

Answering Questions in Criminal Law

study points

After reading this chapter, you will be able to understand:

- the distinction between the skills required for a problem and essay-style question
- the appropriate structure to adopt in answering both problem and essay-style questions
- the common pitfalls and problems students face in answering questions.

1.1 Introduction to answering questions

Criminal law is a vast and diverse area of law, allowing for assessments to themselves be varied and diverse. Typically, criminal law is examined by way of an unseen examination requiring you to deal with both essay-style and problem-style questions or by assessed coursework. Some institutions may be more novel in their approach and examine criminal law through a practical skill, such as mooting or client interviewing. This chapter, however, will focus on the advice of answering problem-style and essay-style questions under exam conditions. Therefore, matters such as conducting research, referencing, word limits, grammar, use of language etc will not form part of our discussion. For information on this, please consider a textbook on legal skills.

1.1.1 Necessity for this chapter

You may ask yourself – why do I need to read this chapter? Indeed, you may feel entirely confident in answering questions for your examination; however, *Criminal Law* would be incomplete without a section advising you on structure, style and content. Many criminal law textbooks on the market offer end of chapter questions and ‘thinking points’ for you to consider; however, few actually give you the opportunity to consider how to structure your relevant answers.

The chapter is designed to be used alongside your studies, allowing you to consider the appropriate approach to take in answering the questions featured at the end of each chapter. It is hoped that this chapter is of use also outside of the subject of criminal law to inform other areas of law given its general applicability.

This chapter is not intended to tell you that you must answer a question in a certain fashion; rather, it is merely guidance that you may accept or reject in the hope of finding the point at which you are comfortable in your approach. This chapter is also not intended to teach you how to revise, or how to study; for that I advise considering many of the legal skills books available on the market (many of which are found in the further reading section of this text).

1.1.2 Writing style

Some general comments are worth mentioning at this stage. Many of these comments may be ‘forgiven’ under examination conditions but are non-negotiable in pieces of assessed coursework. Some general comments include:

- *Use of the English language:* Ensure that your spelling, punctuation and grammar are at a level appropriate for degree students. Simple mistakes such as confusing ‘there’ and ‘their’; and ‘to’ and ‘too’ are more commonplace than you may think. Further, incorrectly

spelling 'judgment' as 'judgement' is a bug-bear amongst most academics. In addition, correct use of capital letters for such things as 'Act' in relation to an Act of Parliament is essential when producing your work. These matters are not easily forgiven under timed conditions.

- *Contractions:* Avoid the use of contractions, ie shorthand, in your work. For example it is inappropriate to use 'don't' instead of 'do not'; 'won't' instead of 'will not' etc. This is one that may be forgiven under timed conditions.
- *Personal writing:* Although in problem questions you are told to advise a client, this does not mean that you are expected to write your answer as though you are writing to the client, for example 'Dear Mark, My advice to you is ...'. Rather, you are advising the party in an impersonal sense, addressing such matters as 'In advising Mark ...'. Further to this, your writing style must be professional throughout, but you must ensure that you avoid language which is 'too formal' (ie what you may think a lawyer sounds like).

1.2 Problem questions

A problem question is designed to test your skills of factual analysis and application. In simple terms, you are required to take a piece of law and apply it to the relevant facts before you.

Problem questions are designed to test the student's ability to:

- identify legal issues relevant to the problem;
- digest and understand legal sources and their relevance to the problem;
- determine how these legal principles can apply to the problem at hand;
- explain in clear terms what the 'solution' to the problem may be, taking into account alternative arguments; and
- draw sensible, reasoned and logical conclusions.

These facts of such problem questions are hypothetical in nature, though many academics base such questions on their own previous experiences in practice.

1.2.1 The anatomy of a problem question

Problem-style questions, also referred to as 'fact patterns' or 'scenario-based' questions are rather uniform in style. Each problem question will contain a set of hypothetical facts that raise at least one, but hopefully more, points of law that require consideration. In effect, you are tasked with advising a particular individual or party as to their legal position in relation to the facts; in the context of criminal law, you are required to advise whether or not an individual is liable for an offence.

There are a number of different 'types' of problem question, in terms of their design, and it is useful to lay these out at this stage.

1.2.1.1 Type 1: Short and distinct questions

These questions are often popular amongst students given the *prima facie* brevity of the questions at hand. Such questions are often phrased as brief snippets of information which are largely unconnected to the other questions. Often, as an administrative matter, the problem question will explain whether each scenario is equally weighted or not. For example, a Type 1 problem question may look like this:

example

Advise Jack of his criminal liability in the following circumstances:

- (i) Jack enters a department store with the intention to steal makeup for his girlfriend for her birthday. Jack grabs some lipstick and runs from the store without paying.
- (ii) Jack visits his parents for dinner. Whilst in his parents' home, Jack finds some of his mother's expensive jewellery in his parents' bedroom and takes it without permission.
- (iii) Jack, who works at his local MP's office as a cleaner, discovers some documents marked 'confidential'. Jack takes the documents in the hope that there may be some information in those papers of monetary value.
- (iv) Jack wishes to steal a television from his local supermarket. Jack hides in the stockroom until the shop is closed and then attempts to steal the television. He is caught by a member of staff before he can escape.

Each issue is equally weighted.

This style of question is also used in circumstances where the examiner wishes the student to expressly deal with an alternative argument. In most cases, the examiner will write 'would your advice differ if ...'. These sorts of questions are useful for testing your understanding of how the law may apply in different, albeit rather similar, scenarios.

1.2.1.2 Type 2: Longer questions with progression of one or two main issues

These sorts of questions are popular amongst examiners as they allow for a story to be told. In such cases, the facts will provide a detailed background of events leading up to the commission of the offence. Often these questions will focus on only one or two issues, allowing for a much more detailed and thorough application of the facts to the case. These facts are provided in order to assist a student in determining what matters are relevant and what matters are not. It also allows stronger students to identify what exactly the issues in the question are. A typical example of a type 2 question may look like this:

example

Jack, who suffers from impotency, is always trying to think of ways in which he can engage sexually with his wife, Jill. Anxious of his inability to engage in sexual intercourse with his wife and worrying that Jill may attempt to find sexual pleasure elsewhere, Jack is determined to find a way to be intimate with his wife.

One night, Jack teases Jill that the pair should engage in a bit of 'horseplay'. Jill, uninterested in his advances, informs Jack that she is not 'in the mood'. Jack, upset by this remark, begins to remove his own clothes in the hope this may change Jill's mind. Indeed it does and Jill now begins to remove her own clothes. Jack, excited by this, begins to penetrate Jill with his finger, and upon seeing that Jill is enjoying this, decides to insert another finger. Jill begins to feel uneasy and requests that Jack stops. Jack refuses and inserts another finger, claiming that this is how Jill 'liked it' when they were younger. Despite her pleas, Jack continues to penetrate Jill and then begins to fondle with her breasts,

which Jill is overtly unhappy about. Jack eventually stops after seeing that Jill has been reduced to tears. Jill, fearful that Jack may try to do something like this again, calls the police and Jack is arrested.

Advise Jack as to his criminal liability, if any.

