time off	Break	Time off	Study	Finish!
9 pm	Time off	Time off	Study	Study	Time off	Study	Time off	Study	Relax!
10 pm	Time off	Time off	Study	Study	Time off	Study	Time off	Study	Relax!



CHANGE YOUR LEARNING TECHNIQUES LEADING UP TO THE EXAM

The following suggestions are for those of you who do not need to pre-exam cram. It's a good idea to change your study techniques in the last few weeks leading up to the exam.

Practice, practice and more practice!



The single most useful and important exam preparation you can do is to practise and then do more practice!

Practise *throughout the semester*, stepping up to more and more practice in the last weeks before the exam. Law exam practice is perhaps the single most useful preparation you can do for a law exam. It is through this process that you learn the law and how you will apply it in an exam situation.

Learning law in theory and reading legal principles in abstract will never test your ability to apply these principles to various fact patterns. The *key* to understanding the law and to achieving in a law exam is to:

- Ⓒ successfully identify legal issues;
- Ⓒ isolate the appropriate legal principle; and
- Ⓒ apply the law to the facts of the problem.

For most, it is a difficult task to do this in an actual exam setting without practising first.



Finding practice questions

Practise as many *past exam* papers and *review questions* as you can get your hands on! For example:

- complete past exam papers from previous years from your university – they may be available in the library or from your lecturer;
- borrow from the library resources in your law subject with questions and (sometimes) answers – these may be called *Questions and Answers* or *Tutorial Series*;
- search online for Australian exam papers on your law subject – ensure the questions are appropriate for your needs;
- test yourself by writing your own practice questions.

Incorporating practice questions into your exam preparation

- 1 During the semester, once you have finished a particular subject of the course and completed your summary notes for that area, test your notes by completing a question in that area of the law subject. Ask yourself: Do my notes cover the scenarios raised by the questions? What sort of issues arise out of the fact problem here? Update and clarify your notes through this process.
- 2 During the semester, when you have finished a definable portion of the course (a very large section covering several topics, for example), complete a practice exam on that area.
- 3 In the last few weeks before an exam, start completing entire practice questions and answers spanning across the entire law subject. This should serve as a consolidation of your knowledge – for instance:



- It is a good idea to write some answers out in full, so you get some idea of the amount to write in the time pressures of an exam.
- As well as writing out full answers, it is also beneficial to write out a detailed dot-point answer of exactly what you would argue and the legal principles you would rely upon in the exam.
- Just reading through a question will generally not help – you may be surprised when you sit down to actually answer it.
- As a general guide, complete at least 4–5 fully written out answers before the exam and dot-point answers for any other review questions or previous exams you can find.

4 Save at least one exam paper for the last 2 weeks of exam preparation. To allow sufficient time to fix your problems, actually complete the exam in exam conditions and time – that is, without any distractions or leaving and coming back to it – and work all the way through.

Having completed all of the above, you may be surprised at the amount or type of revision you need to do. You may also be surprised at how little time in a law exam you have to complete the set questions. Practising exams will usually reveal the gaps and deficiencies in summary notes and the areas of the law subject to work on leading up to the exam.

Write summaries of your summary notes

In the last few weeks before the exam, write summaries of your summary notes.

All semester you have written study notes, and then summarised and condensed that information into shorter summary notes. Yet, writing summaries of your summary notes is an excellent



way to prepare for the exam. It consolidates your knowledge, puts the law subject in context and enables you to identify issues. Think what will work best for you. Lists? Tables? Charts? Flowcharts? Diagrams? Pictures?

Some ideas are:

- ④ Write a summary of all the *causes of action* within a law subject, including the elements to prove and legal principles to apply. Compile a table on an A4 page (try rotating the page to landscape format to make more room), filling in the headings, as suggested in the table below:

Cause of action	Element	Tests to apply
The area of law you sue under.	The elements to prove in establishing the cause of action (a numbered list is easy and clear to read).	Briefly summarise the <i>major</i> legal principles that apply to prove the cause of action and help explain each element.
For each cause of action within your law subject, fill in each separate row, an area of law to sue under.	For each cause of action, fill in a separate row with the elements to prove.	For each cause of action, fill in the specific tests to apply to prove each element within the cause of action.

- ④ Summarise the cases in the subject you are studying on one A4 page. Just include the case name, a few words reminding you of the facts and keywords of the area of law it concerns.
- ④ Think of ways to summarise how areas of the law subject fit together, the law subject as a whole, or legal issues or elements that overlap.



- ⊕ Another table could be compiled on *related* causes of action – that is, if you have a cause of action under *this* area of the law, you may also have a cause of action under that area. In the table you should think of the *similarities*, *differences*, *overlap* and *common elements* between causes of action within a subject. For example, in criminal law, there may be overlap between manslaughter and murder, in torts between battery and assault, etc.

Set up, organise, label and tab your exam folder

In the last few weeks before the exam set up your exam folder. This should happen earlier rather than later so you become familiar with the structure of your summary notes. This folder should be designed as your *exclusive* and *sole exam resource*, designed to allow you to effectively and efficiently apply your legal knowledge in a law exam.

Your exam folder should contain:

- 1 summary notes: 30–50 pages at most;
- 2 exam summaries: a few pages;
- 3 practice questions and answers; and
- 4 time breakdown for the exam (how many minutes per mark or per question).

(You should not need to take your study notes into the exam as they should be fully incorporated into your summary notes, but you might like to take them for reference if they are needed.)

Your exam folder can be an A4 with hole punches, display books with plastic sleeves etc. Look around for ideas for presenting your summary notes, bearing in mind:



- ☺ In organising your folder, the legal principle you need must be at your fingertips, right when you need it. You must be able to turn to the page you need quickly and easily so you have the law ready to apply right in front of you.
- ☺ When choosing your exam folder it must easily fit on your exam desk without being too much in the way while you are writing – anything larger than A4 is probably too burdensome.

One important aim in preparing your summary notes folder is to avoid flick, flick, flicking in an exam, the product of too many summary notes. When you compile summary notes from your study notes (by following Step 5 of this *Survival Guide*), remember your aim is to summarise to reduce the volume of your summary notes for the purpose of using them in an exam.

A second way to improve the effectiveness and organisation of your exam folder is to tab, index or file your exam folder in an easy-to-use way. There are many different labelling systems you can use for your exam folder; have a look around the stationery shops for some ideas. For instance:

- ☺ Find small sticky paper notepads and cut to size for labels, sticky-taping each to your summary notes.
- ☺ Attach colourful paperclips to your folder with a handwritten label attached to each.
- ☺ Use sticky envelope labels and fold to turn into a tab.
- ☺ Use colour-coding for labels, find bright pink, blue or yellow card.



- ④ Write your label on ordinary paper and cut it out. Get a piece of sticky tape twice the size of the label. Stick the label on to the sticky tape leaving enough edge to stick on to your page. Fold the sticky tape underneath to the back of your page. Trim your labels at the end for uniform size.

When choosing labels make sure:

- ④ your labels are easy to see;
- ④ the labels you choose are sturdy and unlikely to fall off. You'll probably keep summary notes for future reference and strong labels will last for years;
- ④ the label you give to each section is appropriate! (Remember, there's not much space on a label.) What is the one word that describes that area of the law to you? Is there an appropriate abbreviation you can use?

THE LAST FEW DAYS BEFORE AN EXAM

Make sure you get some sleep!

Fatigue seriously affects your ability to have a clear and lucid mind. You are much better having a sleep the night before an exam than staying up for hours the night before. At some point you must draw the line and say: "That's it. I've learnt as much as I can." Drawing the line at the exam room door is probably too late. Will you really learn that much more by cramming the few minutes before walking in?

On a more serious note, stay away from alcohol and mind-altering prescription or illegal drugs that will artificially assist you



in staying awake. A law exam is a *stressful* situation, where you are required to demonstrate sophisticated legal knowledge in a short time, but alcohol or drugs are not a solution to stress in either the short or long term. Law exams are one of the steps to prepare you for the professional world – it’s better to learn how to cope with your anxiety now than a few years down the track.

If you are having problems coping with stress, or you are turning to alcohol or drugs to deal with the stress of studying law, there are university counsellors or medical professionals to give you better strategies to cope.

Pack your bag the day before!

Write a last-minute checklist so you do not forget important exam items.

