Referencing Technique for Law Students [1]

Why do you need to reference? There are many reasons why you need to reference your work. Referencing will enable the reader to check your information and find out more about the subject, if they wish. You also need to credit other authors, and acknowledge their contribution. If your work is being formally assessed then demonstrating that you have read widely around the issue will help to gain marks. And importantly, you must avoid plagiarism, that is passing off the work of someone else as your own. The penalties for plagiarism can be very serious and are clearly set out in the University handbook.

There are two widely accepted methods: Harvard and numerical. Find out which your lecturer requires.

Harvard Referencing This is the simpler of the styles. The main advantage of this system is that the reference is contained within the main body of the text and refers only to the author and the date of publication. Full bibliographic details are given at the end of the work. A disadvantage is that it disrupts the flow of the text.

> It is contended that human rights should not remain the concern of individual states but are of legitimate interest to all other states and their citizens (Sieghart 1984).

If the author's name can be included naturally in the sentence then you should simply give the year of the work in parentheses (brackets):

> Sieghart (1984) contends that human rights should not remain the concern of individual states but are of legitimate interest to all other states and their citizens.

If there is more than one work by the same author in a particular year then letters can be added after the date:

> (James 2002a) and (James 2002b)

If exact quotation is used then page numbers should be given:

> "…Hart accepted the need for the law to enforce some morality" (Freeman 2001 p364)

If you cite from a source quoted in another work then you should refer to both in the text:

> A study by Smith (1960 cited Jones 1994 p24) showed that…

If there are two authors the surnames of both should be used:

> A recent study (Smith and Jones 1998) has shown that…

If there are more than two authors then you should use the surname of the first followed by et al.:

> Evidence (Smith et al. 1997) has demonstrated that…

Numerical Referencing This system involves inserting numbers into the text that refer the reader to a numerical sequence of references contained in footnotes positioned either at the bottom of the page on which the text appears or at the end of the work/chapter. The advantage of this is that the flow of the text is maintained. The way in which the reference appears is very similar to the method outlined in the section dealing with bibliographies (below) except that the author's initials always appear before the surname:

> The dualist tradition of the UK, in terms of international law, has imposed a long-standing reluctance to incorporate the ECHR into our legislation[1].

[1] S. Nash., M. Furse, 1998. Protecting Human Rights: The Incoming Tide. *Journal of Criminal Law* 62(2) p172

Opinion is divided on the use of italics/bold print to highlight either the name of the author, the text book, journal article or the name of the journal. Be consistent in your chosen application but seek clarification from each lecturer.

[1] by Helen James, Outreach Centre UoG

Limiting footnotes : Very often when writing you will find that you refer to the same author and piece of work more than once. If this is the case then there are a number of abbreviations that can be used. Some of those most commonly used are listed here:

Ibid.	refers to the same source as the immediately preceding footnote but taken from a **different page**
Op.cit.	refers to a source that has already been cited but **NOT** in the previous note
Loc. cit.	this is used only when referring to the immediately preceding footnote. Here the reference will be found on the **same page**
Supra/above	permits reference to an authority already cited without having to repeat the whole reference e.g. see *Donoghue v Stevenson* supra
Infra/below	this is similar to *supra* but refers to an authority yet to be cited

Below is a footnoted extract from an essay:

> The ECHR is a treaty of the Council of Europe[2], established in the aftermath of the Second World War, aimed at reconstructing durable civilisation on mainland Europe. The UK was the first country to ratify the Convention[3]. Much of its text was drafted by British Lawyers and exported to become part of the written constitutions of many Commonwealth countries[4].
>
> Whilst not the only International Human Rights Agreement[5], the Convention has undoubtedly had greater influence on UK law than any other; the nature of its enforcement machinery includes the European Court of Human Rights with power to deliver rulings adverse to the governments of member states[6]. The Court has taken a purposive approach to interpretation of the Convention, developing substantive rights covering situations unthought of in the cautious document of 1949[7]. Fenwick contends that had the initial document been more radical this would have jeopardised acceptance and ratification by individual member states[8].
>
> Until incorporation the Convention has no binding force in UK law. Successive governments have argued that the rights guaranteed by the Convention already form part of our birthright and constitutional heritage[9], rendering direct incorporation unnecessary. Undoubtedly Parliament has been responsible over the centuries for major advances protecting human rights and freedoms. There has however been an enormous increase in the number of applications to the European Court of Human Rights since the early days of the convention and this, according to Fenwick, suggests that it is seen as an important protector of human rights, perhaps more so than any other institution[10].

Book references/bibliographies

Whether using the Harvard or numerical system at the end of your work you should give references to all sources used in your research. Do not see this as an opportunity to demonstrate that you have read vast quantities of material - be honest and keep it relevant to the work produced. You should order your reference by Author, Date, Title, Edition, Place and Publisher. This information should be taken from the title page and NOT from the book cover. Your list should be alphabetical by author surname and should be subdivided into separate lists for book references, journal articles, electronic sources etc:

Single author:

> Freeman, M.D.A., 2001. *Lloyds Introduction to Jurisprudence.* 7th ed. London Sweet & Maxwell

> Maguire, M., Morgan, R., and Reiner, R., 1997. *The Oxford Handbook of Criminology*. Oxford: Clarendon Press

[2] The predecessor of the European Union
[3] Rights Brought Home: The Human Rights Bill. Cm 3782. October 1997. p.3.
[4] A. Lester., Twilight of our Elective Dictatorship. The Times. 15th May 1997.
[5] See, for instance, International Covenant on Civil and Political Rights.
[6] H. Fenwick., 1998. *Civil Liberties.* 2nd ed. London. Cavendish Publishing Ltd. p17
[7] loc.cit.
[8] loc. cit.
[9] supra n4.
[10] H. Fenwick., op. cit. p19

Multiple authors - 4 or more:
Here you should use the name of the first author only. The others are signified by the phrase *et al.:*

> Wilson, W.A., et al., 1995. *Gloag and Henderson: The Law of Scotland.* Edinburgh: W Green

Editors : Sometimes a book will have no author, merely an editor:

> Foster, N.G., ed., 2001. *Blackstone's EC Legislation* 12th ed. London Blackstone Press Ltd.

References to material taken from edited works You may need to refer to material taken from an edited work:

> Pollak, O., 1950. The Criminality of Women. *In* Doherty, M., ed., *Criminology.* London. Old Bailey Press. 1998, pp67-70

Journal Articles : This is similar to the referencing of books. It should be sequenced as follows: Author, date, article title, *journal title,* volume and (part), page(s):

> McKeever, G., 1999. Fighting Fraud: An evaluation of the government's social security fraud strategy. *Journal of Social Welfare and Family Law* 21(4) pp357-371

Other problem areas ; Two particular areas that commonly cause confusion for students are referencing an Internet source and the use of quotes:

REFERENCING AN INTERNET SOURCE
This is a relatively new source of information and as such standards of referencing are still evolving. However as a general guide you should list the following:

Author, date the document was created, publication title, web address, date site visited:

> Bradney, A., 2002. Accountability, the Law School and the Death of Socrates. *Web Journal of Current Legal Issues*. http://webjcli.ncl.ac.uk/2002/issue1/bradney1html (visited 09.03.02)

USING QUOTES
Whenever you use the exact words of an author you MUST use quotation marks to indicate this. Generally speaking you should use single quotation marks, although if you are using a quote within a quote this should be distinguished by the use of double marks.
If your quotation is short, three lines or less, then it should be encompassed within the body of your text. Long quotations of more than three lines should be set apart from the main text, indented, single line spaced and perhaps italicised. If you italicise your text it is not necessary to use quotation marks:

> *no one would dispute that people ought not to go hungry, cold, homeless, or sick ...[but] it is not always their government's fault, nor is their government always in a position to do anything about it. Many countries are still just desperately poor: in natural resources, human skills, available capital, and the organising and managerial capacities that would be needed to put these things usefully together, even if they were all there*[11].

Bibliography
Costigan, R., Power, H. 1996. Legal Writing: Coursework. Universities of Swansea and Glamorgan

Fisher, D., Hanstock, T. 1998. Citing References. Nottingham. Nottingham Trent University

ELECTRONIC SOURCES
Anon. 1996. Vancouver Referencing. http://lisweb.curtin.edu.au/guides/handouts/vancouver.html (visited 05.03.02)

Anon. 2001. Stylus: A guide to the writing and presentation of undergraduate legal essays in the law school. http://www.law.strath.ac.uk/resource/Stylus%20Editsept2001D.pdf (visited 05.01.02)

Anon. 2001 Harvard System http://www.bournemouth.ac.uk/using_the_library/html/harvard_system.html (visited on 05.09.01) Anon. 2001 Harvard System

[11] P. Sieghart., 1985. The Lawful Rights of Mankind: An introduction to the international code of human rights. Oxford. Oxford University Press. P118

LEGAL CASE REFERENCES AND TITLES OF CASES[12]

CASE REFERENCES

It is usual, when quoting a legal case, to append a reference to enable the reader to trace the original report. The references follow a recognised pattern, for instance:

Campbell Discount Co Ltd v Bridge (1961) 2 All ER 92.

This means the plaintiff was the Campbell Discount Co Ltd, the defendant was Bridge, the case was contested in 1961, the report will be found at page 92 of Volume 2 of the All England Report for that year.

Before 1865, when the Incorporated Council of Law Reporting was formed, the reports were private ventures and, as such, of indifferent quality. The further back in time you go the briefer and more selective the reports become. Fairly complete sets of reports are carried by university libraries, the libraries of professional institutes serving the legal, accountancy and secretarial professions, together with such libraries as that of the Guildhall and the City of Westminster and the library of the British Museum.