1.2.1.3 Type 3: Longer questions with multiple issues

This style of question is similar to type 2, except that the case progression often involves multiple issues, including multiple criminal offences and defendants. This style of question is often popular in 'mixed' scenarios where the student is required to consider a multitude of offences, from different strands of the criminal law, eg sexual offences and theft-related offences. Such scenarios differ from type 1 questions in that they are continuous and involve a clear progression of the facts. An example of a type 3 question is detailed below at **1.2.1.4** and has been annotated to demonstrate the extent of the question asked.

1.2.1.4 An annotated example

Consider the following example of a problem question (a type 3 question) and use it to consider the approach adopted by the question, the style of the factual scenario and the issues identified. This scenario will be relevant later into the chapter (at **1.2.5**) when we consider a structure to answering a problem question.

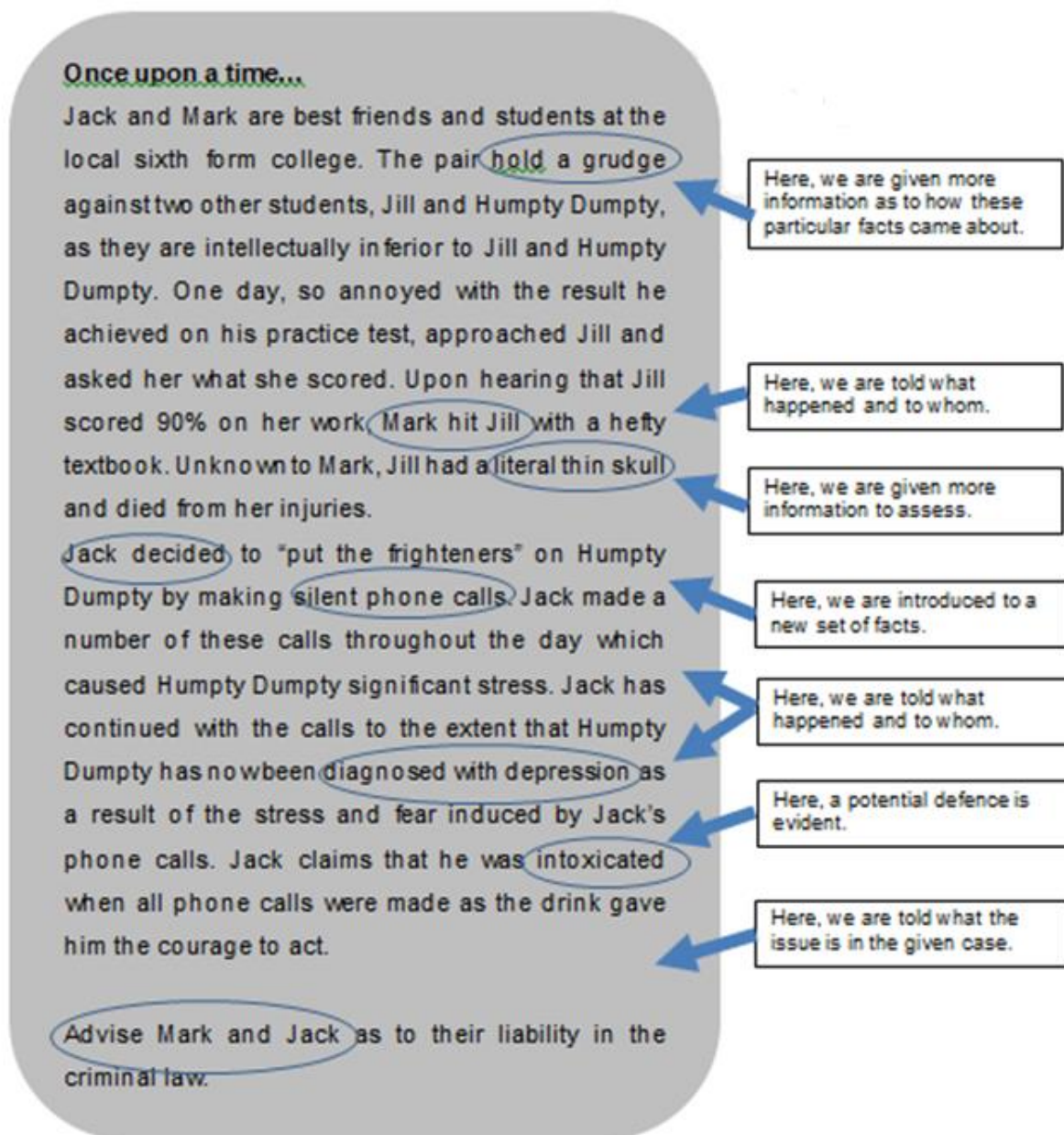


Figure 1.1 Anatomy of a problem question

Many problem questions, unlike this one, will assist you in identifying the issue by asking you to, for example, 'Advise Jack as to his potential liability for murder'. In the above case, you are not told what the issue is, but asked whether Mark and Jack are liable in the criminal law. In such cases where the issue has not been made clear, it is your job to decide, on reasonable analysis of the facts, what the problem is in the question. In this question, it is clear that the issues are whether Mark is liable for any homicide-related offence and whether Jack is liable for a non-fatal offence against the person. The extent to which the issue is made clear to you is a matter for your individual tutors.

Further to this, it is unlikely that a problem question will merely consider just one issue; rather, a problem question is likely to invoke a number of issues for you to determine (as is the case in this question). In criminal law, this is often done by involving more than one party that

requires advice or by creating a number of offences committed by the same individual in one transaction. In both cases, you must be prepared to deal with the issues as they come to light.

1.2.2 Skills required

Problem questions are designed to test your ability to understand how a particular piece of law applies to a factual scenario. It is about taking the law in its theoretical context, and placing it in a practical 'real-world' context. To do so requires a number of skills – more than simply memory of the relevant legal principles. Such skills are detailed in Table 1.1.

Table 1.1 Skills required for problem-based questions

Skill	Explanation
Factual analysis	The ability to identify relevant facts to your scenario and to sift through irrelevant information, or information that could be classed as a 'red-herring'.
Structure	The ability to organise your work in such a fashion that it presents a logical, free-flowing and smooth transition through the issue at hand. A good structure will allow you to insert your authority at relevant points without disrupting the flow of your work. A good structure will also ensure that the information you provide remains relevant, concise (where appropriate) and sound.
Application	The ability to take a particular legal principle and apply it to the facts provided. The application to the facts is crucial in identifying whether a particular law is relevant to the scenario before you and the legal responsibilities of the parties being advised.

Any answer to a problem question is best explained as a piece of legal advice to an individual or party. The key to providing sound advice, according to Foster (*How To Write Better Law Essays*, 4th edn (Pearson, 2016)), is to ensure that the advice is clear, simple and full. According to Foster, advice is:

- 'clear' when it is dealt with in a 'structured and ordered manner';
- 'simple' when it is provided in 'plain and simple English, avoiding overly complex legal language wherever possible'. This simple style requires you to avoid writing in a 'complicated and academically analytical' way and focus on a sort of 'clarity that would appeal to the layperson and legal professionalism';
- 'full' when it covers 'every angle and [provides] as many feasible solutions as possible'.

Research skills are essential when answering a problem-style question not under timed conditions, i.e. for coursework purposes; however, it does not bear as much relevance to timed exam conditions – given the inherently 'closed book' nature of examinations.