Checklist

- Pens – take several (5 or 6) – if they are going to run out, the middle of an exam is the most likely time.
- Different coloured pens – red, blue, green – you can use them to remind yourself of areas to cover in the exam or for headings or subheadings.
- Your student number and identification card – you will be asked for them.
- Your neatly organised and tabbed summary notes.
- If necessary, the *one* textbook you have principally relied on all semester.
- A bottle of water.



- ❑ A watch, clock or timer to keep track of time – most exam rooms will have one, but your view may be obscured or the clock may not work.
- ❑ Anything else – it's a long exam! Headache relief? Tissues? A snack? Sometimes a sugary packet of lollies for the last hour will get you through and increase your concentration (just test out your reaction to this beforehand and check your university exam policies for guidance).

At some universities, bags and pencil-cases are prohibited in the exam room. If this applies at your university, make sure everything is in a see-through plastic bag.

Leave your textbooks at home! You should only ever need to look at your *summary notes*. For security, you may want to take one, at most 2, textbooks provided you are *familiar* with these books and have used them as a resource throughout the semester. You simply do not have time to read new books in a law exam!

On exam day, eat something!



Stay away from panicked last-minute revision.



Ignore your nerves and eat something before you go into the exam. You can't perform at your best in a law exam for 3 or 4 hours without food.

At some point draw a line to end your study.



It may be best to stay away from that exam door

Prior to a law exam, students congregate just near the exam door. Typically, students about to start an exam are nervous, worried or excited. Some students will compare their legal knowledge and summary notes.

Depending on the type of person you are, it may be a good idea to stay away! At this point there is very little, if anything, you can do about your level of exam preparation and knowledge. Gathering in a group is likely to make you feel even more nervous. It may be a better idea at this time to just focus on your abilities. Forget about what your law colleagues know or don't know. You are in an exam on your own and it is probably best to start off that way in the minutes immediately before the exam.

Compose a pre-exam routine

In preparing yourself physically and mentally for a law exam, it can sometimes help to set yourself a pre-exam routine that you can follow for every exam. A routine may help you feel in control, less stressed and able to cope with the anxiety of a law exam every single time you need one.

Your routine may be related to the time you finish studying, whether you have a break, the food that you eat, the pens that you pack or the route you take to get to the exam.

THE EXAM

“IRAC” as leading to success in a law exam

An excellent law exam answer can be achieved in different ways, yet in all top exam papers and in nearly all law assessments



the key is “IRAC” an acronym that expresses legal reasoning, one of the principal skills to analyse and argue a legal problem. The following discussion explains how to apply IRAC in a law exam.

There are 4 principal elements in IRAC:

- 1 Issue – Identify the legal issues from the facts.
- 2 Rule – Discuss the appropriate legal principles that apply to the facts.
- 3 Application – Apply the law to the specific facts of the fact-problem.
- 4 Conclusion – Conclude with an assessment of the likely outcome of the cause of action.

Issue: Identify the legal issues from the facts

The first step in analysing a legal problem is to accurately identify *all the legal issues* that arise from the facts. Thus, from a set of facts, you need to “spot the legal issues”, and there likely to be several.

To spot the legal issues in a fact problem, read straight through the problem once, starting at the beginning and reading through to the end. As you read, think of potential issues and causes of action and the position of each party as you come across them. As you read, from your knowledge of the law subject, think to yourself, “oh, that’s the issue of . . .” or “those facts relate to this issue . . .”.

Then, re-read the question, this time more slowly. Start at the beginning again and, as you read through for a second time, try to identify further issues you missed in the first read-through.



Look at each of the facts in turn and ask yourself: Why is that fact there? What legal issue does it relate to? Is that a legal problem from this law subject that I recognise?

Once you finish reading, quickly read the question once more. By this time you should be familiar with the entire fact-problem and the parties, and you will probably find even more legal issues to address.

The trick to issue-spotting is to remember that, in nearly every fact problem, in every law exam, every single sentence of the facts will be relevant to a legal issue. If you find, after reading a fact-problem, facts that you have not allocated to an issue, you are usually missing an issue.

Once you have identified the legal issues in an exam, it is a good idea to prioritise them in order of importance. Sometimes the legal issues are complicated, with several parties involved. It may be best to deal with those issues in your answer first. Spend most of your time on the more complicated issues. Leave the smaller causes of action, or those that are obvious, to last.

For some law subjects it may be appropriate to ask yourself: WHO will sue WHOM, and in WHAT cause of action? This can then be used as a heading.

In a law exam, write out the issue and then turn to identifying and applying the law. Repeat this for each of the legal issues you have identified.



Issue-spotting

The following is a fact-problem from an exam in the subject of torts law and is used as an example of how to spot legal issues in a law exam. Every italicised fact is relevant to answering the



legal issues. The legal issues in this question are in bold and square brackets after each sentence.

Ben was *flying a kite in his garden* in the suburb of Kangaroo pawvale, when a *sudden gust of wind tore it out of his hands*. **[Issue: In intentional torts, the kite being torn out of his hands may mean there is no direct conduct for a trespass.]** *The wind carried the kite onto the neighbouring rooftop of Leo's house.* **[Issue: Is this the tort of trespass to land or the tort of nuisance?]** Ben ran home in tears. He asked his father, Mark, to retrieve the kite. *Mark went to Leo's house to ask permission to do so, but found that no-one was home. Mark spotted a ladder leaning against the shed. He carried it over to the house, placed it against the wall and climbed onto the roof.* **[Issue: Is climbing on another person's roof a trespass to land? Is there a defence because he is retrieving the kite? Another issue: Is picking up a ladder a trespass to goods?]** *When Mark was on the roof trying to untangle the string of the kite, which was caught around the chimney, Leo came home. Leo saw that Mark was doing something on the roof but, having an obsessive personality, he almost instinctively took the ladder away and locked it in the shed, where it belonged.* **[Issue: Is leaving Mark on the roof false imprisonment? Another issue: What is the effect of Leo having an obsessive personality – does it affect the intentional behaviour of Leo for the tort?]** Mark, having untangled the kite, stepped back, *intending to descend on to what he believed was the top step of the ladder. By the time he realised that there was no ladder, he lost his balance and fell from the roof, sustaining serious injuries to his right leg and arm.* **[Issue: Is there contributory negligence by Mark by not checking where the ladder is?]**



Mark, who owned a science fiction bookshop in the Main Street of Kangaroo Pawvale, *felt humiliated and bitter about the incident.* [**Relates to the later issue of malicious prosecution.**] So, when Mark saw *Leo's 12-year-old son, Ron*, looking at books by Larry Niven one day, he *decided that it was time for revenge.* [**Relates to the later issue of malicious prosecution.**] He came up to Ron and said: "I have seen you putting a book in your pocket. *Come with me to the back room. I intend to call the Police so they can charge you with theft.*" [**Issue: Is this false imprisonment? Another issue: Is a statement that he will call the police an assault in tort?**] Once they were in the back room, *Mark called one of his shop assistants, Peter, and told him to search Ron.* [**Issue: Is there vicarious liability in tort by directing a shop assistant to commit a tortious act?**] Ron protested, *but Peter frisked him nevertheless, and found Larry Niven's Ringworld in the boy's pocket.* [**Issue: Is this frisking by Peter the torts of battery, assault and false imprisonment? Another issue: Has there been a trespass to goods if Peter touches Ron's book? Is touching the book also an act of conversion? Another issue: If Peter is liable for torts for the frisking, is there joint liability with Mark?**] Ron claimed that the book was his, that he had purchased it with his pocket money a week before. *Mark said that Ron was not to be believed and telephoned the Police. He also told Ron to call his father, Leo, at work. Ron did so.* [**Issue: Do these facts indicate malicious prosecution by Mark?**]

While Ron was waiting for the Police and his father to arrive [**Issue: Is this another false imprisonment by Mark?**], another shop assistant, Ingrid, came into the back



room and said that she remembered selling the book to “this boy” some 6 days earlier. *Mark became so angry with Ingrid that he told her he would sack her unless she kept quiet. [Issue: Is threatening to sack a person an assault?] Ingrid answered that as a law student she knew her rights and would not allow Ron to be falsely accused of theft. Enraged, Mark threw Ron’s book at Ingrid. [Issue: Is the act of throwing Ron’s book at Ingrid a conversion of the book? Another issue: Is throwing the book at Ingrid an assault?]* Ingrid, trying to avoid being hit, moved backwards and fell upon Constable Stevens, who had just entered the back room. **[Issue: Is Ingrid liable in battery for making contact with Constable Stevens?]** The book landed on Constable Stevens’ head. **[Issue: Is Mark liable in tort for throwing a book that makes contact with his head? Another issue: Is this assault?]** As a result of his traumatic experience in Mark’s bookshop, Ron has developed an anxiety disorder for which he is being treated by a child psychiatrist. **[Issue: Is there an action on the case for intentional infliction of nervous shock? Another issue: What is the affect of Ron’s anxiety disorder on the damages payable for commission of the torts?]**

Advise the parties.