Principal abbreviations. Dates *(where given)* indicate the period covered by the series.

AC	Appeal Court
AC (HL)	Appeal Court - part of volume reserved
All ER	All England Reports
App Cas	Law Reports - Appeal Cases
C & P	Carrington and Payne's Reports
Ch App	Law Reports - Chancery Appeals 1865-1875
CI & Fin	Clark and Finelly's Reports 1831-1846
CPD	Law Reports, Common Pleas Division Ch Chancery
DLR	Dominion Law Reports (Canadian)
ER	English Reports Ex Exchequer
H & C	Hurstone and Coltman's Reports
HLC	Clark's Reports, House of Lords
KB	King's Bench
LR	Law Reports
LT	Law Times Reports
M & W	Meeson and Welsby's Reports 1836-1847
Madd	Maddock's Reports 1815-1822
QB	Queen's Bench
RPC	Reports of Patent Cases (available in Patent Office)
TLR	Times Law Reports
Term Rep	Term Reports, Durnford and East
WLR	Weekly Law Reports

TITLES OF CASES

There are certain clearly defined rules for naming cases.

Indictable Offences : Prosecutions for indictable offences are usually in the name of the Queen (as representing the State). A criminal case is therefore called 'Reg v' whomsoever it is, for instance 'Reg v Bloggs'. 'Reg' is the shortened form of 'Regina' (used during the reign of a Queen. 'Rex' is used instead during the reign of a King. 'R' is acceptable for either). 'v' is short for versus.

When cases are tried summarily before magistrates the title of the case, e.g. on appeal by case stated to QBD will not contain Reg (or Rex) before 'v' but will contain the name of a private person. In these cases the name of the actual prosecutor will appear (for instance a policeman).

When an appeal is taken to the House of Lords, the name of the official prosecutor (usually the Director of Public Prosecutions) is substituted for the word 'Reg'.

[12] Source - Concilio

Civil Cases : Civil cases are normally cited by the names of the parties - HADDOCK v BLOGGS. In those cases where the Queen (the State) is a party she is usually called 'The Queen' although 'R' may also be used.

- In the case of appeals the party who appeals is termed the appellant and the other party the respondent. The name of the appellant is usually put first.
- In a case where a will is being interpreted the name of the case will be *'In re'* (in the matter of) somebody or something - for instance *'In re Bloggs'* (often shortened to Re Bloggs).
- Certain applications to the court are called *'Ex parte'* (on the application of) - for instance *'Ex parte Bloggs'* (usually shortened to Ex p Bloggs).
- In probate cases 'In bonis' (in the goods of) may be used - for instance *'In bonis Haddock'* (or In b Haddock).
- In Admiralty cases the name of the ship is used - for instance 'The Vortigern'.

Correct use of Language and Referencing

Spelling. Always proof read your work or better still get a friend to read over your final draft and pencil in corrections. Make lists of frequently miss spelt words and stick them on the wall in front of their desk. Make use of computer aids such as a spellchecker, but don't become over-reliant on them. Remember, spellcheckers will not be able to tell you whether the word you actually want is 'there' or 'their'.

Expression. Try reading out loud your final draft since you can often hear mistakes which are overlooked when reading. You should also make a habit of consulting standard reference texts for grammar, punctuation and correct usage. Also, you can visit the UoG Drop in Centre for advice and assistance.

Quotations, Format and referencing. Whenever you copy a passage, word for word, from the work of some other writer, you are quoting. Then you must indicate the quotation by (i) using a special format (either inverted commas for a short quotation, or indentation for a quotation longer than three lines), and by (ii) giving an exact page reference to the source from which you have copied the passage.

If you do not indicate quoted passages in this way, **you may be accused of plagiarism-that is, the unattributed use of the words and work of other writers**. At all points in your essay your reader should be aware of a distinction between the ideas, arguments and actual words you have taken from sources, and your own commentary on these.

Usage. There is no rule for when or how much you should quote. In some disciplines, such as literary criticism, you may need to quote constantly; in others it may be enough to summarise or make reference to a source. Once you have used a quotation, avoid restating it in your own words.

The quotation must play its own part in advancing your argument. This is a common fault. In general, check that your quotations are:

a. Used sparingly (unless you are demonstrating judicial argument)
b. Focused precisely on the point you are making
c. Brief and telling (unless as in (a) above)
d. Properly integrated into the flow of your argument and the grammar of your own sentences.

References/Acknowledging your sources

In an essay whenever you are:

1. Quoting the exact words of another writer.
2. Closely summarising a passage from another writer
3. Using an idea or material which is directly based on the work of another writer.

you must acknowledge your source.

The three most common referencing styles for printed materials are:

Footnotes: numbers in the body of the text, following each reference, and numbered acknowledgements of the sources at the bottom of each page. This has the advantage of making it easy for the reader to identify a source at a glance.

Endnotes: numbers in the text, but running consecutively throughout the whole essay, and the numbered acknowledgements given in a list at the end of the essay. This permits you to give extended commentaries and additional information about points in your essay.

Included references: The minimum information necessary to identify the source is given in brackets in the body of the essay: usually the author's name, date of publication and page number(s). Full details of the printed source are obtained through reference to the Bibliography. This format is common in science and the social sciences.

Bibliography : This is a list of all the sources (printed and electronic) you have found useful during your preparation for the essay-not merely a list of the sources you have actually referred to in the final essay. It is arranged alphabetically, by surname of author, and must have a consistent format. **It is essential to include a bibliography – do not leave it out!**

Direct quotations : Whenever you use a direct quotation in an essay there are certain formalities which must be observed:

1 You must copy exactly the wording of the original text. If, for reasons of comprehension or grammatical coherence, additions or omissions are essential, then there are recognised procedures for handling this (an example will be later).

2. Every direct quotation must be followed by a full reference to the source you took it from, including the precise page number(s) where the passage occurred (this is essential).

3 Any materials from which you quote must be included in your bibliography.

4 If these conventions are not observed in your essay, you may be accused of plagiarism, which is the academic sin of claiming the words and works of others as your own.

Format – to put the above into practice.

When you include quotations in your essay, you should follow these general guidelines for format:

1 If the quotation takes up less than three lines in your hand-written or typed essay, then include it in the body of the essay and enclose it in quotation marks (either single or double but remain consistent throughout your work). If a quotation takes up **more than three lines,** then indent the whole quotation (that is, make the margins wider) and, if you are typing, use single-spacing. Quotation marks should *not* be used with this format.

Look at the following extract from an economic history essay and note the format used for the quotations:

"Moreover, the influence of culture upon economic expectations and consumption choices is important. Douglas and Isherwood (1980, p. 58) point out:

> *In most cultures reported over the world, there are certain things that cannot be sold or bought. One obvious case with us is political advance (which should not be bought); as to selling, a man who is capable of selling his honour, or even of selling his grandmother, is condemned by cliché.*

The investigation of cultural variables is termed '*social accounting'*. It takes for granted that 'reality is socially constructed and also ... that reality can be analysed as logical structures in 'use' (Douglas & Isherwood, 1980, p. 64) and focuses on interpretation of the economic evidence and procedures which operate a specific cultural group."

Special punctuation marks in direct quotations

When quoting a passage, if you alter *or* add anything to the exact words used by the original writer, you must indicate these changes by **square brackets**, thus such changes may be necessary to:

- add essential explanatory information; for example, a passage from a linguistics essay:

> *"Whorf has argued that different languages dissect time differently. For example, Hopi is said by Whorf to be a 'timeless' language in which the verb does not distinguish between past, present and future. Yet he also admits that the Western concept of dimensional time can be approximated in Hopi by other linguistic means:*
>
> *It [Hopi grammar], by means of its forms called aspects and modes, also makes it easy to distinguish among momentary, continued and repeated occurrences, and to indicate the actual sequence of reported events.*
>
> *So in this case language is not a true determinant of cultural experience but merely a reflection of a cultural tendency."*

- Integrate the quotation in to the grammatical structure of the essay; for example, a passage from a political science essay:

  The policies of the Conservative Party, under Douglas-Home and Heath, had become 'progressively less attractive to both the workers in industry and to the multi-national companies [which were] extending their European markets'.

- Include a comment or indication of your own *opinion* about the material you are quoting, or to indicate an *error* (in which case you use the Latin 'sic', meaning 'thus', enclosed in square brackets). This could be either a grammatical error or a form of spelling. For example, a passage from a history essay:

  According to Senator Cristiano Otoni, speaking to the Brazilian Upper Chamber in 1883, before the end of the slave trade, owners had been , 'careless as to the duration of the life [sic] of their slaves.

  Here the student uses [sic] to indicate a grammatical error-'life' instead of 'lives'-in the original text.

If you *leave out* words from a complete sentence in the original source, you indicate this omission by three dots, thus ... Such omissions may be made:

- At the *beginning or end* of a passage, either in order to adjust the quotation to the grammar of your sentence **or** to omit less relevant material. However, if the quotation is cearly a syntactic fragment (only part of a longer sentence but clear in meaning in itself), then it is not essential to indicate omissions, especially at the beginning of the quotation. For example, a passage from an anthropology essay, where the omission of words from the direct quotation is not indicated as it occurs at the *start* of the original sentence:

  Literacy also 'equips people to perform the varied tasks required in the modernising society' (Lerner, 1958: 60) and 'spreads the consumption of urban products beyond the city limits' (Lerner, 1958:61).