1.2.3 Common pitfalls

Examiners see the same mistakes made year on year. It is essential, therefore, that you avoid these common pitfalls. One of the first major pitfalls is that students believe that problem-based questions are 'easier' than essay-style questions. This view is often associated with the fact that problem questions merely require you to state the law and apply it to a simple set of circumstances. Although that is correct to an extent, problem questions can be much more complex in nature than essay-style questions. Problem questions are designed to test your understanding of matters that do not have an obvious and straightforward solution and test your structure towards answering the question with practical legal thought and analysis.

Some pitfalls to avoid include:

- simply repeating the facts of the case at hand;
- simply stating the law without any application to the facts;
- failing to provide authorities to support legal propositions;
- providing the facts of authorities cited as opposed to the legal principle that the case represents;
- writing everything you know about the subject on the page and not focusing your answer;
- failing to provide a reasoned and logical conclusion – often students simply explain that the outcome may go one way or another (this is fine to the extent that you explain why);
- involving academic discussion and debate – clients do not care if a particular piece of law is controversial and subject to criticism, unless it potentially affects the outcome of the case;
- creating facts that do not exist in the scenario given (although you should consider reasonable inferences from the facts given – which are likely to be ambiguous);
- considering issues that are irrelevant, ie if causation is obvious it must be considered but not as much time should be devoted to it;
- failing to consider alternative outcomes that are reasonable on the facts.

1.2.4 General advice

There are several important points to make about problem questions.

1.2.4.1 Read the question

Always read the question through at least twice. On the first occasion, do not make any notes; simply read the facts and understand what the case is about. Once you have done that, read the facts again and, this time, annotate the question, making appropriate notes of the issues at hand.

1.2.4.2 Understand there is not simply 'one way'

There is no one way (no single 'right' way) in which to go about answering a question – the information below is merely a suggested way of exploring the issues, and it should not be taken as the way you need to work through questions.

1.2.4.3 Answer the question

Make sure that you are doing what the question asks, ie advising the parties. Often students start advising everyone mentioned in a problem, but marks are only awarded for the parties identified at the end of the question. Make sure you read the question in full.

1.2.4.4 Use authority

Ensure that you use authority to back up your points, ie relevant cases and statutory provisions. You will get credit for mentioning authority, if it is relevant to the point you are making and to the question. Students often ask 'how' they use authority in exam conditions. The answer is simple; use the authority to support the point you are making. It will be useful at this stage to distinguish the different types of authorities that may be used.

As a quick point, it is always useful in examinations for authorities to be underlined or highlighted in a particular way. Naturally, of course, your marks will not suffer if you fail to do so; however, underlining your authorities is a good habit to get into as it allows you to see what you have cited without having to read your script again, and it allows for quick reference for the marker of the paper to see what you have cited.

Cases

If you are citing a case authority, there is no need to refer to the citation provided; use of the name of the case is sufficient – though many lecturers also require you to know the year of the case. Examples may include:

- 'In R v Brown (1994), the House of Lords determined that consent could not lawfully be given for any activities that resulted in injury of actual bodily harm or above, unless the activity is recognised as a lawful one based on public policy.'
- 'Factual causation requires the defendant to be the factual cause of the end result. The court in R v White phrased this as the 'but for' test whereby it must be proven that, but for the defendant's conduct, the end result would not have occurred.'

In many circumstances, the case authorities used will be pronouncements of simple or uncontested matters, for example that the main authority for the virtual certainty test is that of *R v Woollin*. In such a case, it is perfectly appropriate to simply place the authority in parenthesis after the statement of law. For example:

- 'The mens rea for murder is malice aforethought, express or implied. This terminology simply means that the defendant must intend, directly or indirectly, to kill or cause serious bodily harm. Direct express malice refers to the situation where it is the defendant's 'aim, objective and purpose' to kill (Moloney); whereas indirect (or 'oblique') express malice refers to the situation where the end result (ie death) is a virtual certainty and the defendant appreciates that such is the case (Woollin).'
- 'Appropriation is defined in s 3 TA 1968 as an assumption of the rights of the owner and this has been interpreted to mean 'any one' of the rights of the owner (Morris).

In other cases, the authority used may not be so simple – especially where it has been doubted by a later, more superior court, or where the decision involves dissenting judgments. In such cases, you may be required to delve a little deeper into the legal principle of the case in

determining its use or relevance to the facts of the case. This may often require the use of analogies or propositions based on *obiter dicta* comments as opposed to the *ratio* derived from the case. This still does not mean, however, that a detailed explanation of the facts of the case should be provided; you are awarded marks for your use and application of the legal principle to the facts at hand – not your skill at memorising case facts.

Legislation

In terms of legislation and other statutory provisions, it is acceptable to use abbreviations when citing the source under exam conditions. However, it is always advised that you write the full statutory name out first before then using the abbreviation later, for example:

- Your first use of the authority may read as follows: 'Mark may be liable for an offence contrary to s 18 of the Offences Against the Person Act (OAPA) 1861'.
- A subsequent use may read as follows: 's 18 OAPA 1861 provides that ...'.

Further to this, there is no requirement for you to quote word-for-word the provision of a statute as, although this may show good memory, it is often a waste of time. Rather, you should aim to paraphrase the provision in the statute identifying any key words or short phrases that are important to the facts. It is often advisable to place these key words or statements in quotation marks. For example:

- 'Robbery is defined in s 8 TA 1968 as where a person steals and 'immediately before or at the time of doing so, and in order to do so' he uses force on any person or subjects another to the fear of force.'
- 'By s 2 FA 2006, a person is guilty of fraud by false representation where they make a false representation dishonestly and intend "to make a gain" or "cause a loss" by that representation.

Academic commentary

Although academic commentary is useful in understanding the law in its contextual nature, the use of academic commentary (in the form of textbooks or journal articles) is often frowned upon. This is because they are 'secondary' in nature, compared with cases and legislation which are 'primary' in nature – thus the names 'primary' and 'secondary' sources. Further to this, the object of a problem question is to test your understanding of the law by applying it to the hypothetical scenario provided. Always consider 'what would the client want to know?' In most cases, the client could, quite frankly, not care less about what a particular academic thinks about an area of law – they are concerned with how the law applies to them. In that sense, academic commentary in a problem question should be avoided.

However, there are some situations where the use of academic commentary is helpful. Mainly this will be in cases where the law is uncertain, ambiguous or contradictory. In those cases, academic commentary may be useful in assessing how the court in question may interpret and apply the law to the facts at hand. The use of such commentary should, however, be restricted to simply what is needed in order to deal with the ambiguity and should not be taken further into openly and extensively assessing the relevant law.

1.2.4.5 Sign-posting

Use sub-headings to separate out your work. It allows for you to have a logical structure whilst also making it easier for the examiner to follow. You sub-headings could be used to separate out the parties involved, or perhaps the potential offences charged. To keep your examiner happy, you can underline or highlight these sub-headings also, for example Mark and the Assault; Jack and the Murder; Jill and the Theft.

1.2.4.6 Accept the facts

Do not 'invent' facts; the facts of a problem question are sacrosanct. Sometimes the facts are deliberately ambiguous; this is not an opportunity for you, however, to delve into your imagination. This does not, however, prevent you from considering alternatives based on ambiguous facts. Only use hypothetical situations where they assist in your advice.