Now we have identified the issues, we might think, who will sue whom, and in what cause of action?

From the top of the problem, the first cause of action you would deal with in your exam answer is: *LEO v BEN (for the tort of trespass to land)*.



Rule: Isolate the law

After you have identified the legal issues to address in a fact problem, your next step is to identify the applicable legal principles to apply to each of the legal issues in dispute. In many subjects the applicable legal principles contain elements – that is, 3, 4 or more criteria to consider in determining the outcome of the dispute. Sometimes the issue you have identified could give rise to 2 or more causes of action.

To demonstrate your knowledge of the law and the applicable legal principles to apply to the identified issues, one approach is to actually write out the law. This approach would mean you restate the applicable legal principle, citing a statutory section or case as authority for that proposition. You may also elucidate on the case law in this area of law, how it was applied and particular facts that were used to support that application. In areas of the law that are uncertain, you may discuss that uncertainty and different approaches. Some analysis of policy considerations as to the legal principle may also follow.

In answering a law exam fact-problem, just writing out the law is usually not enough.



In addition to identifying the issues and the applicable law, one of the most important steps in a law exam is the application of the law for each issue to the facts of the problem.

Another approach in identifying the law is, however, to condense this element 2 with element 3 (of the 4 elements cited on page 80), explaining the law as you also apply the law to the facts. In this approach, your application of the law to the facts of the problem will show a demonstrated understanding of



the law. Further details on this approach follow under “A brief word on IRAC” below.

Application: Apply the law to the facts

The application of the identified law to the legal issue in dispute from the facts is probably the single most crucial step in a law exam. Identifying legal issues and writing out the relevant principles of the law from a textbook, lecture notes or a case is an important first step in resolving a legal problem, but the additional step of explaining how the law applies to the specific facts of the problem is equally (if not more) important.

For this reason, when applying the law to the facts, it is best to avoid writing out a lengthy statement of the applicable legal principles without reference to the facts and simply writing: “This law clearly applies to the facts here.” This approach misses the all-important application stage of IRAC.

In answering a fact-type question, it is not uncommon to come across legal principles, or elements within a legal principle, that apply for several causes of action. If you have described an element or legal principle earlier on in an exam answer and find that that same principle arises later, it is usually appropriate to refer back to your initial legal analysis to save time.

A brief word on IRAC

In some law subjects you may be specifically instructed to use IRAC as an exam approach in answering fact-type problems. This is common in law subjects in the earlier part of your degree as IRAC is an excellent tool to teach the fundamentals of legal reasoning.

Sometimes, however, you may think about combining the “R” with the “A” in IRAC to ensure you do apply the law to the



facts, answer all the legal issues and not run out of time. This approach would be particularly suited to larger law subjects where time is an issue, such as equity and trusts or torts law or subjects later on in your degree – from late second or third year – such as administrative law or elective subjects.

Rather than writing a distinct section on *the law*, it will be apparent from the wording of your application of the law to *the facts* that you have correctly identified the applicable legal principle.

Following are 2 examples of a torts law exam issue. One uses IRAC, the other combines the “R” and “A” in IRAC.



Exam answer using IRAC as separate steps

Each element of IRAC is indicated in square brackets and **bold**.

The fact that Mark is trapped on the roof because Leo has taken the ladder away raises the issue of whether Leo has falsely imprisoned Mark.

[The student here identifies the legal issue – the “I” of IRAC.]

False imprisonment is where there is a total restraint of liberty of the plaintiff caused by conduct of the defendant without lawful justification. For false imprisonment, the defendant must directly cause or actively promote imprisonment by the defendant’s own act or through the act of a third party. The restraint of liberty must be total, without a reasonable means of escape, and the cause of action is actionable per se, without proof of damage.

[The student has correctly isolated the relevant law of false imprisonment – the “R” of IRAC.]



Applied here, Leo's removal of the ladder knowing Mark was on the roof, is arguably a false imprisonment. Although Mark has voluntarily entered the confined space of Leo's roof, Leo's actions would be considered to directly cause Mark's imprisonment – that is, by removing the ladder, Leo's actions have directly caused or actively promoted Mark's imprisonment on the roof.

Mark's deprivation of liberty can also be considered a total restraint as Mark is trapped on the roof without any other reasonable means of escape. Jumping from the roof, for example, would be considered an unreasonable escape because of its danger. Further facts are required, but if there is a tree near the house that Mark could use to climb down from the roof, there would not be a total restraint of liberty.

[The student has applied the law of false imprisonment to the facts of the problem.]



Exam answer using IRAC, combining “R” and “A”

Mark v Leo

False imprisonment

[The student here identifies the legal issue by way of heading – that is, Mark has a cause of action against Leo in false imprisonment – the “I” of IRAC.]

Leo's removal of the ladder from the roof could amount to a false imprisonment as there is likely to be a total restraint of Mark's liberty. Although Mark voluntarily entered the confined space of Leo's roof, Leo's actions are likely to be considered as directly causing Mark's imprisonment – that is, by removing the ladder, Leo's actions have directly caused or actively promoted Mark's imprisonment on the roof. Mark's



deprivation of liberty can also be considered a total restraint as Mark is trapped on the roof without any other reasonable means of escape. Jumping from the roof, for example, would be considered an unreasonable escape because of its danger. Further facts are required, but if there is a tree near the house that Mark could use to climb down from the roof, there would not be a total restraint of liberty.

[In this example the student has used the words of the legal principle (R) while applying it to the facts of the problem (A). The student clearly demonstrates an understanding of the law of false imprisonment and how it inter-relates with the facts of the problem.]



Combining “R” with “A” while incorporating case summaries

Often IRAC means students incorporate case summaries within their exam answer. An example might be:

In the case of *Nagle v Rottnest Island*, the plaintiff became quadriplegic after diving off a rock into shallow water. The court found in that situation that a duty of care will exist if an occupier under a statutory duty encourages persons to engage in an activity. Applied here, since the Outer Suburbs Basin District (“OSBD”) put up warning signs in the changing rooms, the decision in *Nagle* can be applied to this case to find there was a duty to take care.

When combining the “R” with the “A”, students still incorporate the case within their answer:

Phillip v OSBD

Negligence



Duty of care

It is likely OSBD owed Phillip a duty of care because of the similarity between this situation and *Nagle's* case. Like *Nagle*, OSBD is an occupier of the Eastern Basin, is under a statutory duty and encouraged persons to engage in an activity by putting up warning signs in the changing rooms.

PERFECT EXAM TECHNIQUE

Allocate your time



It is entirely illogical and irrational not to allocate your time in a law exam.

In a law exam where you are given a block of time (2, 3, 4 hours) to answer a number of questions, the best approach is to allocate your time for each question based on the number of marks available.

All questions within a law exam are allocated marks. If you do not answer a question, you will receive zero. If you answer a question poorly because you have run out of time, you will receive a low mark (or zero) as well. Regardless of how brilliant and inspired your Question 1 answer is, at the very most (and very rarely) you will receive the maximum marks allocated to that question, nothing more.

For example, if a law exam contained 4 questions each worth 25 marks, it would be illogical to spend one hour on Question 1, 45 minutes on Question 2, 30 minutes on Question 3 and nothing on Question 4.





In the above scenario, let's say the student receives the top mark of 25 for Question 1 (unlikely, but let's pretend anyway). For Question 4 the student receives 0; Question 2, let's say 18; and Question 3, let's say 15 (generous).

All up, an exam result of 58 – a pass. A PASS from a student who has the *potential* to receive a *high distinction*, given his Question 1 answer. Disappointing, isn't it?

If you want to give yourself the best chance of passing an exam or receiving any mark up to a high distinction, the only way you can do this is to:



Allocate enough time to each question based on the number of marks it is worth.

Even if you do not receive full marks for Question 1 (which is rare in a law exam in any event), a *consistent and steady* application to each question based on the marks it is worth is, without a doubt, the only way to (almost) guarantee a pass and possibly even achieve a high distinction.