Here is a passage from a sociology essay where the omission of words from the quotation is indicated since it occurs at the *end* of the original sentence:

Turning now to the sociological components of the study, it is firstly necessary to define what is sociological. '*Sociologists use the scientific method to learn how human groups are put together and how they function . . .*' (Mack & Young, 1968:1).

In the *centre* of a quotation, where certain phrases or clauses are not relevant to the point being made in your essay. In such cases the omission must ***always*** be indicated. For example, a passage from a prehistory essay:

However, while it can be relatively easy to recognise patterns of behaviour and 'to infer from them some of the parameters of the activities which produced them, ... it is much more difficult to determine the nature of the social unit which performed those activities' (Freeman, 1968, p. 265).

Footnotes and endnotes

The usage of these two types of referencing were outlined earlier. At this juncture is is necessary to explain and demonstrate their usage within your work.

The first two systems of referencing, footnotes and endnotes, are very similar: in both you insert a number (either in brackets or slightly above the line) in your text at the end of a sentence or immediately following a direct quotation or a point taken from a source. For footnotes these numbers may either run consecutively through the whole essay or start afresh with (1) at the start of each new page; for endnotes the numbering is always consecutive. With footnotes the information about the source of each numbered reference is given at the bottom of each page of your text; with endnotes the same information is given in a consolidated list at the end of the essay.

Format. The following points should be noted, both for use in your own essays and to enable you to interpret the footnotes and endnotes you encounter in your reading:

1. *On a first citation of* a work, full details, as in the bibliography, must be given, together with a *precise page reference.*, for example, 'R. Beard (1 *970), Teaching and Learning in Higher Education,* Penguin, London, P.49.' However, check with the module leader who may accept just the author's name and page number, the bibliography will give the full reference.

2. *Subsequent references* to the same work may be cited by:
    - short form: the writer's name, the short title, and the page number, e.g. Beard, *Teaching and Learning,* pp. 89-91. Again, check with the module leader – they may accept just the name and page, supportted with a full reference from the bibliography.
    - Op. cit.: (i.e. *opere citato,* Latin, 'in the work cited) This is used following the writer's name and followed by the page reference when the citation is to the same work referred to earlier but not in the immediately preceding footnote. It may or may not be underlined. For example:
      M. Douglas (1973), *Natural Symbols,* Penguin, London, P. 88.
      R. Fox (1967), Kinship and Marriage, Penguin, London, p. *161.*
      M. Douglas, op. Cit., p. 132.

- *Ibid: (i.e. ibidem,* Latin, 'in the same place') This is used, with a following page number, when the citation is to **the same work referred to in the immediately preceding footnote**. It may or may not be underlined, for example:
  M.Douglas (1973), Natural Symbols, Penguin, London, p.68
  Ibid., pp. 70-71
  Ibid., p. 173

3. ***Other common abbreviations*** **in references:**

- loc. cit. *(loco citato* "in the place already quoted') has confused usage (and you would probably he wise to avoid it in your own writing). It is sometimes used in place of op. Cit. when the reference is to an article *or chapter* rather than a book. It is sometimes used in place of ibid. when the citation is to the same source and the same page as the immediately preceding reference. It is sometimes used in place of op. Cit. when the citation is to the same page as the previous citation to the same source.
- f. (or ff.) ('and the following page(s)') is used to indicate frequent references to an item within a few consecutive pages, e.g. R. Fox, *Kinship and Marriage,* p. 71f.
- passim ('scatteredly') is used when the reference is to items to be found throughout that source or that section of a book, e.g. *Beard, Teaching and Learning,* passim.

4 ***Complex references.*** If you are citing a quotation or material which you have found already quoted, by another writer, include in your citation both the full bibliographic details of the original quotation (which you will find in the reference) and the details of the book in which you found it, e.g. H. Cox (1968), *The Secular City,* Penguin, London, p. 93, quoted in M. Douglas (1*973), Natural Symbols,* Penguin, London, p. 37.

Included references

In this third style of referencing, which is commonly used in science and the social sciences, all references are cited in the body of your text. The references are extremely brief (writer's name, date of publication, page number) and the full bibliographic information is supplied in the bibliography. Some styles of included referencing use p. or pp. to indicate page numbers. Others use a colon: between the year and the page number.

Format

If the writer's name appears in the text of your essay, the remaining items of the citation will follow this in brackets, for example:

Beard (1970: pp.91-92) argues that concept learning is important. (Here the actual argument is found on pages 91 and 92.)

Fox (1967) demonstrates the close relationship between kinship and marriage in certain societies. (As this relationship is the theme of the whole book, no specific page references are given.)

If the writer's name does not appear in the text of your essay, the reference must include his or her name within the brackets and should come at the end of a sentence or immediately following a direct quotation, for example: "It has been argued that concept learning is important (Beard, 1970, pp. 9 1 -92)."

Comparison of referencing styles

Each style of referencing has characteristic advantages, for example:

1. Footnotes make it easy for the reader to identify a source immediately merely by glancing to the bottom of the page. However, lengthy footnotes, including comments and additional information, can be distracting and clumsy.
2. Endnotes permit extended commentary and additional information, but require the reader to refer constantly between the actual text and the final pages of the essay.
3. Included references are extremely efficient but can only identify a source and allow no room for additional comments.

First Example : In order to demonstrate these styles of referencing more clearly, a passage from a student's prehistory essay has been used, with included references to the above versions.

> The work of van Lawick-Goodall (1971), Kortlandt and van Zon (1968), and Wright (1972) shows that present-day chimpanzees, orangutans and macaque monkeys are capable of using simple tools and bipedal locomotion. Wright (1972, p. 305) concluded, after tool-using experiments with a captive orangutan, that manipulative disability is not a factor which would have prevented Australopithecines from mastering the fundamentals of tool technology. However, while there is an unquestionable validity in comparing the behaviour of present-day apes with early hominids, it is important to note, as Howells (1973, p. 53) says, 'a Pantroglodyte is not and cannot be the ancestor of man. He cannot be an ancestor of anything but future chimpanzees.'
>
> However, van lawick-Goodall (1971, p. 233) suggests that the modern chimpanzee shows a type of intelligence closer to that of man than is found in any other present-day mammal. She argues that:
>
> > *... the chimpanzee is, nevertheless, a creature of immense significance to the understanding of man ... He has the ability to solve quite complex problems, he can use and make tools for a variety of purposes ... Who knows what the chimpanzees will be like forty million years hence?* (van lawick-Goodall, 1971, pp. 244-245)

The bibliography following the essay from which this passage was taken includes the following items:

Howells, W. (1973), *Evolution of the Genus Homo, Addison-Wesley* Pub. Co.

Kortland, A. & van Zon, J.C.J. (1968), 'The present state of research on the dehumanisation hypothesis of African ape evolution', *Proc. 2nd lnt. Congr. Primatol,* Atlanta, pp. 10-13.

van Lawick-Goodall, J. (1*971), In the Shadow of Man,* Collins.

Wright, R.V.S. (1972), 'Imitative Learning of a flaked-stone technology', *Mankind* 8, pp. 296-306.

Second Example

The work of van Lawick-Goodall,[13] Kortlandt and van Zon,[14] and Wright[15] shows that present-day chimpanzees, orangutans and macaque monkeys are capable of using simple tools and bipedal locomotion. Wright concluded, after tool-using experiments with a captive orangutan, that manipulative disability is not a factor which would have prevented Australopithecines from mastering the fundamentals of tool technology.[16] However, while there is unquestionable validity in comparing the behaviour of present-day apes with early hominids, it is important to note, as Howells says, 'a Pantroglodyte is not and cannot be the ancestor of man. He cannot be an ancestor of anything but future chimpanzees.'[17]

However, van Lawick-Goodall suggests that the modern chimpanzee shows a type of intelligence closer to that of man than is found in any other present-day mammal.[18] She argues that:

> *... the chimpanzee is, nevertheless, a creature of immense significance to the understanding of man ... He has the ability to solve quite complex problems, he can use and make tools for a variety of purposes... Who knows what the chimpanzees will be like forty million years hence*?[19]

13 J. van Lawick-Goodall (1971), *In the Shadow of Man, Collins.*

14 A. Kortlandt & J.C.J. van Zon (1968*), 'The present state of research on the dehumanization hypothesis of African ape evolution', Proc. 2nd Int. Congr. Prmatol, Atlanta, pp. 10-13*

15 R.V.S. Wright (1972), 'Imitative learing of a flaked-stone technology', *Mankind* 8, pp. 296-306.

16 Ibid., pp. 305.

17 Howells (1973), *Evolutin of the Genus Homo,* Addison-Wesley Pub. Co., p.53

18 van Lawick-Goodall, op. Cit., p.233

19 ibid., pp.224-245

Neutral citation of judgments system is introduced

LORD CHIEF JUSTICE : Practice Direction *(Judgments: Form and citation)*

Changes intended to make it easier to distribute, store and search judgments, and less expensive and time-consuming to reproduce them for use in court, have been introduced.

In order to facilitate publication of judgments on the World Wide Web, and their subsequent use by those with access to the Web, all judgments in every division of the High Court and the Court of Appeal would be issued with paragraph numbering.

A form of neutral citation of judgments, by means of an official number attributed to the judgment by the court, would apply immediately in all divisions of the Court of Appeal and in the administrative court and would be introduced in other parts of the High Court as soon as practicable.