1.2.4.7 Distribute your time appropriately

A major issue that arises with students dealing with problem questions is the tendency to explain everything that they know about this particular area of law without a real regard for the facts of the case at hand and what is, and is not, relevant. Academics often refer to this as a sort of 'verbal diarrhoea' – please forgive the term; though it is pretty accurate.

Students must ensure that they distribute their time according to what the most important issues are. Dealing with a point in great detail that raises no contention is a waste of your time and is unlikely to score highly. This does not mean, however, that you should ignore the point; rather, it means that you should acknowledge the point and deal with it quickly before moving on to more important issues.

The question will often assist you in determining what is the most important or crucial point to consider – often by providing you with background information into that issue. Likewise, ensure that your answer deals only with matters you are expected to cover according to your module syllabus – it's there for a reason! Although knowledge outside of the syllabus may look impressive, it will not score you any more marks than a student who does not include the point. In summary, feel free to mention such knowledge but do not spend any long periods of time on it.

1.2.4.8 Remain practical

A good lawyer, whether practising or not, must consider problems in a practical capacity. To do so will ensure that they have a complete understanding of how a particular area of law works in practice. For example, the police are very unlikely to arrest an individual for theft without any further evidence of theft, eg walking out of the store with the goods.

1.2.5 Advice on structure and technique

The most important guidance to take from answering a problem question in law is to follow an appropriate structure. In order to develop one's structure, one needs to understand appropriate problem-solving techniques.

An effective problem-solving technique is essential for your success on a particular module. The techniques discussed in this text will be just as relevant to your other study

modules, such as land law, contract law etc. An important point to note is that many institutions provide you with the relevant guidance on ‘structuring’ an answer – and you are advised to consider this guidance carefully. For the most part, these points of guidance will feature heavily on the well-known techniques used across all universities. Although these techniques vary in terminology, the basis of the approach is largely uniform. A number of mnemonics exist to assist you in your problem-answering style; these are detailed in Figure 1.2.

I	ssue	I	ssue	P	roblem	C	laim
R	ule	P	rinciple	L	egal rule	L	aw
A	pplication	A	pplication	A	pplication	E	valuation
C	onclusion	C	onclusion	N	ote outcome	O	utcome

Figure 1.2 Useful mnemonics for problem-solving

IRAC and the other mnemonics ensure that you have a solid structure in answering your questions and that you do not miss key information. Importantly, however, IRAC should not be used to deal with every issue at the same time; rather, IRAC should be used to approach each individual issue in turn. What I mean by this is that you must divide your answer up into sections and use IRAC to deal with each issue that arises. This is demonstrated below at 1.2.6.

1.2.5.1 Issue

The first task is to identify the relevant legal issues in the case. This is not always an easy task and requires you to think about the law you have studied and the circumstances in which such law applies. It is therefore essential that you understand what areas of law are relevant to your particular course so that you can avoid irrelevant material.

Importantly, it is not appropriate to think that there is only ever one issue in a given case. In fact, there are at least three ‘layers’ of issue in a problem question. The three layers are detailed in Figure 1.3.

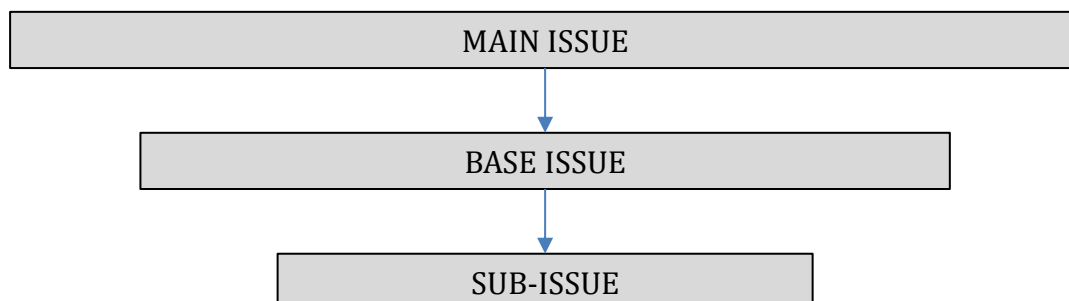


Figure 1.3 Identifying the issues in a problem question

It is not as complex as it may first sound. Let us break it down for you using the following example.

example

Jack is upset that Jill is having an affair with Andy and stabs her with a knife. Jill dies.

Advise Jack as to his liability in the criminal law.

Main issue

What are you asked to advise on in the problem question? Your answer must be directed at answering this main issue. In this case, the issue is whether or not Jack is liable for the criminal offence of murder. In order to answer this question, we need to understand who the parties are and what events transpired. In essence, we wish to know:

- who did what to whom; and, as a result
- what the legal consequence is.

In this case, Jack has stabbed Jill which has led to her death. As a death is involved, we know that we must consider the law of fatal offences (ie homicide). As Jack is the person carrying out the attack, he will be the accused and we shall have to consider his liability for the offence at hand.

Base issue

In order to prove or establish the main issue, what elements must be determined and fleshed out? Essentially, it must be asked 'what points of law must be established in order to advise the parties?'

In this case, in order to ascertain whether Jack is liable for the offence of murder, the *actus reus* and *mens rea* of the offence (ie the elements of the offence) must be made out and Jack must lack a defence. The base issue is therefore concerned with identifying what the relevant elements of the offence are. This exercise can be characterised as breaking down the problem question into mini-problem questions. By taking each issue in turn and subjecting it to a thorough and detailed analysis, your structure will remain strong and your answer will be full.

Sub-issue

In order to prove or establish the base issue, what elements must be determined and fleshed out? We know from the base issue that the *actus reus* and *mens rea* of murder must exist – now is the time that you consider each element in turn. See Figure 1.4 and Table 1.2.

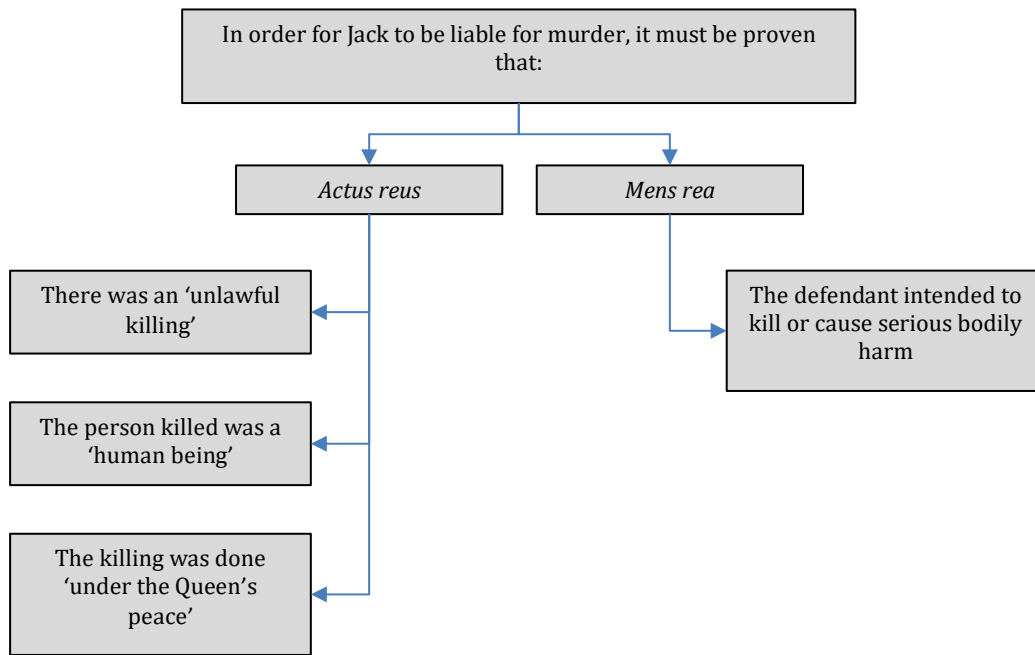


Figure 1.4 Identifying the sub-issues in a problem question

Table 1.2 demonstrates how IRAC fits into the structure adopted above. Please note that the sub-issue forms part of IRAC, in that it is the 'issue' element.