Why?

The first few marks of any question in every law exam are a cinch to get – if you just *have a go*, and hit the mark even only a little bit, *you will get marks for it*. Once you reach the last few marks of the maximum that can be awarded, *it is very, very difficult to achieve them*. In most cases, examiners will not award full marks. By spending too much time on a question, writing on and on, explaining or giving another case example, it is unlikely you will maximise your marks in any justifiable way. Your time is *much better spent* getting the first marks of the next question.





Let's go back to our previous scenario. This time our student has given *equal* time to *all 4 questions*, and this time has received 20 for all 4, dropping 5 marks on each question. Exam result? 80 – A HIGH DISTINCTION, even with losing those 5 marks on each question.

How to plan your time in a law exam

There is a simple formula:

- ☺ Work out how long your exam is – in minutes of writing time.
- ☺ Divide the minutes by the total number of marks the exam is worth.

Now you have how many minutes per mark?

- ☺ For each question, multiply how many minutes per mark **BY** the number of marks the question is worth.



FOR EXAMPLE:

- If your exam is 3.5 hours long (with 15 minutes reading time), you have 210 minutes of writing time.
- If your exam is marked out of 100, you have 2.1 minutes per mark.
- If there are 4 questions, each worth 25 marks, you have 52.5 minutes per question.

Sample exam timetable based on 4 questions, each worth 25 marks, in a 3.5 hour exam:

9.15–9.30	Exam reading time
9.30–10.20	First 25 marks



10.20–11.10	Second 25 marks
11.10–12.00	Third 25 marks
12.00–12.50	Fourth 25 marks
12.50–1.00	Filling in missed issues, proofreading

OR

- If your exam is 3 hours long, you have 180 minutes of writing time.
- If your exam is marked out of 70, you have 2.6 minutes per mark.
- If there are some questions worth 5 marks, some 10 marks, some 20 marks, multiply 2.6 by the number of marks for each question:

5 marks	13 minutes
10 marks	26 minutes
20 marks	52 minutes

If you have been notified of the mark allocation prior to the exam, work out the times beforehand and put them in a prominent place on your exam desk. If you only learn the exam times once you have entered the exam room, the first thing to do as soon as you are permitted to write is work out how long to spend on each question and place it on an easily-seen position on your exam desk.



You must STOP yourself from writing when your time clicks over to the next question.





Not just one more line! Every minute you spend exceeding your allocated time on one question is costing you marks in the next. It's not likely you will get the few marks you are labouring after! Move on!

Decide which question to do first

Sometimes in a law exam you don't have to start with Question 1! Sometimes you do.

In some law exams the questions follow a logical progression, adding more facts and layers for you to analyse. An example is where there is a fact scenario in Question 1 and Question 2 changes the scenario to present several different issues. For example, in a land law exam a question may require you to analyse a set of facts based on the Torrens system of land registration, and a further question may ask you to analyse the same facts in relation to land under general law. In this type of law exam, you must follow the exam in logical progression, starting at Question 1 and working through.

But in most law exams, each question asked will be entirely independent and unconnected to the other questions within the paper. In fact, sometimes each question within a law exam is written and/or marked by a different examiner. For these law exams you do not have to start with Question 1. If you do choose to start on a different question, make sure you label your answers very carefully.

In some cases there is great merit in completing an exam in the order you choose. Why?

Invariably there will be areas of the law subject that are more difficult to understand, with complicated concepts and inconsistent and uncertain case law. There may be other areas of the law you do not feel confident with, or have not studied



completely, usually because they are harder areas of the course. There are also areas of the course that are conceptually easy to understand or simple to apply, with established principles of law. In a law exam the issue in these areas will usually be obvious and easy to spot.

If you can answer questions separately, think about prioritising your questions. Given a law exam long, when are you *more* likely to write the best answer you can for each question over that 3-hour-plus stretch? It is a rare law student who does not feel fatigued, or have a sore writing hand, after several hours in a law exam. Which question will you leave to last?

Strategically, you are more likely to receive higher marks overall if you leave the easiest question to last. Deal with the hardest question first or second. Complete questions that are somewhere in between in difficulty either second or third.

Why?

Odds are that if you find a question easy, most of your fellow students will too. This means that, overall, most students will deal with that question quite well, including students who have not studied. The marks across the board, for all students in the exam, will usually be higher than for the other questions. (Say, for a 25-mark question, most students receive 18–20. The minimum mark might be 15.) Therefore, it is much harder for you to achieve a high mark in an easier question when compared to your fellow students. To receive a high mark for an easy question, you will have to perform at an extraordinary standard, writing almost the perfect answer.

If you are aiming for a top exam mark, the most advantage will be gained by leaving the easiest question to last. By this stage of the exam, you are almost always tired, sore and not intellectually performing at your best. In most cases your last question



will receive the least marks in the exam. In completing an easy question last, you do not need to operate at a high level, you will feel like you are on the “home run” and will still gain the marks you need to get a high result. (In the earlier example of a 25-mark question, you may receive 16–18, still an excellent result.)

Compare that to completing the hardest question last. Imagine! After 3 hours of intense concentrated assessment, thought, analysis and continuous writing, you now have to write a complicated legal analysis on areas of the course you find the most difficult. Overall, you are more likely to receive lower results because a hard question will, across the board, be marked lower than an easy question. At the end of the exam, you are weary and worn out physically and mentally and, typically, not equipped to think at the high analytical level required for a difficult question. Some students may also feel despondent and have negative thoughts, such as: “I’ve failed. This is not enough to pass.” Alternatively, they may have run out of time and feel panicked and rushed. By completing the most difficult question in the law exam either first or second, you are mentally alert and academically ready to deal with the level of analysis required. Your writing hand will not be too sore, you will feel motivated to achieve and, best of all, on completion, you should feel relieved the question is dealt with and that the exam should get easier from then on.

A proviso!

It is sometimes a good idea to answer the hardest question second. Completing the hardest question first may make you think “I can’t do this! This is beyond me” or “I’m going to fail”. Start your exam by completing a question that you think you can handle (but still leaving the easiest question until last). Having one good answer complete and feeling confident you



have at least made a good start in the exam can help with exam nerves and “warm you up” for the hardest question.

Essays in law exams



An essay answer in a law exam requires a different approach to answering a fact–problem.

If your law exam requires an *essay* answer, treat this as your *hardest question*. Essays in exams are generally handled poorly by students because they do not do what is asked – that is, write an essay.



Read the essay question carefully

Determine exactly what the question is asking you to do. Are you required to analyse a statement? Discuss a legal principle? Explain the significance of a case? If it is a proposition, you do not have to agree with it!

Remember: An essay must have a point, a contention, an argument – a mere outline, dot points or *précis* of the law is insufficient.



Think about how you will tackle it

Spend 3–5 minutes planning before you start writing.

An essay requires you to answer the question asked by using the law (legal principles and cases) to support your contentions. What will you argue in your legal essay? What points, legal principles and cases will you rely on in your essay to support the propositions you make?



Make sure you answer all parts of the question asked. Do not select what you know from the question and discard other parts; deal with everything the question requires.

To give you an idea, if you have 50 minutes to write a legal essay in an exam, you should probably have an introduction, 3 main arguments or points to make and a conclusion.



Write!

It's usually not expected in an exam that you will write at the same level as a legal assignment completed during the semester. However, your legal exam essay should still have some structure. Make your legal essay clear by using headings and subheadings. Jot down some that will be relevant and will help structure your answer before beginning to write the main text.

To assist with structure, one idea is to divide your exam essay into 3 parts:

1

Introduction

Tell your examiner *what* this essay will argue, *why* the statement made in the question is wrong (or right), **YOUR ARGUMENT**, the contention that this law essay will prove. Make your first sentence count! There's no need to write out the essay question again or to rephrase the question in your own words.

2

Middle

In the body of your essay in an exam develop arguments that support your overall contention throughout your essay. To do this, rely on legal authority – cases and sections of legislation to support each statement you make.

Based on a 50-minute essay, you would generally make 3 main arguments in your essay, each explained and supported by



principles of law. To develop each argument, a good idea is to write *key sentences* – that is, one or 2 sentences within each section of the essay that will define the *key idea* or principle statement for the reader. This sentence can be at the beginning of the paragraph or somewhere in the middle. (For more on developing an essay, see Step 7 of this *Survival Guide*.)