A reported judgment could be cited by means of a copy of a reproduction of the judgment in electronic form authorised by the publisher of the relevant series of reports, provided that the report was presented to the court in an easily legible form and the advocate presenting it was satisfied that it had not been reproduced in a garbled form from the data source.

Lord Woolf, Lord Chief Justice, sitting in the Court of the Lord Chief Justice, so stated in a practice direction issued and coming into force on January 11, 2001.

THE LORD CHIEF JUSTICE said that the practice direction was made with the concurrence of the Master of the Rolls, the Vice-Chancellor and the President of the Family Division.

It represented the next stage in the process of modernising the arrangements for the preparation, distribution and citation of judgments given in every division of the High Court, whether in London or in courts outside London.

Form of judgments

1.1 With effect from January 11, 2001, all judgments in every division of the High Court and the Court of Appeal would be prepared for delivery, or issued as approved judgments, with single spacing, paragraph numbering (in the margins) but no page numbers.
In courts with more than one judge, the paragraph numbering would continue sequentially through each judgment, and would not start again at the beginning of the second judgment. Indented paragraphs would not be given a number.

1.2 The main reason of these changes was to facilitate the publication of judgments on the World Wide Web and their subsequent use by the increasing numbers of those who had access to the Web. The changes should also assist those who used and wished to search judgments stored on electronic databases.

1.3 It was desirable in the interests of consistency that all judgments prepared for delivery, or issued as approved judgments, in county courts, should also contain paragraph numbering (in the margins).

Neutral citation of judgments

2.1 With effect from January 11, 2001 a form of neutral citation would be introduced in both divisions of the Court of Appeal and in the aministrative court. A unique number would be given by the official shorthand writers to each approved judgment issued out of those courts.

The judgments would be numbered in the following way:

Court of Appeal (Civil Division) ((2000) EWCA Civ 1, 2, 3 etc.

Court of Appeal (Criminal Division) ((2000) EWCA Crim 1, 2, 3 etc.

High Court (Administrative Court) ((2000) EWHC Admin 1, 2, 3 etc.

2.2 Under the new arrangements, paragraph 59 in *Smith v Jones,* the tenth numbered judgment of the year in the Civil Division of the Court of Appeal, would be cited: *Smith v Jones* ((2001) EWCA Civ 10 at (59).

2.3 The neutral citation would be the official number attributed to the judgment by the court and must always be used on at least one occasion when the judgment was cited in a later judgment.

Once the judgment was reported, the neutral citation would appear in front of the familiar citation from the law report series: thus *Smith v Jones* ((2001) EWCA Civ 10 at (30); (2001) QB 124; (2001) 2 All ER 364, etc).

The paragraph number must be the number allotted by the court in all future versions of the judgment.

2.4 If a judgment was cited on more than one occasion in a later judgment, it would be of the greatest assistance if only one abbreviation, if desired, was used. Thus *Smith v Jones* ((2001) EWCA Civ 10) could be abbreviated on subsequent occasions to *Smith v Jones*, or *Smith's* case, but preferably not both in the same judgment.

2.5 If it was desired to cite more than one paragraph of a judgment each numbered paragraph should be enclosed with a square bracket: thus *Smith v Jones* ((2001) EWCA Civ 10 at (30-(35, or *Smith v Jones* ((2001) EWCA Civ 10 at (30), (35), and (40)-(43).

2.6 The neutral citation arrangements would be extended to include other parts of the High Court as soon as the necessary administrative arrangements could be made.

2.7 The administrative court citation would be given to all judgments in the administrative court, whether they were delivered by a divisional court or by a single judge.

Citation of judgments in court

3.1 For the avoidance of doubt, it should be emphasised that both the High Court and the Court of Appeal required that where a case had been reported in the official *Law Reports* published by the Incorporated Council of Law Reporting for England and Wales it had to be cited from that source. Other series of reports could only be used when a case was not reported in the *Law Reports*.

3.2 It would in future be permissible to cite a judgment reported in a series of reports, including those of the Incorporated Council of Law Reporting, by means of a copy of a reproduction of the judgment in electronic form that had been authorised by the publisher of the relevant series, provided that: (i) the report was presented to the court in an easily legible form (a 12-point font was preferred but a 10 or 11-point font was acceptable) and (ii) the advocate presenting the report was satisfied that it had not been reproduced in a garbled form from the data source.

In any case of doubt the court would rely on the printed text of the report, unless the editor of the report had certified that an electronic version was more accurate because it corrected an error contained in an earlier printed text of the report.

Concluding comments

4.1 The changes described in this practice direction followed what was becoming accepted international practice. They were intended to make it easier to distribute, store and search judgments, and less expensive and time-consuming to reproduce them for use in court.

Lord Justice Brooke was still responsible for advising the Judges' Council on those matters, and any comments on the new arrangements, or suggestions about ways in which they could be improved still further, should be addressed to him at the Royal Courts of Justice, WC2A 2LL.

GLOSSARY OF LATIN TERMS

Despite the introduction of new simplified anglicised terms by the **Civil Procedure Rules 1998**, you are likely to come across a wide range of latin terms in the text books. They continue to be used in other common law countries, particularly the US. The following glossary helps to demystify these terms.

ACTUS NON FACIT REUM, NISI MENS SIT REA : The act itself does not constitute guilt unless done with a guilty intent

ACTUS REUS : A guilty Act. A wrongful Act.

AMICUS CURIAE : Friend of Court.

ANIMUS POSSIDENDI : Intention to exclude others.

ASSUMPSIT : The name of an action which lay for damages for breach of a simple contract (one not under seal) – the origins of the law of contract.

AUDI ALTERAM PARTEM : Let us "Hear the other side."

BONA FIDE : In good faith.

BONA VACANTIA : Things found without any apparent owner which belong to the first occupant or finder unless they be things which belong to the Crown by virtue of its prerogative.

CAVEAT EMPTOR : Let the purchaser beware.

CERTIORARI : To be more fully informed of. Certiorari is an order whereby a cause is removed from an inferior court to a superior court for review. The writ of Certiorari was abolished by Section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, which substituted the order of Certiorari – now in turn replaced by the quashing order by the CPR 1998. In many cases of summary conviction the right to Certiorari has been taken away by statute

CONSENSUS AD IDEM : Consent to the same thing.

CORPUS POSSESSIONIS : The substance of Possession. (Exercise of control over a thing by direct or indirect means).

DAMNUM SINE INJURIA ESSE POTEST : There may be damage or loss inflicted without any act of injustice.

DE BONIS ASPORTATIS : About property removed.

DOLI INCAPAX : Incapable of Crime.

EJUSDEM GENERIS : Of the same kind or nature.

EX CATHEDRA : From the throne (with the weight of one in authority).

EX PARTE : On the application of (On behalf of)

EX POST FACTO : From a subsequent act (In retrospect)

EX TURPI CAUSA NON ORITUR ACTIO : From a bad cause no action arises.

FIERI FACIAS : Fieri Facias (normally abbreviated to fi fa) is a judicial writ whereby one who has recovered judgment for any debt or damages may obtain execution of the goods and chattels, including leaseholds, of the judgment debtor. "Let him do that which he must do".

FUNCTUS OFFICIO : After performing his duty. (An official discharged on office)

HABEAS CORPUS : Habeas Corpus is the generic name for a writ commanding an officer who has a person in custody to have or bring his body before the court. "Let us have the body."

HABEAS CORPUS AD SUBJICIENDUM : This, the most celebrated prerogative writ in the English Law, is the usual remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body of the person in custody, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the judge or court shall think fit.

IGNORANTIA JURIS NEMINEM EXCUSAT : Ignorance of the law excuses no one.

IN BONIS : In the goods of.

IN CAPITE : In the head.

IN CONSIMILI CASU : In a similar situation.

IN PARI DELICTO : Equally at fault.

IN PARI DELICTO POTIOR EST CONDICIO DEFENDENTIS : Where the parties are equally at fault the position of the defendant is the stronger one.

IN PERSONAM : All civil actions are either in Personam or in Rem. Actions at Law in Personam are those which seek recovery of damages etc. So in equity the court acts in Personam and will make a decree against a defendant provided he is within the jurisdiction although the subject matter of the suit may be situated abroad.

IN RE : In the matter of.

IN REM : A judgment In Rem is a judgment pronounced on the status of some particular subject matter. Such are actions for the condemnation of a ship in the Court of Admiralty; suits for nullity of marriage.

IN TERROREM : For the purpose of intimidating.

INJURIA SINE DAMNO : Injury without loss.

INTER PARTES : As between the parties.

JUS DARE : To give (administer) the Law.

JUS DICERE : To assert the Law.

JUS MAJUS : The greater right.

JUS MORIBUS CONSTITUTUM : A Law derived from custom.

MALITIA SUPPLET AETATEM : Malice makes up for the want of years.

MANDAMUS : This is an order of remedial nature and is, in its form, a command issuing in the Queen's name, and directed to any person, corporation, or inferior court of judicature, requiring them to do some particular thing which appertains to their office and duty. In its application, it may be considered as confined to cases where relief is required in respect of the infringement of some public right or duty, and where no effectual relief can be obtained in the ordinary course of an action. Now replaced by the enforcement order by the CPR 1998.

MENS REA : A guilty mind.

NISI PRIUS : (Unless previously) A judicial writ, whereby a sheriff of a county was commanded to bring the men empanelled as jurors in any civil action to the court at Westminster on a certain day, unless before that day (Nisi Prius) the justices of assize came into the county, in which case, under the statute of Nisi Prius, 1285, it became his duty to return the jury not before the court at Westminster, but before the justices of assize.