Table 1.2 Using IRAC when dealing with the sub-issues

Sub-issue	IRAC structure
1.1 Was there an unlawful killing?	R – What is the legal definition of 'unlawful' and 'killing'? A – Has the defendant committed this act? C – Is there an unlawful killing?
1.2 Was the person killed a human being?	R – What is the legal definition of a 'human being'? A – Does that definition apply to this case? C – Was the person killed a 'human being'?
1.3 Was the killing under the 'Queen's peace'?	R – What is the legal definition of the 'Queen's peace'? A – Does that definition apply to this case? C – Was the killing done under the 'Queen's peace'?
1.4 Did the defendant intend to kill or cause serious harm?	R – What is the legal definition of intention in murder? A – Has the defendant met this definition? C – Did the defendant intend to kill or cause serious harm?

Once this task has been completed, the next step is to offer an 'overall conclusion' on the base issue, for example, 'It is clear from the above points that the *actus reus* for murder has been satisfied.'

1.2.5.2 Rule

Upon identifying the relevant 'issue' in the case, it is necessary to explain and detail the statement of law most relevant to the issue. The 'rule' section of IRAC is particularly easy, requiring a student to take both a generic and then more focused appreciation of the legal principles.

For example, in relation to sub-issue 1.2 above, we have to consider whether the killing has been of a 'human being'. The law on this can be found in Chapter 8 of *Criminal Law*, but for the time being, it is worth giving an example of 'stating the law':

example

'The phrase "human being" has been subject to numerous definitions but is often centred around the concept of independent breathing. In R v Enoch (1833), the court held that a child must have 'an existence independent of its mother' in order to be classed as a human being, and in R v Poulton (1832) the court explained that the child must be wholly expelled from the mother's body. In both cases, the court distinguishes between a human-in-being and a human-in-waiting.'

What should be noted here is that a judgement call has been made as to how much law should be used when stating the legal principle. In doing so, unnecessary authority or legal principle that is irrelevant has remained undiscussed, for example reference to harm committed to a child who dies in the womb before then being given birth to. Notice also that the facts of these case authorities have not been provided; rather, the focus of the legal principle is the *ratio* that can be taken from the case at hand. Further, it is often helpful to 'save' some of the legal propositions for the application stage to ensure that the answer remains free-flowing and not stagnant.

With this rule stated, the student may then go on to apply the rule to the facts.

1.2.5.3 Apply

The third, and most important element of IRAC is the ability to apply each element to the facts in the scenario. At the first stage ('issue'), we identified the questions that need to be answered; at the second stage ('rule'), we identified the legal principles relevant to the issue at hand. At this stage, we are combining both the issue and the rule together and determining whether or not the issue in this case has been made out by use of the law (ie we are actually answering the question at hand).

This aspect of IRAC is often considered by students to be the most difficult; however, when the requirements of a good application are broken down, it is evident that the task is quite simple.

example

'On the facts, it is obvious that Jill is a human being. Given that Jill appears to be an adult, engaging in sexual activities, the only logical conclusion is that she is a human being within the definition provided by the court in Enoch.'

As you will see from the example, the facts of the case have been used in order to establish whether the legal rules apply. Notice how it was not simply stated that 'Jill is clearly a human being' or 'this requirement is clearly satisfied'. Indeed, that is the obvious, and very simple, conclusion; however, the nature of 'application' is ensuring that the specific facts of the scenario given are used to explain how the law applies, ie reference to Jill being an adult and engaging in sexual conduct demonstrates that she is a human being. Naturally, this is a very simple example of how to apply, but the same technique applies across the board even when dealing with complex scenarios.

In considering the application stage, you may wish to ask yourself the following:

- How does the law apply to these sets of facts?
- What information is present in the facts that proves that the law does or does not apply to these facts?

1.2.5.4 Conclude

Now, consider your conclusion. Has the particular sub-issue been made out? Do not feel that you have to reach a definite conclusion; in a criminal trial, there is no guarantee of a particular outcome. A definitive conclusion does not matter as long as you can illustrate your argument by reference to authorities. Quite often, arguments can be presented in the alternative – this is not a matter of concern so long as you have reached an appropriate conclusion on the facts provided. Further to this, do not be afraid to explain that a particular conclusion depends on the extent of the facts and the interpretation of the facts.

example

'The second element of the actus reus is thus satisfied. The next issue is whether the killing was committed under the Queen's peace.'

1.2.6 Putting it all together: an example structure

As discussed above, structure is key to success. With a logical structure, all that remains is slotting the appropriate content into the relevant sections. Figure 1.5 provides an overview of the necessary structure, which is then further detailed below. The examples given are based on the problem question provided at **1.2.1**.