3 Conclusion

Write one, 2 or 3 sentences to finish your essay. In your conclusion, bring the *main ideas* and themes of your essay together, rounding to a final point. Try not to leave your examiner with the impression you have simply run out of ideas or time (even if this is true!).

Little things that might make all the difference

Implementing these brief points may help with the overall presentation of your exam answer. Usually you will not receive points for presentation per se, but improving your exam presentation demonstrates to the examiner that your answer is logical, well ordered and structured.

Identify your answers

Clearly identify which question you are answering because your answers are not necessarily marked in the order in which they were written and different answers may be marked by separate examiners.

Use one script book for each exam question

Consider, if practicable, whether you should use one exam script book for each separate exam question. For example, if there are 4 questions, use 4 script books. You might also



consider leaving one page space between answers in case you have time to return to a question.

Only write on one side of the script book

An idea for presentation is to use the left-hand side for additional arguments you think of as you are writing, or dot-points to clarify your discussion, if that side of the script book is blank.

Use headings and subheadings

Consider whether you should use headings and subheadings to organise fact-problem answers as well as essay answers in a law exam. Headings and subheadings can help to clarify your own answer and may also prevent you from confusing separate issues. Headings and subheadings may also assist your examiner as he or she can clearly see the issues you have addressed.

Write legibly

You are not expected to write in beautiful cursive script in a law exam! Examiners usually understand the pressures of time in a law exam and usually become excellent at working out most styles of handwriting. There is an important rule though:



At all times in an exam write legibly so your answer is decipherable (not necessarily neat)!

To do this:

- 🕒 Practise writing an answer and ask a friend or family member to read it back.



- ☺ Before an exam, try out different types of pens to see which is the most comfortable for you to write with in a long exam.
- ☺ If your writing is large, only write on every second line in the exam script book.

If your writing is *truly illegible* – that is, it simply cannot be read – it might be categorised as a “disability” by your university and special arrangements for the exam can be made.

Spend a few minutes on your spelling and grammar

A law exam is rarely perfect and generally it’s not expected to be. But just a quick read of your answers at the end of the exam for spelling and grammar can improve your exam presentation.

Don’t leave the exam early!

You can nearly always improve, fix or identify a further issue in the exam right until the last minute. If you have discovered all of the issues (hardly ever!), read over your exam answers again, adding in points.



Don’t joke!

Many examiners will tell you: “Don’t joke!” It is usually good advice.

Points that may maximise your marks

Use your reading time wisely

In some law exam, you will have an allocated reading time, which is usually around 15 minutes. The general rule is that you are not allowed to write anything during reading time.



Reading time gives you some valuable minutes to have a head start on your exam (even without writing!). You can constructively deal with your exam jitters, get a substantial feel for the issues tested on the exam and prepare yourself to go straight into the first question.

In reading time you could:

- 1 Carefully read the instructions on the front cover. Do you have to answer all questions or have you been given a choice? Are there specific instructions for you to follow? Anything out of the ordinary?
- 2 Turn to the first question of the exam and just read it straight through, solidly and steadily. If you are nervous, it's not unusual for the first few lines not to mean anything. Just keep reading! Without stopping, read the exam paper through, thinking: What is this question about? What legal issues do I recognise?
- 3 Turn to the first question you will answer (whether Question 1 or otherwise) and start a detailed reading of the question. Remember, you may have missed the first few lines! Work out the facts. Who is whom? What has happened? What legal issues do I recognise from these facts?
- 4 If you still have time, open your notes to the first issue you will address when reading time ends.

When you are allowed to write, if there are legal issues you have identified in *any* of the questions, you could quickly jot them down so you don't forget them later.

For each question, re-read the facts at least once

After you finish answering each question, turn to the next question and re-read it carefully. For each fact, think! What legal issue does this fact raise? Why is this fact in the exam?



(See issue identification tips above.) What has happened? Who is whom? Who has done what? Where do these facts fit in? Why is that there?

For each question, plan!

For some students, planning a law exam answer helps work out the issues to address. For other students, there is no need to plan. In some law exams I have actually marked the plan thinking it was the answer, only to find that the student had then rewritten the entire answer straight after with even more detail!



Use a plan:

- **when you are not sure where to start**
- **to work out the facts and how they inter-relate**
- **to remind you of the legal issues that are raised by the facts**
- **to work out the structure of your answer, including the order in which you will discuss the legal issues.**

A plan only has to make sense to you and may, but will probably not, earn you additional marks. When you're planning, you can write in your examination book or on the paper itself. Some ideas are:

- 🕒 write over the exam paper the legal issues that arise, then prioritise them using a numbered list;



- ⊙ highlight or underline legal issues as you re-read, indicating where the facts are relevant to a legal issue in each cause of action;
- ⊙ make sure you have the facts straight in your head or your answer will become more and more muddled.



Write!

If you have written a plan, you should have logically organised the legal issues from the facts and should now be in a position to write.

If you are stuck on where to start in a law exam, just pick *any legal issue at all* you can identify from the facts, even the most obvious one, and *write!* The easiest way to start is simply to write a heading.



Just start! The first few lines will always be the hardest.

- If you are required to write an essay in the exam, then answer the question asked. *All parts of it!*
- Argue your point.
- Avoid rambling and writing out the question again.
- Use headings and subheadings.
- Structure: Write an introduction, body and conclusion.
- Phrase in terms of doubt.
- Use authority in the form of cases and authors.





Run out of time?

If you have 10 minutes left on a question and you know you will not finish in that time, switch to dot-point answers. You are much better off writing some quick points or an outline plan of what you would have discussed more fully if you had had the time. In dot-point answers write a few words identifying the issue, as well as keywords or case names, to let the examiner know you are aware of the issues.

Using this approach is usually *much more efficient* than encroaching into the time allocated for the next question (as explained earlier, the last few marks of a question are the hardest to get). It is also obviously preferable to not writing anything at all – for which you will receive no marks.

Obviously, dot-point answers are unlikely to gain you as many marks as writing out the answer in full, but they can help you achieve perhaps one, 2 or even a few extra marks.

In the last 10 minutes of an exam, if you have time, it's a good idea to quickly scan through the question again. What facts have you left out? Have you covered all the issues and principles from the facts? Are there gaps in your answer? Does your answer make sense?

Abbreviations

Abbreviations in law exams can get out of control!



B/c WAPDA was un'c a/b this matter, he can sue in neg.?

As a general rule and unless you have been instructed otherwise, abbreviations in a law exam can be *used*, provided you have defined the abbreviation earlier in your law answer or when the meaning of the abbreviation is obvious.



☺ *Abbreviating names in the fact-problem*

- Generally, you *can* abbreviate the names of the parties in the fact-problem to one letter, initials or to an acronym. If it is an obvious abbreviation, there is no need to define it.
- If, however, the name is short (say, less than 6 letters), it is easier and clearer to write it out in full.
- In fact, sometimes the names of parties in an exam are chosen for easy abbreviation – for example, Alan Ant, Bertie Beetle, Cindy Cockroach and Dickory Dock could be abbreviated to AA, BB, CC, DD.
- If you do use a single letter or initials for a party’s name, make sure there is no overlap with another name in the question and that the abbreviation can only apply to one party.
- If there is an overlap – for example, Alan and Andrew – it is best to write out the name in full (rather than A1 or A2, which can get confusing).
- Always abbreviate names in an exam when they are long or clearly suited to abbreviation – for example, the West Australian Port District Authority should become WAPDA.

☺ *Be careful using your own abbreviations*

The best policy is to avoid using abbreviations in your exam. Will it really take much longer to write “because” rather than “b/c”? If, for some reason, however, you *must* use abbreviations, be very selective and limited in your application. If there is *any doubt* as to whether your examiner will understand your abbreviation, *define it* on the first use.





Students in torts often use the abbreviation “DOC” for “Duty of Care”. In the exam, the first time this abbreviation is used in each question, it should be defined in brackets immediately after its use: Duty of Care (DOC).

Use legal authority



In law exams support propositions of law with a section of an Act or a case name.



Providing primary legal support for your answers in law exams is a critical step in legal reasoning. A law exam should have authority in the form of either statute or case law to support every statements of law.

The key to providing legal authority in a law exam is well-organised and exam-focused summary notes (covered in Step 5 of this *Survival Guide*). Preparing summary notes will mean that you have the law you need *at your fingertips* right when you need it and ready to use in the exam.