NON EST FACTUM : It is not my act.

NOSCITUR SOCIO : It is known to an associate.

NOVUS ACTUS INTERVENIENS : A new act coming in between.

OBITER DICTA : Matters spoken by the way.

PER CONTRA : To the contrary.

PER INCURIAM : Without sufficient care.

PER SE : By their very nature.

PRAECIPE QUOD REDDAT : Warn him what he is giving back.

PRO TANTO : To that extent.

QUAMDIU SE BENE GESSERIT : As long as he shall behave himself well.

QUANTUM MERUIT : So much as he has earned.

QUARE IMPEDIT : Wherefore he hindered.

RATIO DECIDENDI : The reason for deciding.

RES EXTINCTA : Subject matter has ceased to exist.

RES INTEGRA : intact

RES IPSA LOQUITUR : The facts speak for themselves.

RES JUDICATA : The matter decided.

RESTITUTIO IN INTEGRUM : Restitution of Property previously handed over.

STATUS QUO : Unchanged position.

SUBPOENA : (Under penalty) A writ commanding attendance in a court under penalty (usually to give evidence).

SUI GENERIS : One of a kind

SUGGESTIO FALSI : Suggestion of Falsehood.

SUPRESSIO VERI : Suppression of the truth.

TRESPASS QUARE CLAUSUM FREGIT : Trespass to land.

TRESPASS VI ET ARMIS : Trespass by force of arms.

UBERRIMAE FIDEI : in absolute good faith – duty of total disclosure in insurance law

UBI JUS REMEDIUM : Where the Law is - there is the remedy.

ULTRA VIRES : Beyond ones power (or authority)

UT RES MAGNIS VALEAT QUAM PEREAT : It is better for a thing to have effect than be made void.

VIVA VOCE : With the living voice (oral).

VOLENTI NON FIT INJURIA : Consent to run the risk of injury.

SOME TIPS ON WRITING TECHNIQUES

PLANNING AND BACKGROUND RESEARCH

Which comes first – reading or planning ? The answer is a bit of both. A basic idea of where you are going is needed to identify what to read. However, trawling through the literature will open up new avenues of thought which need to be pursued. The result is that the planning process is a continuous, evolving one.

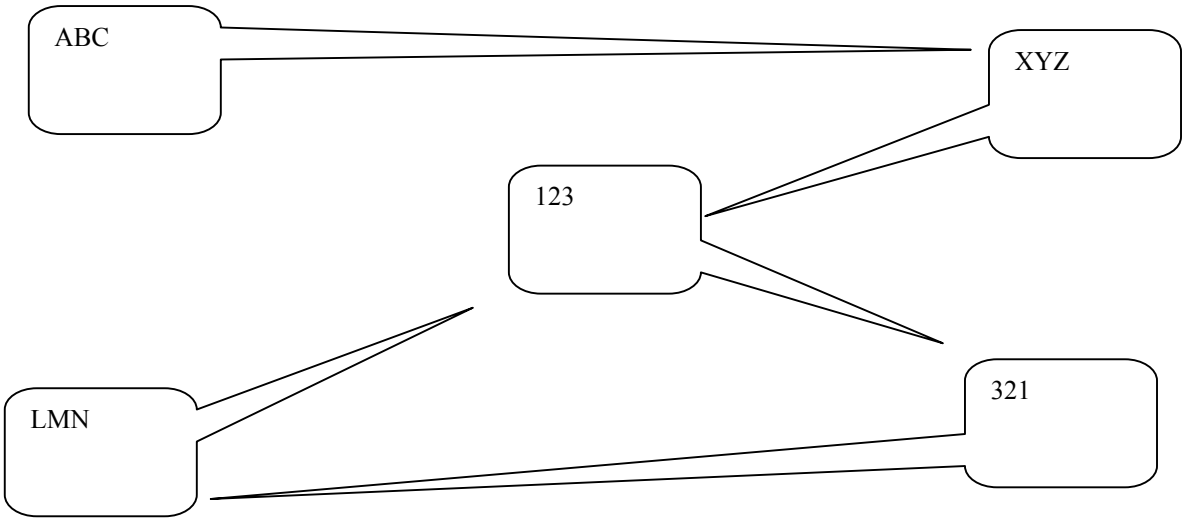
The danger of constructing a definitive plan too soon is that until sufficient research is conducted the plan will be influenced by expectations of what is involved and perceived outcomes, neither of which may be borne out by research. Having too narrow a view at the outset can result in the researcher closing his mind to new ideas or failing to research literature which would be valuable but which is outside the self prescribed remit of the research.

A common problem with research is to draw the line of relevance too restrictively both in content and also in word search titles. The researcher needs to learn to think both by synonym and laterally to identify linked issues and topics.

Putting the Jig-Saw Together. It is essential that a report flows naturally, in a logical manner. The structure, identifying where different issues and topics belong in a construct involves a degree of inspiration as well as logic and time often plays a part in this, but the ability to have an over-view of potential constituent part is very helpful.

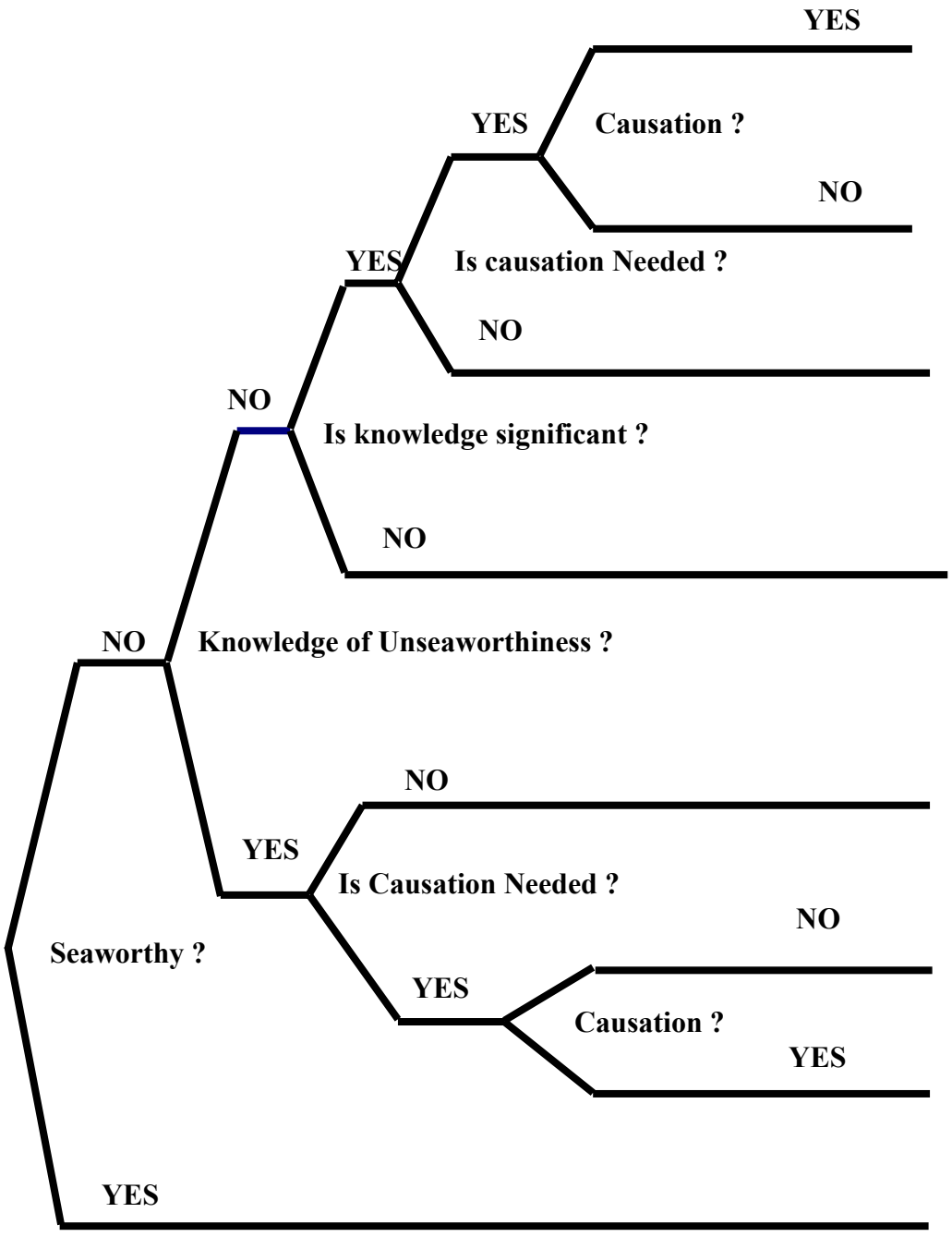
One way of achieving this is the **mind map**. Putting ideas down at random as they come to you is the first step. Then the ideas can be linked by arrows to identify what belongs together. A second draft linking ideas around a central core helps to develop a more coherent structure. Try to use as big a piece of paper as possible for your mind map. The back of a roll of wall paper pinned to the wall works well. A white board is good but may not be available. It is always possible to add new ideas to the mind map as they appear. An alternative is to put ideas on separate pieces of paper and to pin them up on a board, moving them around and repositioning them to create new or better links and relationships.

MIND MAP



The second way of achieving this is the **decision tree**. This helps to identify the decision making process, both in terms of major steps and in terms of minor adjustments.