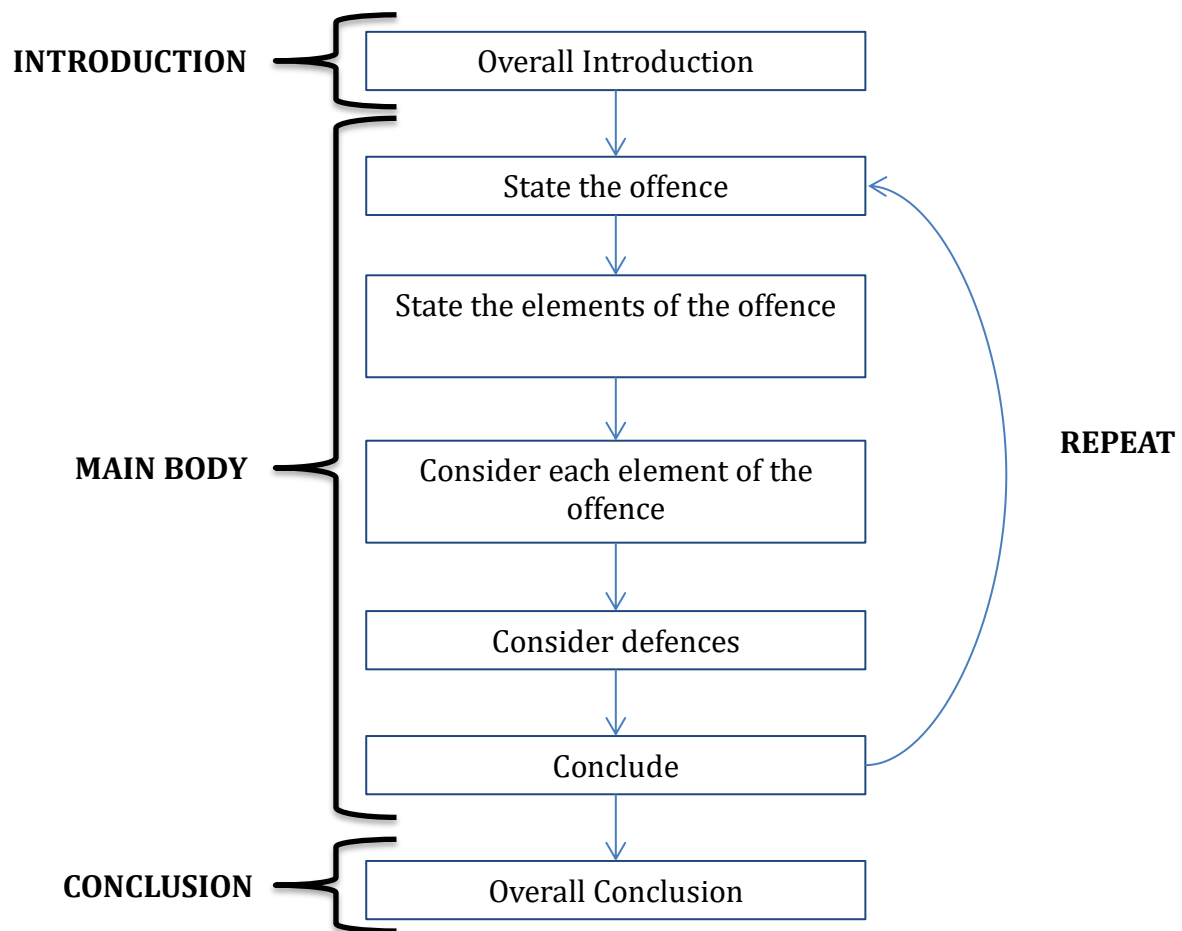


Figure 1.5 Example structure for a problem question

1.2.6.1 Overall introduction

An introduction should be present in all problem questions and should be a brief overview of the matter at hand. The essential nature of the introduction is to detail what the ‘main issue’ is in the case. With this in mind, a standard introduction may include:

- the parties concerned (including victims/complainants and defendants);
- the likely offence(s) the defendant(s) may be charged with (for example, murder, robbery, etc);
- informing the examiner as to how the advice will be structured.

example

‘This case concerns a number of fatal and non-fatal offences against the person. Mark may be liable for a homicide offence against Jill, whilst Jack may be liable for a number of non-fatal offences against Humpty Dumpty. This advice shall consider the liability of each defendant separately before then proceeding to any potential defences that may be raised.’

Notice at this stage that the answer has not launched itself into a lengthy explanation of the law. The introduction merely identifies the relevant area of law, the parties involved and the important issue that exists between the parties.

1.2.6.2 State the potential offence

The next stage ought to explain what the likely criminal offence will be and your *prima facie* reasons for such. In stating the offence, also state whether the offence is common law or statutory and, if the latter, which statutory provision is relevant. Essentially you are informing the reader of:

- the specific offence in question; and
- the facts as to why this may be the relevant offence.

If relevant, you may also wish to inform the examiner which offences are not relevant – because a key element of the offence is missing.

example

'Jack and Humpty Dumpty

Prima facie, Jack may be liable for a number of non-fatal offences against Humpty Dumpty as a result of the psychiatric injuries suffered by the silent telephone calls. Specifically, given the level of harm sustained, Jack may be liable for inflicting Grievous Bodily Harm (GBH) contrary to s 20 of the Offences Against the Person Act (OAPA) 1861 or the lesser offence of assault occasioning actual bodily harm (ABH) contrary to s 47 OAPA. It is unlikely that Jack will be liable for an offence of GBH with intent contrary to s 18 as there is no evidence on the facts that Jack intended Humpty Dumpty to suffer grievous bodily harm.'

1.2.6.3 State the elements of the offence

This stage requires the student to inform the examiner what the relevant elements are of the offence in question. This is a demonstration of your 'base issue' and you can approach it quite simply by explaining:

- what is the *actus reus* and *mens rea* of the offence.

example

'Section 47 ABH

In order to be liable for an offence contrary to section 47, the prosecution must prove the necessary *actus reus* and *mens rea* of the offence. The *actus reus* of section 47 is:

- an assault or battery;
- which occasions;
- actual bodily harm.

The *mens rea* of section 47 is:

- intention or recklessness as to the assault or battery.

Each element will be considered separately.'

1.2.6.4 Consider each element in turn

Take each individual element of the offence in turn and follow IRAC for each element. This is your 'sub-issue' and allows you to consider how we prove the base offence. Please note that the words from IRAC have been inserted into the text but it is advised that you do not do so in your own work.

example

previous discussion of assault or battery

'The next element of the offence is that the defendant, through his conduct, must "occasion" the ABH (*issue*). "Occasioning" simply means to "cause" and requires the prosecution to prove the standard rules of causation (both factual and legal) in the given case (Roberts (1971)) (*rule*).

In this case, it can be seen that 'but for' the silent phone call, Humpty Dumpty would not have suffered actual bodily harm (R v White). There is no evidence in this case that any other factor was the factual cause of Humpty Dumpty's harm. Factual causation appears to be satisfied. The prosecution must also prove that the defendant is the legal cause of harm requiring his conduct to be more than a minimal contribution (R v Cato). In this case, the defendant is the sole contributor to the harm suffered and there is no possibility of a break in the chain of causation (*apply*).

It would appear, therefore, that causation is satisfied (*conclude*).'

move on to discuss the meaning of 'actual bodily harm'

1.2.6.5 Consider potential defences

Once you have established that an offence exists (ie you have explained and applied the *actus reus* and *mens rea* of the offence), you can then turn to consider whether any defences exist. Where a defence is relevant you need to discuss it. Please note, you should only discuss any relevant defences – it is a waste of time to discuss intoxication where no intoxication is present in the facts.

example

'It is likely that Jack will be liable for ABH against Humpty Dumpty for the reasons set out above. Jack would be advised that no defences are available in this case. Although Jack was intoxicated at the time of making the silent telephone calls, Jack's intoxication is entirely voluntary and is not available to a crime of basic intent (R v Allen). As the offence of ABH involves an element of recklessness, it is not possible for Jack to claim that his level of intoxication prevented him from forming the necessary *mens rea* given that the act of becoming voluntarily intoxicated is considered evidence of recklessness in of itself (DPP v Majewski). In any event, had intoxication been an available defence, Jack would not be able to claim that he lacked the necessary *mens rea* as there is clear evidence on the facts that Jack took the intoxication in order to commit the offence, ie he used the intoxication to gain Dutch courage (Gallagher). As a result, Jack has no defence to liability.'

1.2.6.6 Overall conclusion

Offer a simple conclusion whether, on the facts present, the defendant is likely to be liable for an offence. Given that issues of guilt or innocence are matters for a jury or magistrate, it is not possible to say categorically that the defendant will or will not be liable. Instead, it is best to say that it is 'likely' or 'unlikely' that he will be liable. It is also advised to give a brief sentence on the relevant punishment for the offence – though this is a matter on which it is best to seek guidance from your own tutors.

example

'Jack is likely to be liable for ABH against Humpty Dumpty. Jack is unlikely to have any defence to excuse his conduct. If convicted, Jack may be liable to a custodial sentence of up to 5 years (if convicted in the Crown Court) or 6 months (if convicted in the magistrates' court). Jack may also be liable to a fine.'