Citing cases in a law exam

Check the requirements of your law school, but in most cases it would be unusual for a law exam to require full citation of cases. If there is no need for citation in the exam, there would be no need to write, for example, (1948) 6 CLR 47; 4 AITR 36 etc. Instead, when writing your exam answer all that would be needed is one or 2 words to identify the case, either in brackets or following a colon at the end of a sentence or in the body of your answer. There is usually no need to write the full case name. You can use just one name from the case, provided there is no confusion with other cases of the same name within your law subject.





Citing cases in a law exam

- 1 Jonathon must prove State City Corporation (SCC) owed him a duty to take care. This issue is not contentious as it is reasonably foreseeable that any kind of carelessness by SCC could cause damage to Jonathon, or a person within the class of persons to which Jonathon belongs – that is, pedestrians using a footpath: *Donoghue v Stevenson*.
- 2 Eastern Ambulances has breached its duty of care. A one-hour delay would not be considered a reasonable period to wait for the arrival of an ambulance because the risk of Joshua suffering necrosis in consequence of malrotation of the lower intestine was real and not far-fetched or fanciful: *Wyang*.

In applying the common law, a law answer should mention one (or at most 2) principal cases as authority for your statement. There is no need to mention all of the cases that support that principle.

Generally, it is unnecessary and will not add much to your answer to write out a quote from a case. You can assume that your examiner is aware of the case, as well as the quote you are referring to. Rather than write it word-for-word, generally it would be a better to refer to the case and apply it to the facts of the problem.

Citing legislation in a law exam

For statutory authority, it is best to pinpoint the statutory section applied to the facts, either in a sentence or in brackets or following a colon at the end of the sentence.



Unless the law subject you are studying only examines one piece of legislation, when citing always include the name of the legislation as well as the jurisdiction. As you will probably cite legislation more than once in the exam, generally it is good advice to abbreviate the legislation, but only after you have defined the abbreviation the first time you cite the legislation.



Citing legislation in a law exam

If you are studying misleading conduct, the principal Act is the *Trade Practices Act 1974* (Cth). In an exam, your first citation should be:

s 52(1) *Trade Practices Act 1974* (Cth) (TPA).

Subsequent citations can just be “s 53 TPA”.

Generally it is unnecessary and too time consuming to write out the words of a statutory section in full. Assume that your examiner is aware of that statutory section and instead focus on applying that section of the Act to the facts of the exam problem.

Use appropriate language



In writing your law answer, aim for the 3 Cs:

CLEAR

CONCISE

COMPREHENSIBLE

Use language that will effectively communicate to the reader the *specific* legal principles as applied to the facts of the problem. This means:

- ☉ Use fully-formed and entire sentences, not dot points, lists, plans (unless in the last 10 minutes – see above).



- ☹️ Use appropriate legal writing – no colloquialisms, no jokes, no swearing(!).



Phrase your language in terms of doubt

The law is about legal argument and in the law it is rare to be able to state a certainty! Legal principles change and the adversarial nature of our court system mean you can never say with 100% certainty that something will or will not happen. This means that, in nearly every case, *all* legal writing (including a law exam) should be phrased in terms of doubt. For example, use the words and phrases “likely”, “probably” or “in all probability”, rather than definite and absolute terms. You can qualify the use of these terms by saying something is “highly probable” or “highly unlikely”.



“It is highly likely that Phillip has a cause of action in battery since a punch to the face would clearly constitute immediate and direct bodily contact.”



Avoid legalese

Today it is unusual for a law student (or lawyer) to write in ‘legalese’– that is, the stylistic language of the law. This means that all references to, for instance, “heretofore”, “forethought”, “the party of the first part”, “the said contract”, “subject to the foregoing thereafter”, and so on, are *out*.

It is usually important, however, to use specific legal terms taught to you as part of a law subject, for example, “novus actus interveniens” or “locus standi”. It is also important you know the meaning of these terms to use them appropriately.



Use the parties' names

In your exam answer, it is generally a good idea to refer to a party's name (for example, "Phillip", "Mr Bugden", etc) instead of "plaintiff", "defendant", "appellant", "respondent" (these become confusing, especially if you are considering appeals).

Avoid rambling



To minimise wasted time and maximise marks, limit the number of superfluous words in your exam answer.

When marking, an examiner is usually looking for *specific things* in your answer and, in particular, looking for evidence of legal reasoning – identification of the legal issue, identification of the applicable legal principles and the application of that law to the facts of the problem. In practising exams, look for and improve for your next practice:



- words that are superfluous;
- sentences that do not add anything to your answer;
- sentences that restate the facts; and
- sentences that could be rephrased to make them clearer or more concise.

There's no need to rewrite the facts!

Although it may help you get started, rewriting the facts into your exam booklet or rephrasing the facts in your own words will not earn you marks in a law exam.

Sometimes students rewrite or rephrase facts in an exam in an effort to clarify them, but this can be a time-consuming task.



Instead, become familiar with the facts by implementing the points in the “Plan” section above – that is, jot down notes on the exam paper, write a plan, use different colours, think about who has done what to whom? Who is this person?

The table below provides some examples on how to avoid rambling and rewriting facts for the purpose of writing clear and concise law exam answers.

Instead of ...	Write ...	Explanation
<p>RAMBLING: “Whether Pat has an action against the Outer Suburbs Ambulance Services depends on whether Pat can prove negligence. To do this, she must first prove there is a duty to take care owed by the Outer Suburbs Ambulance Services that is reasonably foreseeable . . . When you look at the facts here. . .” etc, etc, etc.</p>	<p>“<i>Pat v Outer Suburbs Ambulance Services</i> (OSAS) Negligence <i>Duty of care</i> Pat may have difficulty in proving OSAS owes her a duty of care because . . .”</p>	<p>Rambling in a law exam is where you write and write, and take a long time to finally get to the point. Instead of verbose sentences that go on, condense issues into headings and focus straight to the legal issue from the facts.</p>
<p>WRITING OUT THE FACTS: “The facts state that Mary merely tapped John and that John’s injuries were ‘nominal’.”</p>	<p>“<i>Mary v John</i> Negligence <i>Duty of care</i> As John has only suffered nominal damages, he is unlikely to succeed in negligence.”</p>	<p>Summarising the facts and what they state will not achieve any marks. Go straight to the answer! Your examiner <i>knows the facts!</i></p>



Instead of ...	Write ...	Explanation
<p>RESTATING THE QUESTION: “This essay question asks whether Lord Atkins’ notions of reasonable foreseeability and proximity were distinct and the requirement of proximity ...”</p>	<p>“Question 2 Deane J’s discussion in <i>Heyman’s</i> case refers to those categories of case where proximity needs to be proved.”</p>	<p>Often students write out the question to get started, to make a mark on the page! It’s much more impressive to start with a forceful opening sentence, then answer the question either working from a plan in your head or from notes you have jotted down.</p>

Give substance to your writing



Don’t just state a conclusion without any substance!

A great law exam answer will not be bare and brief, but instead will demonstrate the application of legal reasoning and analysis. A good idea is to write your way through the *steps* of legal analysis, explaining how the legal principle applies to each of the facts of the problem. You need to clearly explain to the examiner how you came to a particular conclusion, step by step. Although for many law students law and maths seem far apart, constructing a legal answer in an exam is similar to answering a maths problem. Solving a maths problem is more than simply writing a numerical answer after the question asked. As with law, in maths it is the *working out* that attracts marks, the *process* of achieving that particular result.



Resting in the exam itself

For some law students the thought of having a break during the exam itself will not cross their mind. For others, however, sitting for so long is physically uncomfortable, requiring you to leave for a drink, a stretch or the toilet.

If you do need to take a break in a law exam:

- ☺ If possible, plan your break before beginning the exam – scheduling a 5- or 10-minute rest in the middle of the exam may help you to complete the first half.
- ☺ Schedule a break at your desk to stretch your writing hand, have a drink or a small snack.
- ☺ If you are likely to need the toilet during the exam, arrive at the exam venue early to find the closest toilet and the route from the exam room.
- ☺ If you have a short break, use the time to continue thinking about the exam problems and what you will deal with next.

Don't forget, if you suffer from a disability that will make sitting in a long exam difficult for you, your university will have alternative and appropriate examination options available for you.



Dealing with nerves, panic, etc!

Before you read on, remember that feeling nervous before and while sitting an exam is perfectly normal. Nerves can be used productively to focus your attention, zone your thinking and give you the motivation you need to successfully complete a law exam.