DECISION TREE



Decision trees are also an ideal tool of analysis for solving problem questions in exams and planning how to argue a case in court either for claim or defence. If you analysis the layout of claims and defences and the judgements in the higher courts, APPEALS CASES reports are ideal for this, you will find that they virtually all follow a clearly defined structure.

They also provide an analytical tool for assessing risks and the chances of success or failure.

It is better to research to a plan in a disciplined manner. This will avoid wasting time reading un-useful material and will enable you to write in a constructive manner.

Opinion Writing

The judicial decision is the outcome of the synthesis of law and fact. This synthesis lies at the heart of the distinction between the analytical structure (legal logic) applied by lawyers and that applied by other disciplines. However, the analytical process involved in determining first fact and secondly current legal understanding / knowledge is common to both and applies equally to the workings out of the synthesis. In Skanska v Egger,[20] Judge Wilcox provides clear and compelling guidance as to what is required to produce a logical and effective analytical piece of work, with considered examples of what is not acceptable. In his article, Retrospective delay analysis[21] Geof Brewer summarises the key elements of the judgement.

"Despite the use of sophisticated computer based planning techniques, delay analysis remains largely a fact based process upon which the expert must show an objective and balanced approach. The resolution of disputes on large construction and engineering contracts increasingly involves the use of computer based delay analysis techniques to assist in the identification of the cause of critical delay to a project and, in the more sophisticated cases, to assist in the computation of claims for lost productivity.

*In **Skanska Construction v Egger** (Barony) Judge Wilcox was required to take account of the evidence of expert delay analysts in arriving at the quantum of damages. The contract between Skanska and Egger has created a long running legal battle between the parties.*

Egger is a subsidiary of an Austrian family owned company which produces chip board and other timber based products at several factories throughout Europe. It entered into a contract with Skanska for the design and construction of a factory to be built in East Ayrshire in Scotland. Skanska agreed to undertake design development, management and construction of the factory for a guaranteed maximum price of £12 million. Egger took direct responsibility for the supply and installation of the specialist plant and equipment.

The contract was particularly difficult. By completion, Skanska was making claims in the order of a further £12 million relating to what it argued were extras to the contract. There was a counterclaim by Egger for more than £4 million. In January 2003 I reported a decision of the Court of Appeal where the court had reviewed earlier decisions concerning responsibility for claimed additional works arising out of design and development.

Following those earlier judgments concerning liability, Judge Wilcox held a separate trial to hear evidence concerning quantum, including the evidence of two expert delay analysts concerning the delay suffered by certain of Skanska's subcontractors leading to loss and expense claims which Skanska sought to pass on to Egger.

Judge Wilcox clearly preferred the evidence of Skanska's expert who had prepared an analysis which he described as "accessible". He described the characteristics of a good planning expert as someone who was objective, meticulous as to detail and, importantly, not hide-bound by theory when demonstrable fact collided with computer program logic.

Apparently this could not be said of the evidence provided by Egger's programming expert. Judge Wilcox was severely critical of his evidence on a number of levels. Firstly he made clear his frustration with the complexity of his report. It ran to several hundreds of pages supported by 240 charts. Egger's expert had been supported by a team of assistants and it appears that the report he had prepared was too complex and extensive for the court to easily assimilate.

More critically however, Judge Wilcox commented that the report had largely been based upon factual matters provided third hand from employees of Egger, such that, perhaps understandably, the expert was not entirely familiar with all the details. Judge Wilcox commented that the extent of reliance upon the untested judgment of others in selecting and characterising the data for input into the computer program, however impeccable the logic of that program, adversely affected the authority of the opinion based upon such an exercise.

Judge Wilcox gave an example of evidence which had been made available to Egger's expert which contradicted the evidence he had based his report upon. Despite this, the expert had refused to change his view which clearly irritated Judge Wilcox who commented that it was surprising that there was not sufficient intellectual rigour to admit the possibility of doubt.

Other failings in Egger's expert's evidence were highlighted. Judge Wilcox observed that the reliability of a sophisticated delay impact analysis is only as good as the data put in. The expert had made errors in reconstructing the initial contract programme in a computer based network form. Those errors meant that the programme adopted by the expert could not be used as a reliable base line. Similar criticisms were made of the expert's approach to the construction programme, which he had based upon a master programme prepared by Skanska, despite that this had become virtually redundant from the outset.

Judge Wilcox commented that at the heart of the matter lay the expert's power of selection of facts and interpretive judgement of them. This being the case, it was crucial that the expert could demonstrate that he applied an objective and balanced approach to the evidence.

[20] Skanska Construction UK Limited v Egger (Barony) Limited, TCC 30 July 2004.

[21] © Brewer Consulting : 29 September 2004,

That balanced approach needed to be applied for example when dealing with the vexed problems of concurrent delays. Egger's expert had taken the view that where there was a delay event that Skanska did not claim to be the responsibility of Egger, he had assumed without further investigation that Skanska was accepting liability for the event. Judge Wilcox described this as applying the logic of Humpty Dumpty and with that searing observation, rejected the evidence of Egger's expert, holding substantially in favour of Skanska."

STARTING TO WRITE

Agonising over how to start is not helpful,. It is better to start to write and put pen to paper quickly sketching out ideas. Get into the substance of the work and remodel the introduction later.

However, it is never a good idea to write a report on instinct alone, developing the work in a haphazard manner. It is always hard to abandon work once done and a bad structure can become mentally institutionalised and difficult to overcome once in place.

It is a simple matter to add new ideas and concepts to a structured piece of work but virtually impossible in an unstructured piece of work.

Always draft a plan, even if you have to adjust it later.

SAMPLE PLAN

INTRODUCTION : setting out aims, objectives, expected outcomes, methodology.

CHAPTER ONE : background

CHAPTER TWO : identified problems

CHAPTER THREE : advice – solutions

CONCLUSION : present and future – what has been achieved – expectations.

SETTING OUT A REPORT

There are many ways of compiling a report. There is no definitive rule to how a report should be set out, but in general a report will be divided up into sections rather than chapters. It is a good idea to number sub sections. Heading may also be used. Thus

Section 1.0 INTRODUCTION

1:1 Aim

1:2 Objectives

- 1:2:1 To ….
- 1:2:2 To ….

1:3 Outcomes

- 1:3:1 To enable ……

1:4 Methodology

- 1:4:1 Case review
  - (a) English Law
  - (b) European Law etc

Whilst you may not agree with the content, Law Commission Reports provide a very good example and template of how to set out a review of legal problems and issues, frequently identifying the current state of affairs, defects in the law and recommendations for reform.

Take the opportunity to look at some examples of previous dissertations and reports. You may not agree with content but examples of layout are helpful.

RESEARCH TIPS

The bibliographies of relevant previous dissertations can give you a useful starting point for a literature search. Likewise, the bibliographies of legal articles and Law Commission Reports are invaluable. Often the articles will all point backwards to one significant piece of work that everyone refers to. Frequently subsequent articles are merely re-workings of this original work and much time can be saved by reading that in detail first before analysing whether any of the later work adds anything at all to that initial work. Often minor suggestions are provided but the original work provides a structure for all thought on the concept thus far.

The same can be said of legal authorities. Many subsequent cases merely provide examples of the legal principle set out in a leading case, with minor extensions to deal with specific factual situations. It is not always necessary to refer to the latest case on a topic if it adds nothing jurisprudential to the topic.

Plan library research time carefully. Remember that library opening times are restricted during vacation periods. Also, time often flies in the library and can be more time consuming than one imagines, particularly when you want to photocopy material for later use and there is a long queue.

Systematic Research and Indexing Research.

Create a concise topic based index of your materials as you go along with a short précis of content to enable you to identify useful material for subsequent use. It is a good idea to number any photocopied materials and record the number in your topic index. This will make it easy to relocate the material as and when needed for subsequent reference or study.

Simultaneously create two indexes, one of materials in alphabetical order by author for use in your bibliography and a second of cases in alphabetical order for your case list.

If you do them as you go along, they only take a short period of time whereas it is a long and tedious process to compile them at the end when the material is scattered all over the place, hard to locate and seems to be very long. The indexes can then be cut and pasted into your final work without more ado once you have finished the report / dissertation, just before binding and presentation.

Referencing and Footnoting.

Reference and foot note as you go along. Do not leave it to the end. Never underestimate the time that it can take to locate references later. The relevant page or section of an article or case can take time to identify / re-locate later, but is readily recordable at the time when it is in front of you, so try not to leave it till later. Time spent as you go along in referencing and footnoting is rewarded in multiple relative to subsequent after the fact referencing and footnoting.

Proofing, Printing and Binding.

Always proof read work. It is best to get someone else to do this for you. They will spot mistakes that you can easily overlook because you are familiar with your work, and know what you think it says and means. A third party has to make sense of it and so will more easily spot mistakes. The proof reader does not have to be a lawyer or law student. Family and friends can be just as helpful. If a non-layer can understand it, it is a readable piece of work. Avoid jargon, keep it simple.

Alternatively, put it away in a draw for a day or so and read it fresh, not immediately after finishing writing. This means setting an advance target for completion, to give you a breathing space.

Do not leave printing and binding to the last minute. Shortages of paper, ink and availability of printers / terminals present unexpected problems. The binders may be busy to bind things while you wait. Finally, always keep a back up copy of work. Do not rely on the computer's hard disc since a compute crash can result in all your work being lost. Exam boards are rarely sympathetic since the problem is avoidable by good house keeping practice.