1.2.7 Summary of answering problem questions

A few key points should be taken away from this section of the chapter. In summary, you must ensure that:

- you are able to identify the relevant legal issues raised in the factual scenario;
- you have a good understanding of the legal principles and authorities relating to those principles;
- you understand how best to structure your answer;
- you understand how to distribute your timings and why you need to do so;
- you apply the legal principles to the facts and not simply state what the law is; and
- you always consider alternative possibilities.

1.3 Essay questions

Unlike problem questions which require you to provide specific legal advice to an individual based on a factual scenario provided, essay questions require you to critically discuss or analyse a legal issue. The key to answering essay questions is understanding the remit, or reach, of the question. A problem question in this respect is 'apparently' easier in that it sets the parameters for your answer, ie you are to consider the defendant's liability for murder. In an essay-style question, however, you are to determine what the focus of your answer will be.

Essay questions are designed to test the student's ability to:

- identify the meaning of the question and what the question is asking of you;
- consider the arguments which are relevant to dealing with the question at hand;
- weigh up and analyse the arguments previously identified;
- construct reasoned and logical opinions on the question asked;
- use authority in support of any argument made; and
- reach logical conclusions based on the question asked.

1.3.1 Anatomy of an essay question

An essay-style question can be rather uniform in many respects; often you will be provided with a quote, often taken from an academic or a case judgment, and you will be required to discuss, evaluate and analyse the quote. Alternatively, you may be provided with an unquoted statement that you are required to consider (see below for an example of both of these styles).

The main distinction that lies between essay-style questions is the ‘task’ that is to be done. In determining what the task is, one is best advised to consider the ‘directive words’, ie the words that instruct you in how to complete the task at hand. The University of Leicester (Learning Development, Essay Terms Explained (online article, 2011)) has produced a summary table detailing the numerous different directive words that one may be faced with during their time in higher education. The full table can be found at: www2.le.ac.uk/offices/ld/resources/writing/writing-resources/essay-terms.

The following table details the most common directive words used in law assessments.

Table 1.3 Types of directive words in essay-style questions

Essay term	Definition
Analyse	This requires the student to break up the statement into constituent parts and investigate the plausibility of the statement. Analysis is a task requiring students to consider the arguments both for/and against the statement, weighing up those arguments and reaching an appropriate conclusion.
Assess (also ‘critically assess’)	Requires the student to weigh up to what extent a proposition is true (ie how far are they in agreement/disagreement with the statement). The student’s task is to persuade the reader of their argument by citing relevant research whilst also identifying any flaws and counter-arguments as well.
Evaluate (also ‘critically evaluate’)	This task requires students to weigh up arguments for and against a statement, either of law or academic opinion. In doing so, they must assess the strength of the evidence on both sides and use clear criteria to guide their answer as to which opinions, theories, models or items are preferable.
Discuss (also ‘critically discuss’)	Essentially this is a written debate where the student is required to use reasoning in making their arguments, backed up by carefully selected evidence to make a case for and against an argument, or point out the advantages and disadvantages of a given context. Importantly, a ‘discuss’ question requires the student to arrive at an appropriate conclusion.

Inevitably, these directive words essentially seek to perform the same task – having the student weigh up a particular argument and reach an appropriate conclusion based on their own

reasoned and logical opinion. In my own mind, the real distinction in essay-style questions comes in the manner in which the question is asked. Consider the following examples:

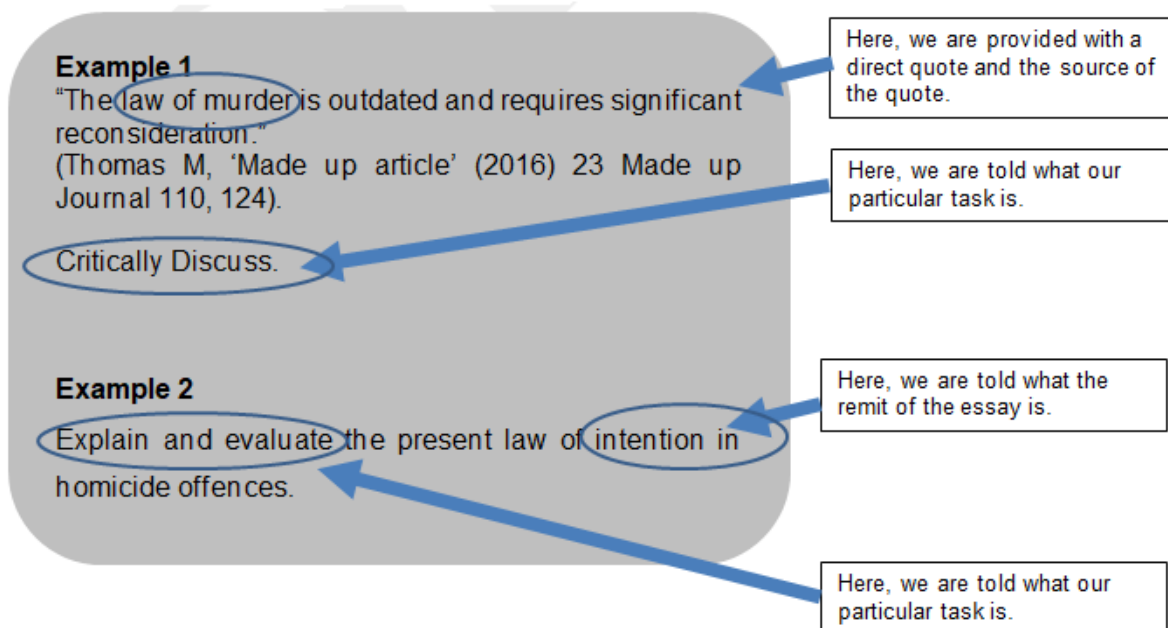


Figure 1.6 Anatomy of an essay-style question

In Example 1, students are provided with a broad statement covering the entirety of the law of murder. The 'task' of the student to critically discuss whether the law is outdated and in need of reform. In completing the task, however, the student is not informed as to what they should consider (ie the remit of their answer), other than matters within the law of murder. Naturally, therefore, answering this question using literature and authority from the law of theft is clearly wrong. However, the student may focus their answer on the meaning of intention or the meaning of 'death' in the law of murder; both are clearly within the remit of the question. If answered well, a student can positively assess whether the law of murder is, indeed, outdated. The broad nature of this question allows students to focus their efforts on one or two particular aspects of the law in this area and make a detailed consideration of how those points relate to the question at hand. This approach is to be advised over an attempt to deal with every possible angle and argument in the law of murder which, naturally, would be more of an overview than a detailed account.

In Example 2, the student is told exactly what the remit of their task is, ie assessing the law of intention in homicide offences. This question is therefore much more narrow in scope than Example 1, meaning that the student will know what area their examiner wishes them to focus on. This question allows students to perform well by explaining the key issues in the law of intention, before then assessing whether they are 'fit for purpose', as it were.