Sometimes though, anxiety and feelings of stress may overwhelm you to the point where you feel you just cannot cope or cannot deal with the exam. You may have difficulty in breathing, a tightened chest, sweating, nausea, dizziness, other physical symptoms or be feeling faint.

When you read the exam, you may think “I can’t do this, it’s too difficult” or “This is nothing like I expected”.

What do you do?

If you have intense anxiety in an exam, your immediate priority is to calm down enough to start an exam answer. In making that vital leap from panicking to starting your exam answer, your anxiety may subside.

If you read the exam paper and feel you just cannot do it, just have a go! There is nothing to lose. You will fail if you do not write anything or if you get up and walk out. You are right there, right now, so just write something! Once you start, you may find it is not so bad after all.

Should I leave the exam room?

- ☹️ Try not to leave the exam room unless your panic attack is very serious and you are unable to control it. Leaving may make the situation worse – you may just keep thinking of all the lost time you are spending out of the exam room or have difficulty going back in.
- ☹️ If you must leave the exam room, sit in a quiet place, breathing slowly. Devise a plan to calm down and visualise yourself through the process. Tell yourself you will walk in the door of the exam room, sit at your desk and coolly re-read the paper to find one legal issue to address.



Some ideas, hints and tips to get you started

- 🕒 Tell yourself to *relax* and *calm down*. Close your eyes, slow down your breathing and tell yourself positive statements, such as “I can handle this” or “I just need to start”. For the moment, forget about the clock.
- 🕒 Slowly re-read the question or choose a new question altogether. If the noise of other students working affects your nerves, put your head down low and your hands over your ears to re-read. Keep telling yourself there will be *something* in one of the questions in the entire exam that you can answer.
- 🕒 After re-reading a question, start at the top of the facts and work your way through the problem, trying to identify *any* legal issue you can – all you need is one to get you started! There is bound to be at least one easy legal issue you can identify from the facts. If you are having difficulty in working out the facts, draw maps of the facts or diagrams or pictures.
- 🕒 Once you have *something* to write, regardless of how easy, **JUST START**. Making the first mark on a blank piece of paper is always the hardest. Forget about neatness – just write anything relating the facts of the question to the law. From that first paragraph, you will probably gain momentum for further legal issues and calm down enough to finish each question.
- 🕒 Once you are back on track with your exam and coping with your anxiety, *reassess the time you have allocated to each question*. Totally forget about the lost time. It doesn't matter now – you have a job to do and you need time to do it. Work out how many minutes you have remaining



and divide the marks accordingly. It is crucial that you stick to your allocated time for each question. You will receive lower marks for not completing all the questions.



Let's say you had to deal with a panic attack for the first 30 minutes of the exam. You now have 180 minutes to finish 4 questions, each worth 25 marks. This means you now have 1.8 minutes per mark – that is, 45 minutes for a 25-mark question (rather than 2.1 minutes per mark or 50 minutes for the question). Writing a good answer is achievable in 45 minutes and, in the end, your panic attack may not cost you as many marks as you think.

If you feel panicked because there is a difficult question, it's actually not as bad as you think. In fact, there is nothing worse than an easy exam question! Why? If you find a question difficult, chances are everyone else finds that question difficult as well. Students will generally perform poorly on a difficult question, so from the start the threshold to pass the question is lower than it is for an easy question. Even if you deal with the question in an ordinary way, you will probably pass and, indeed, may well achieve more marks than other students.

After the exam

If your panic attack was extremely serious, consider applying for special consideration – speak to your university.

If you have suffered a panic attack in an exam, seek treatment before your next law exam by seeing a university counsellor or other health professional.

Consider ways to deal with and plan for a panic attack in future exams. Have steps written out for how to deal with a panic attack in an exam. It may be enough to have positive



statements written out in your summary notes, such as “I CAN do this!”, “Calm down!”, “I will find a legal issue to answer!”. Or perhaps you could take the advice of the *Hitchhikers Guide to the Galaxy*. Don’t panic! It’s probably not as bad as you think.

AFTER THE EXAM AND ASSESSING YOUR RESULTS

Immediately after the exam

For many, completing a law exam is an emotional time. For many law students, preparing for a law exam has been many months learning and summarising legal principles. During the concentrated time of a law exam, a law student is expected to read several pages of text and apply complex and overlapping principles of the law to complicated legal issues. A friend of mine used to burst into tears several times a day for an entire week following law exams. “Oh, it’s just the exams,” she’d say each time.

On walking out of the exam room or in the days after, a law student may feel emotional. For others, it will be an enormous feeling of relief that the whole thing is over; for others, elation or disappointment at their performance or further anxiety that they have failed.

Some students might find post-exam analysis with friends and colleagues useful, others may not. If you have another exam to prepare for, it may be a good idea to keep post-exam analysis to a minimum. It’s probably best to avoid dwelling on your past exam performance as there is nothing you can do to change it now.

At the end of each exam period, find some time to relax and forget the entire law exam experience, at least for a short time. Find an activity that you enjoy and schedule time after the exams for it! Some ideas are:





- ☺ Have some quiet drinks with friends – or, alternatively, party hard (responsibly)!
- ☺ Read a non-law book.
- ☺ Exercise.
- ☺ Book a holiday.
- ☺ Spend time doing things you cannot do while studying.

It's also very cathartic to clean up your law books, office and your entire living space! For instance:



- spend a moment sorting out your law subject – file any loose study or summary notes, put all textbooks for your completed subject on your bookcase, return all library books;
- clean up your study area – do a desk declutter challenge to ready yourself for the next semester.

Receiving your results

For most, receiving your law results is a tense time.



If you receive an anomalous result, don't panic!

This is where you do not get a grade (such as N, P, C, D or HD) but *something else*. These could be letters such as XN (failure, not assessed), RI (result not finalised), RW (result withheld). Usually you would obtain this sort of result if there was an administrative issue with your grade or enrolment. This would include applications for special consideration, deferred examinations, enrolment encumbrances and the like. Sometimes



there may be a simple entry error with your results – so that your result does not appear. At the first opportunity, inquire into your result.



If you have failed your law exam, don't panic!

Receiving a “fail” grade is nearly always traumatic, especially when unexpected. To deal with this problem, see Step 8 of this *Survival Guide*.

Review your exam performance

Regardless of how you have performed in the exam, this is a good time to take a step back and reflect on your learning approaches. If you have performed well in the exam, make a note of the study steps you implemented in this law subject. What worked for you? What helped most in the exam? How can you change your study methods to improve in the future?

When you have not performed as well as you expected, and when you have received a low mark (a pass or credit), reflect on why that might be the case and make an appointment to discuss your exam with your examiner.

When you are reviewing your exam performance with your examiner, make notes and ask *specific questions* as to how you can improve, exactly why you did poorly, as well as considering your exam technique. Try to pinpoint and list the exact reasons you lost marks. Have you missed issues? Did you inadequately allocate your time between points? Did you have difficulties in identifying the important issues?



The difference between a High Distinction, Distinction, Credit, Pass and Fail

Do any of the following sound familiar?

- ☹️ “I’ve failed. But I studied so hard!”
- ☹️ “I can’t believe it. Only a Pass? [or Credit, or Distinction] I thought I’d done much better!”
- ☹️ “A High Distinction!?! That can’t be right!”

The following discussion explains why you may have difficulty predicting your results in a law exam. This discussion also addresses how law exams are marked, to give you an understanding of the process.

At most universities your law subject results will be ranked between Fail (N), Pass (P), Credit (C), Distinction (D) and High Distinction (HD). Many students have had experiences where they were convinced they had failed and received a High Distinction or, conversely, truly believed they would receive a high mark and just scraped through or failed altogether. In law it is not unusual for students to be genuinely surprised when they receive their results. Why? And how do you fix this?

Students generally perform poorly in a law exam for one of 3 reasons:

- 1 **Poor exam technique** – such as difficulties in allocating time, wordiness, rambling, long citations, etc. Consequently, a student will run out of time and not answer all the questions in the exam. These problems can be fixed and specific hints and tips are included above under the heading “Perfect exam technique”.
- 2 **Inadequate preparation** – a problem that usually relates to time management, procrastination and lack of motivation. These problems are dealt with in Step 8 of this *Survival Guide*.



3 Problems with legal issue identification and prioritisation – this is usually to do with what the student has left out, rather than what they have put in to their exam answer. As discussed above, the first step in a law exam is *identifying the legal issues*. A student is required to read through a set of complicated facts. From those facts, the student must correctly identify those that are relevant to some cause of action and then apply the law to the facts.