PREPARING FOR EXAMINATIONS

'There are two kinds of lawyers, those who know the Law and those who know the judge.' Charles Lamb

Alternatively it has been said of the good lawyer that "He may not know all the law, but he knows where to find it and what to do with it once he does."

But before deciding upon which kind of lawyer you wish to be, certain examinations do have to be passed!

It is well known that the key to success in any examination is adequate preparation. Indeed, this fact is so well known that some of us may prefer to ignore it altogether. Nevertheless (and undeterred) these Notes aim to offer advice on how to acquire the knowledge necessary to pass the course together with some general guidance on examination technique.

Examinations in Law:
These are designed to test not only your nerve but also your knowledge and understanding of the law. Accordingly, you will need to be able to demonstrate not only your ability to understand the question but also your intelligence in planning your answer. In other words, you will be tested on your knowledge and your examination technique.

The Acquisition of Knowledge:
You may find it helpful to read 'Learning the Law' by Glanville L. Williams. First published in 1945 and now under the authorship of Professor Antony Smith, the 2002 edition published by Sweet and Maxwell has been described as "essential reading for anyone embarking on the study of law..." (New Law Journal). A mere 299 pages, this book, written specially for the guidance of the law student, bears the apt legend "Guide, Philosopher and Friend". Although not every tutor would agree with all that it contains it does emphasise that 'Learning by study must be won; 'Twas ne'er entailed from son to son.' (Gay, Fables, ii, II). The book also serves to reassure students that 'Examinations are formidable even to the best prepared; for the greatest fool may ask more than the wisest man can answer.'

Whenever possible you should talk to lawyers and other law students as well as see the law in action by visiting various courts. Court officials are usually helpful and sympathetic and will admit law students to the courts. The majority of courts are, of course, open to the public.

HOW MUCH MEMORISING?

'Lawyers ... persons who write a 10,000 word document and call it a brief.' Louis Brandeis

A perennial question is: *'How much of all this am I expected to remember?*'

Law students work in libraries or at home 'reading Law'. But, how much of what they read must they remember? This is a fair question, particularly when it is considered that, for example, one of the standard text books in Constitutional Law, which is recognised as being one of the easier subjects, contains over 800 pages.

The idea of soaking up information, sponge-like, in order to squeeze it out again in an examination is unappealing to say the least. Indeed, the study of law would be extremely boring if it were no more than a feat of memory.

So the discerning and, ultimately, successful law student must develop the ability to analyse, reason and apply legal rules and legal principles.

Vague, general ideas, however eloquently expressed, are useless in law examinations.

Having said this, a considerable amount of sheer, solid memorising is inevitable as it is simply not possible to apply legal principles or analyse rules or statutes unless you know what they are.

Therefore, you may well find it useful to learn certain definitions by heart.

EXAMINATION TECHNIQUE

"Study is like the heaven's glorious sun, That will not be deep-searched with saucy looks"
Love's Labour's Lost (1.i)

The following comments are offered as guidance and are based on the experiences of many successful (and some unsuccessful) students.

Reading the examination paper

Number of Questions: Make sure that you actually find and read every question on the paper! If the paper consists of a single sheet turn it over! Many students have failed to notice Questions 8 and 9 in spite of the instruction 'P.T.O.' on the front of the paper. If there are two or more pages of questions never overlook the back page.

- Number of Questions to be attempted: Make a careful note of the number of questions which you are required to answer. If you are required to answer 5 questions you will lose 20 per cent of the total marks available if you attempt only 4. Similarly, if you are asked to answer 4 questions and you attempt 5 you will probably end up wasting about 20 per cent of your time.

Time spent in reading the instructions on the paper is never wasted.

Choice of Questions

- **Types of Questions**: There are various types of questions such as, 'problem questions' and 'bookwork' questions. There are essay type questions and questions which are divided into a number of parts. In spite of what has already been said under 'How much memorising' it is possible that parts of the syllabus may not require an analysis of legal principles as such but an examination of the place and function of law in the context of contemporary society. This gives the examiner scope to test the candidate's ability in the context of personal critical appreciation.
- **Making your choice**: Sometimes it is difficult to choose which questions to attempt. If 5 answers are required it might be easier to select 3 only at first and then go on to select the remaining 2 when the first 3 have been answered. This is psychologically, rather than scientifically or mathematically, sound but it does seem to work!
- **Read the questions carefully.** This is the most important advice of all. In fact, read each question twice. Try to think about the question before you allow yourself to start planning the answer. This is much more difficult than it sounds.
  Unless you make sure that you understand the question fully you may write an excellent, if not brilliant, answer to a question which was not, in fact, set. For example, if you are asked to write about 'a rule of law' you are not being asked to discuss 'the rule of law'.

A temptingly easy question could be inviting but it may not necessarily give you the opportunity to display your true merit. Moreover, if you think that the question can be answered in one or two short sentences you have probably missed the point!

Planning the Answer

- Use your intelligence: Remember to attempt the number of questions required and to plan your answers in such a way as to take into account the time available.
- Make rough notes: jot down anything relevant that comes to mind. Write one word, or short headings, in any order and then classify these notes. This will help you to develop your answer in a logical sequence and to avoid drifting from one point to another. In questions calling for comparisons, or an ability to distinguish, such notes will avoid unnecessary repetition and thus save time.

Be relevant: Irrelevance is the bane of all examiners. True, accurate, precise and concise irrelevancies will not gain any marks. Indeed, and unfair though it may seem, irrelevant material may prejudice the marks earned by relevant material.

There will be degrees of relevance within the one question. The most relevant points should be covered first. If you have time you can then expand into less relevant areas but never wander beyond the scope of the question.

Accept any facts stated in the question as true. If a question tells you to assume a particular state of affairs you will not impress the examiners by stating what the position would have been if that state of affairs had not existed.

Don't be a parrot: The truth is that in university examinations in law there are no 'model answers'. In fact, it is doubtful if there are any 'right' answers to many law questions. It follows, therefore, that any 'specimen answer' is not the only answer. Accordingly, examiners will be more impressed by evidence of understanding and powers of reasoning than by feats of memory.

Tackling Problem Type Questions

- The object of such questions: Problems are included in a law examination in order to test a candidate's legal ability . Glanville Williams suggests that you should pay the examiner the compliment of searching for the point of their problem.
- The way of dealing with such questions: There are no rigid rules but the following guidelines will generally be of assistance.

Read every word of the problem. If you think that a word or a given fact is either irrelevant or a 'red herring' think again.
Never begin your answer with a conclusion such as 'X is guilty of murder'. You may have to eat your own words as your answer develops.

State the principles of the aspects of law involved in the problem. Include any relevant definitions. Illustrate the principles of law by citing authorities but do not write down strings of case names (see below).

State the legal points involved in a given decision and, perhaps, comment on whether or not the decision has been approved or criticised.
Apply the legal principles to the facts in the problem. If several points are involved deal with them separately. In many questions the particular problem situation will either be deliberately borderline or one in which judicial authorities are conflicting or rare. If the law is unclear you should state the legal problem raised by the situation and then tackle it by setting out the relevant authorities. Some problems will be set upon points of law which are either undecided or not exactly covered by authority. Despite this you must give legal reasons for your decision.
You will always be given credit for tackling the problem in the appropriate manner, even if your conclusions are unexpected or the examiner disagrees with your findings. You will not fail if you have demonstrated that you have the ability to argue in terms of legal rules and legal principles. One day the House of the Lords may agree with you!

State your conclusions positively. Do not throw the ball back into the examiner's court by asking questions and do not tell the examiner that they have asked a stupid question.

Although you must accept the facts as stated in the question and avoid introducing irrelevancies, you can discuss facts which may have been deliberately omitted in order to test your knowledge of legally relevant factors which should be considered before a conclusion can be reached. Thus a criminal law question such as 'X strangled his girl friend thinking that she was a snake. Discuss.' omits certain factors which must be considered. Was X drunk? Was he insane? Was he under the influence of L.S.D.? Was he asleep?

How necessary is the citation of cases? Do not avoid a problem merely because you cannot remember the names of cases - although you should try to remember the correct names of really outstanding cases.

It will also help if you can remember the rank of the Court which decided the case, more so if it is a decision of the House of Lords. However, it is the rule of law that is contained in the case that is important and must be known and, next, an outline of the facts in order to enable a comparison to be made with the facts in other cases. Remember that facts can differ whilst the legal principle involved remains the same.

A few final points with regard to case citation: firstly, it is better to set out the legal principles involved before mentioning the name of a case rather than to quote one case after another without really extracting the legal principles. Secondly, don't name strings of cases, e.g. 'In relation to the doctrine of strict liability see R. v PRINCE; R v HIBBERT; R v LARSONNEUR; LIM CHIN AIK v R; WARNER v MET. POLICE COMMISSIONER;' and SWEET v PARSLEY.'

Some General Points

- Leave a space of a few lines between each answer before commencing the next answer.
- Time is your enemy. During the course the subject assignments should enable you to determine how much you can write in, say, 30-35 minutes. In a three hour paper in which five questions have to be answered, allowing time to study the paper and to read the questions carefully, and to check your work at the end, the average amount of time which can be devoted to one question is little more than 30 minutes. Do not spend a disproportionate amount of time on two or three temptingly easy questions if this means that you cannot answer more than three in the time available. It will be easier to earn the first ten marks than the second ten for any question. You can pass if you answer the required number of questions moderately well. But you cannot possibly obtain half marks by answering only half the questions almost perfectly because full marks are practically never awarded.
- Do not re-write or re-phrase the question as a narrative way of introducing the answer. The examiner knows what the question is. Avoid verbiage and padding. These waste time, reveal your confusion and antagonise the examiner.
- Do not omit obvious legal points merely because you think they are too obvious to mention. If they are relevant you may pick up one or two easy marks and passing examinations consists of picking up as many available marks as possible.
- Aim at clarity of presentation by making your points clearly, concisely and in logical sequence. Your memory sequence may be from cases to principles but your answering sequence must be from principles to
- cases. Therefore, argue legal principles using cases to illustrate the principles. Avoid long involved sentences. Use paragraphs.
- Never leave the examination room early. If you think that you have finished check your work. Read your answers carefully. You are bound to think of something which will improve or add to the answer. Make sure that you have attempted every part of each question answered.

Summary

- Memorise as much detail as possible, especially definitions, but bear in mind that understanding and reasoning powers are more important than mere feats of memory.
- In the examination room study the instructions on the paper very carefully. How many questions are there on the paper? Check the back of the sheet. How many questions are you expected to answer?
- Read the questions carefully. Think about the question before thinking about the answer. Select your choice with care.
- Plan your answer. Jot down rough notes and classify them into a logical sequence.
- State the principles of law involved in the question. Illustrate the principles with case law. Always give reasons for your answers even if not asked to do so. Quote any relevant statutory authority.
- Never commence the answer to a problem with a conclusion. Having stated the principles of law, apply them to the facts in the problem and then reach your conclusion.
- Exclude complete irrelevancies.
- Remember that time is your enemy!
- Adopt a clear, concise style. Use attractive English, including legal phraseology, in logical sequence.
- Leave a space between each answer.
- Check your work carefully.

A BRIEF GUIDE TO EXAMINATION TECHNIQUE BY MARY LUCKHAM

BEFORE THE EXAMINATION :

Revision : You may well feel a little bogged down by all the information you have amassed during the year and are wondering how to deal with it. Whilst there are no real shortcuts and you will have to work very hard in the weeks leading up to the examinations try not to panic -this will not help you to work effectively. Remember - you will not be expected to know absolutely everything: we are not computers! Provided you understand the main issues in respect of each topic you are studying and you apply that knowledge efficiently in the examination you will pass. Bear in mind that there is normally a reason for each rule of law. It will aid your comprehension if you endeavour understand the reasoning behind the rules.

Organise your revision into manageable components. Work for relatively short periods (you will know when your concentration goes) and give yourself plenty of short breaks. You will find if you do this you will work much more effectively. Do not work when you are really too tired to do so. It is easy to feel that you have worked for three hours when, in reality your mind, because you are tired, your mind has been wandering for two and-a-half of them!

Ensure you understand the rules in respect of one topic before you go on to the next one.

Practice applying these rules

THE EXAMINATION : Make sure you arrive at the examination hall with time to spare -you will feel more relaxed if you do so.

Presentation : It is imperative that you write legibly.

Sentence structure is particularly important. A confused and poorly structured sentence will not convey your arguments effectively and you may, therefore, not gain the marks you otherwise would have. It is easier to keep the structure clear if the sentence is short, so split up long sentences. Take care with punctuation.

Even if your spelling is not generally brilliant -try to spell correctly words frequently used in a legal context (e.g. "homicide" not "homocide", "automatism" not "automism") - otherwise the examiner might get the impression that you have never looked at a textbook or case. Spell case names correctly! Remember examiners get bored like anyone else. *Don't* make *jokes!* Do not address the examiners personally.

The questions : There will be a choice of questions on the examination paper. Read the paper carefully before you even think about what questions to answer.

Next, read the paper again and begin to make your choices. Be careful at this stage. You might choose to answer a question because it relates to an area of law with which you feel familiar. Make sure you really understand what the question is getting at before you begin to answer it.
There are essentially two types of question: the essay question and the problem question so you must work to develop your legal skills to enable you to answer both types.

Essay questions require discussion and often consist of a quote on a particular issue within an area of law followed by the words: "Explain and discuss" or "Discuss" or "To what extent do you agree?'

This type of question requires you to engage in an academic discussion focused on the issue raised by the quote. It does not require a treatise containing everything you know about the area of law involved - you will not get many marks for that! Therefore, before you begin to write your answer be sure that you are sufficiently familiar with the arguments in relation to the issue to make it worth while attempting the question.

Assume you have decided to write an answer to a criminal law question entitled: "To what extent do you agree that the *reasonable man is no* longer ***reasonable,*** so far as the defence *of* provocation is concerned?' what you must not do is write a narrative account of the defence of provocation. Neither is this question an opportunity for you to give your personal opinion of what or whom the reasonable man should represent.

Aim to structure your answer so that it includes:

- **An Introduction :** This will include a definition of terms - and the terms to define here are the "reasonable man" and "the defence of provocation". You should also explain the relevance of the reasonable man to this defence. Thus you have set out the ambit of your essay. Make sure you do not deviate from this as you write your essay.
- **A discussion of the relevant issues raised by the question :** Consider arguments which support the issue raised and also arguments which do not. (thesis/antithesis) This will require an explanation of the development of the reasonable man in relation to the *defence of* provocation although brief comparisons with this construct in relation to other defences where appropriate might be useful to exemplify a point. Use cases to support any propositions you make. Remember, however, that your essay should not resemble a "shopping list" of cases. Relate what you say to the issue raised in the question.
- **Conclusion :** Here you should deal directly with the question. Provided your conclusion is a logical expression of the argument in your essay it will be a valid conclusion.

Problem ***questions are*** more practical and will involve you in giving "legal advice" in relation to a particular set of facts and require a completely different approach to that for essays. See the specimen criminal law problem question and the points to note below for a guide to the correct approach.

Whatever your academic background you are far less likely to have come across this type of question. As there are frequently more problem questions than essays in substantive law papers, it is imperative that you develop the skills which will enable you to deal with them.

When deciding whether or not to attempt a particular problem question try to make a judgment as you read as to whether you can identify the issues raised and, if so, whether the question covers an area or areas of law with which you are confident. If you decide to proceed with the question write out your basic answer plan: it is worth taking the time to do this. Frequently, a long problem can be divided into a series of smaller problems. Deal with each issue separately.

With a problem in contract law, for example, you should always first consider who is suing whom for what. This will give you a basic platform from which to begin your answer.

With a criminal law problem you should first consider what is/are the likely offence(s). You would then establish what it is the prosecution needs to prove in relation to each offence. It is vitally important that you deal with each offence separately. Do not begin your discussion of a second crime until you have said all that needs to be said regarding the first offence. Do not begin with a conclusion e.g. "Fred is guilty of murder" If you consider this to be a possibility on the facts disclosed begin by saying something like "Fred is likely to be charged with murder" and then deal with the offence by reference to the facts in the question.

Again, with tort - look for all the possible torts which may have been committed and consider whether the elements of these torts have been satisfied. Consider all possible defendants and consider whether there are any defences open to them on the *facts* given. Deal with each tort separately.

A note on **defences :** On the *facts* given in the *question:* are there any defences which may be available? (Do not *hypothesise)* Do not begin your answer with a discussion of possible defences. In the panic of the moment a mistake frequently made by students is when they see a problem the facts of which make it clear that the defendant might raise a particular defence, they jump straight in with a discussion of the defence. Stop and think about this. Does it make sense? Of course not. A criminal defendant has no need to raise a defence unless s/he has been charged with an offence. Similarly a civil defendant is only a defendant because s/he has been sued. Always identify and analyse by reference to the facts of the question the crime/tort/contract etc. issue which is the peg on which the defence will hang.

For example, if you see a contract problem which screams "exclusion clause" at you sit back and consider what needs to be established before you even think of writing about the Unfair Contract Terms Act 1977 (and the 1999 regulations where appropriate). Is there a contract? Has there been a breach of contract? Consider by reference to common law rules whether the exclusion clause is part of the contract. If the question relates to goods - are they defective? Has there been a breach of s14(2) Sale of Goods Act 1979?. Then consider UCTA.

Similarly, with a crime problem concerning, say, the defence of self-defence - consider what is the appropriate offence? Define it then deal with the actus reus and mens rea of that offence. Only then go on to deal with the defence.

As with essays, your answers should not resemble a "shopping list" of cases. Cases are a means of establishing a legal principle so set out the principle followed by the authority (case name and, if possible, court and date) followed by the application of that principle to the facts.

Generally a definitive answer is not required to a problem question: frequently there will be insufficient facts to enable you to do that. So, in a question where you have been considering murder it may not be clear from the facts whether X intended to kill or cause grievous bodily harm. What you should do is explain that the jury would be directed in accordance with the direction in Woollin [1997] HL, set out the direction and conclude by saying something like: "Therefore, if the jury is satisfied ..... *then* they may find X guilty of murder."

Whatever the area of law, a systematic, well structured answer is more likely to impress the examiner that you understand the law than one which jumps about from issue to issue.

Generally : Timing yourself is important when taking an examination. You will normally have about 45 minutes to answer each question. Try to keep yourself within that limit for each question. If, at the end of the examination you have a lot of time left, you have probably missed something. Look for it.

If, on the other hand you are taking too long to answer questions you are probably giving too much unnecessary information. Sit back and think about what you are doing. It will be time well spent.

Above all, be confident. However ill-prepared you feel - and it is rare for anyone to feel completely prepared - you probably know enough to pass (or better). It is a question of using what you know to good effect. It is also a question of extracting from your memory only that knowledge which is relevant to the issue(s) in the particular question you are answering. This means you will need to discard a lot. Have the confidence to do that.