When marking a law exam most examiners will have a list of the issues that arise from the facts and each issue will be allocated a separate mark. Sometimes a particular issue within an exam may be worth only one, 2 or 3 marks – usually for minor or obvious issues that would not require much discussion or which are easily identifiable. Other issues in an exam question may be worth 10, 15 or 20+ marks because they require involved legal analysis, an understanding of the intricacies and discrepancies of the law and/or a detailed use of the facts. Many issues may be worth between 3, 5 and 10 marks, depending on their legal complexity.

As a law student in an exam, you usually have no idea how the issues within a fact problem are divided up in terms of marking. (Some law exams, however, do give you a mark breakdown, but usually not the issue.) The reason you are not told the mark allocation between issues is that it would defeat one of the *principal purposes* of a law exam: to test your ability to identify legal issues, as well as assess their importance vis-à-vis the other issues.

As a result of this, if a law student misses an issue (or 2, or 3) from their reading of the facts, they usually have no idea whatsoever. Missing an issue will reduce marks, even though the student may have written excellent legal answers to other issues and thought they had performed wonderfully on the exam as a whole.



Alternatively, if a law student identifies an issue but considers it unimportant from the facts, they will spend less time on that issue and therefore receive fewer marks. Giving only a cursory analysis to a significant issue will reduce marks, even though the student has identified the issue. Again, the student usually has no idea whatsoever that that was an important issue – and therefore also has difficulty in predicting their result.

Sometimes a law student will correctly identify an issue and consider it to be immensely important and write volumes on it. Usually the student's analysis is 100% correct, but not worth many marks because, in fact, it is only a minor issue, or deliberately obvious from the facts. Using all of that time writing about a minor issue is at the expense of more important issues that are worth more marks. In this case, the student again has left out important issues, or only dealt with them briefly, thus reducing their marks. The bottom line is this: it is hard to predict your results in a law exam because you usually lose marks on what you have *left out*, not what you have put in.



In a land law exam, testing your knowledge of indefeasibility and exceptions under the Torrens system, you may receive a problem-type question worth 25 marks. Your examiner would probably be looking for your identification and discussion of the following issues:

- explanation and application of the principle of indefeasibility under the *Transfer of Land Act* to the facts of the problem – 5 marks;
- identification of a lease as a registered leasehold interest and the effect of indefeasible title on a lessee – 5 marks;
- discussion of the statutory fraud exception to indefeasibility, including the cases of *Russo v Bendigo Bank* [1999] 3 VR



376 and *Grgic v Australian and New Zealand Banking Group Ltd* (1994) 33 NSWLR 202 – 8 marks;

- brief identification of any *in personam* rights arising from the facts – 4 marks;
- identification of a person from the facts as a volunteer in land law and the effect of that under the Torrens system – 3 marks.

From this example, you can see that:

- within each issue you may have lost a mark or 2 of the available allocated mark (or more) because you have considered that issue as unimportant;
- if you miss an *entire issue* altogether, you will miss out on all of the marks allocated for that issue;
- if you spend too long on one issue, you will still only achieve the maximum number of allocated marks at the risk of running out of time to discuss the other issues in the problem.

A note! Marking guides, such as the above, are only a *guide*. If you are entirely off-track but still knowledgeable in an area of law, you may receive some marks, but certainly not as much as if you had addressed the correct issue/s.



What can you do about this? How can you predict how long to spend on issues and what to address?

Your aim in a law exam is to finish as much as you can by addressing as many issues as possible, prioritising them in order of importance. To improve your ability to do this:



- ☺ Practise identifying and characterising issues from past exam papers and practice questions – so that you can predict the types of legal issues you may get in your exam.
- ☺ Take a step back and think of the law subject in abstract – that is, “the big picture” – what are the important issues? What areas of the law are uncertain, likely to change or suitable for a policy analysis? (These “big areas” are more likely to be important issues; obvious and easy principles of law are less likely to be of significance in a law exam.)
- ☺ Think about the more difficult areas of the course – how could these be included as issues in an exam?



The golden rule in a law exam is that if you have dealt with every single fact in the problem, and identified the legal issue it is linked to, you have probably identified nearly all of the issues.

In a law exam, generally facts are there for a reason and are not superfluous information.



What makes the difference between a Pass and a High Distinction? Or a Distinction and a Fail?

The following demonstrates the difference between a High Distinction answer and a Pass answer, based on one issue in an equity and trusts exam question.

The facts of the exam problem related to this issue are:

- Phillip is the Marketing Director of Computer Consoles Ltd, a large corporation within Victoria.



- One of Phillip's developers, another employee of Computer Consoles Ltd, tells him (in his capacity as Marketing Director) about a new and exciting, but as yet unmarketed, gaming console called "PicOne".
- Phillip decides to set up his own company called Innovative Consoles Pty Ltd, with himself as Director.
- After securing a contract with the developer of PicOne, Phillip launches a large marketing campaign, using contacts acquired at Computer Consoles Ltd.
- In 6 months Innovative Consoles has made a profit of \$600,000.

What action, if any, does Computer Consoles Ltd have against Phillip?

In a law exam, students would be required to identify from these facts the following issues:

- Is there a fiduciary relationship between Phillip and Computer Consoles Pty Ltd?
- If so, is Phillip accountable for the \$600,000 profit?

In a law exam, a High Distinction answer would be:

Computer Consoles Ltd (CC) v Phillip

Is there a fiduciary relationship?

CC may have an action against Phillip and his wife for \$600,000 in profits obtained if it can establish a fiduciary relationship between itself and Phillip as marketing director.

If Phillip's role as marketing director means he is a *company director* of CC, he will owe fiduciary obligations to the company as one of the established categories of fiduciary relationship (*Hospital Products*).



If Phillip is *not* a *company director* (with the title “director” only descriptive of his position in marketing), he would be an employee of CC and it is less clear whether he would owe a fiduciary relationship to the company. Employees like Phillip can owe fiduciary duties to a company if they are in a position of trust and confidence or given powers or discretions (*Consul Development*). As “Marketing Director” would be categorised as a senior management position, it is more likely that fiduciary duties are owed to CC, with similar duties owed by company directors to the company.

Has Phillip breached his fiduciary duties?

The duties of a company director are derived from both equity and statutory regulation. In equity, Phillip owes a duty to act honestly, in good faith and for the benefit of the company as a whole (*Whitehouse*).

In particular, Phillip, as fiduciary, must account for any benefit obtained (in this case, \$600,000) by reason of his fiduciary position with CC, or some opportunity or knowledge resulting from it (*Chan v Zacharia*).

As Phillip has gained knowledge of PicOne from his position as fiduciary within CC and he has benefited from that opportunity by setting up Innovative Consoles Pty Ltd, there will be a breach of fiduciary duty. Phillip has clearly misused his position as Marketing Director for personal profit.

Remedies available to CC

As Phillip has made a profit of \$600,000 from his fiduciary position with CC, he will be required to account for those profits (*Warman International*). The profits made by Innovative Consoles Pty Ltd will be held on constructive trust for CC.



This is intended to prevent unjust enrichment of Phillip at the expense of CC (*Stephenson Nominees*).

Contrast the above with a Pass answer:

CC, as a company, must establish the existence of a fiduciary relationship. This is well-established under the principle of *Regal Hastings*. Phillip is within a well-established category of fiduciary relationship so fiduciary duties will apply. A duty is therefore owed to the company. This means Phillip is not allowed to profit from his position as Director. Phillip should not have set up Innovative Consoles Pty Ltd. The company set up by Phillip was not approved by the shareholders or directors of CC.

Phillip has therefore breached his fiduciary duties. CC may pursue Phillip as Director for the profits he has made. CC can require Phillip to place any funds received on constructive trust.

Problems with the Pass answer:

- There is no recognition that Phillip may *not* be a *company* director and that “Marketing Director” could be just a title – that, in fact, he is just an ordinary employee. This misses the discussion of whether employees owe fiduciary duties to their employees, a less-established category of fiduciary relationship than director/employer.
- Throughout the answer there is a lack of explanation for the statements made. The discussion has little substance. For example, there is no explanation of the no-profit duty or case authority for the proposition made, and just a bare statement that Phillip should not have acted in the way he did. The student should have then explained *why*.



- The student has insufficiently used legal authority to support the statements made.
- The answer lacks structure and does not have a clear identification of the issues divided by heading or subheading.