1.3.2 Skills required

Essay questions are designed to test your ability to critically analyse and evaluate a particular area of law. This requires more than simply having a strong knowledge of the law in question

and the academic commentary that surrounds it; a good essay requires a number of skills. These skills can be identified as 'Bloom's Taxonomy' and refer to the skills that can be demonstrated by a student in the work they produce. Skills that are featured towards the top of the pyramid (known as the 'higher-order' skills) are routinely harder to demonstrate and thus are worthy of more marks; whereas skills that are featured at the bottom of the pyramid (known as the 'lower-order' skills) are easier to demonstrate and are afforded lesser awards. Bloom's Taxonomy, ie the skills required for an essay-style question, is detailed in Figure 1.7 and explained in Table 1.4

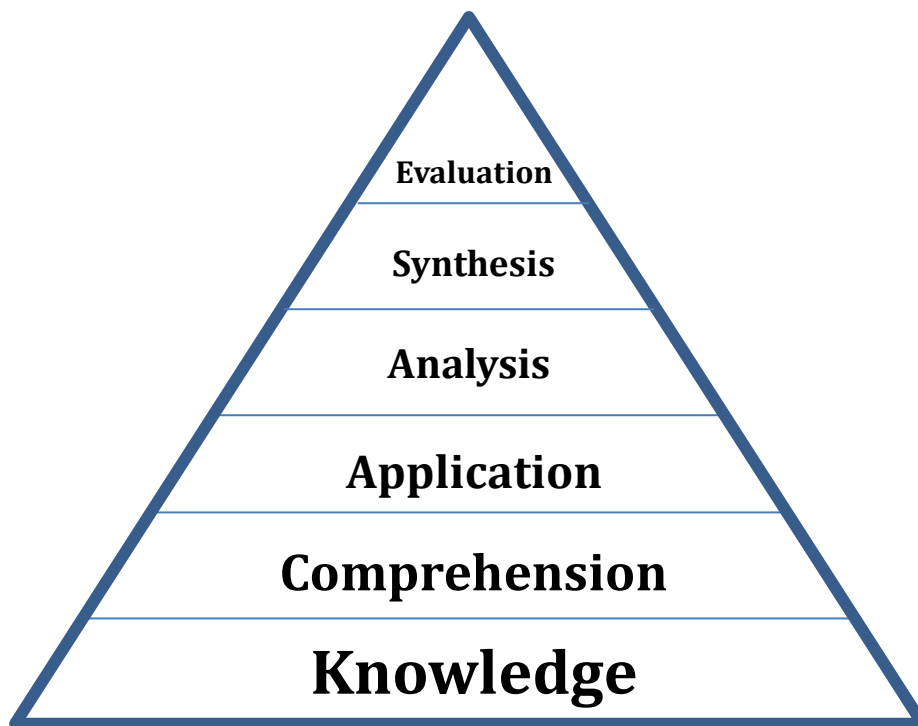


Figure 1.7 Bloom's Taxonomy

Table 1.4 Skills required for essay-style questions

Skill	Explanation
Knowledge	The ability to understand and remember the factual, descriptive nature of the law. Often this is identified by students through simple and straightforward statements of law.
Comprehension	The ability to extrapolate key information and an understanding of how that information can be explained and interpreted. Comprehension is an essential skill for students studying the law in the sense that they actually understand what the legal principle is.
Application	The ability to apply a legal theory or statement to varying circumstances. More often a skill used in problem-based questions, application remains key for essay

	questions in understanding how an argument may vary according to the scenario in which it is applied.
Analysis	The ability to break down a legal principle into component parts and subject it to close scrutiny. Analysis is key to demonstrate that a student understands the need to focus their issues and scrutinise those issues at close range.
Synthesis	The ability to draw together differing strands of an argument, both for and against a statement, and identify the similarities and differences between the two.
Evaluation	The ability to consider the effectiveness of a particular legal issue. Students demonstrate this ability well by detailing how a particular legal principle or issue has developed, the position that existed beforehand and whether the present situation has been improved.

Although there is no magic formula for demonstrating these six skills, it is hoped that the structure advised below (at **1.3.5**) goes some way in addressing these skills. Ultimately it is a question of balance and appropriate contribution.

In addition to the taxonomy, essential to essay-style questions is an appropriate structure. As with problem-based questions, essays should be structured in such a fashion that they present a logical, free-flowing and smooth transition through the task set.

1.3.3 Common pitfalls

Much like problem questions, examiners are confronted with the same mistakes and problems as each academic year rolls around. One of the first major pitfalls is the descriptive nature of a student's work. An essay-style question is designed to test your knowledge and understanding, but, more importantly, it is to test your ability to critically think about the issue at hand. Mere descriptions and explanations of the law are helpful in demonstrating your knowledge, but little more than that. See **1.3.4.2** and **1.3.4.3** for advice on how to make an argument and how to 'engage' with an essay respectively.

Some other pitfalls to avoid include:

- simply stating everything you know about a topic – often referred to as the 'shotgun' approach. This type of answer lacks focus;
- offering an opinion without sound logic or reason behind it;
- failing to explain how the argument made relates, or is relevant, to the question at hand;
- dealing with a matter not relevant to the question at hand, for example by trying to word the question in a way that benefits you but distorts the purpose of the question asked;
- failing to consider alternative arguments and present a logical discussion of competing views.

1.3.4 General advice

There are several important points to make about essay questions.

1.3.4.1 Sign-posting

Use headings and sub-headings to sign-post and structure your answer. Students are often wary of doing so in essay-style questions as they have been previously taught (at secondary school and A-level) to avoid headings as they disrupt the flow of one's answer. Whilst this may be correct for other subject matters, in legal subjects, sub-headings are key. They allow your answer to be read and followed on a much easier scale than an answer without them. They are also helpful in that they provide a mental break for yourself to reflect on the argument that you have just made. You can consider whether you have made an argument, substantiated it and related it back the question before then moving on to your next argument.

As with headings and sub-headings in problem questions, ensure that you underline or highlight them in some way.

1.3.4.2 Making an argument

The key to essay writing is argument. After all, that is why many people enjoy law – because they like to argue. However, essay questions are often answered quite poorly by students as they often lack any real form of argument. Students have often been found saying:

- 'I didn't know you wanted my opinion'; and
- 'I didn't think we were allowed to use our own opinions'.

In fact, both statements are entirely misconceived. A student's argument is key to answering the question and completing the task set. The trick is to understand the manner in which a student can make their own personal argument. Clear wording of an argument may take the form of:

- 'It is my argument that ...';
- 'I contend that ...'; or
- 'It is argued that ...'.

Many students are under the perception that writing in the first person (ie the use of 'I') is forbidden. On the contrary, writing in the first person is just as persuasive and academically strong as writing in the third person. The key to success is understanding the terminology to use when writing in the first person. For example, it is not appropriate to use such phrases as:

- 'I think ...'; or
- 'I believe ...'.

In both examples, there is no academic force or reason behind such concepts. Rather, more authoritative phrases should be used, such as:

- 'I argue ...'; or
- 'I contend ...'.

A point to note to be wary of are the phrases:

- 'I submit ...'; or
- 'It is submitted ...'.

Although such phrases may be considered appropriate by some academics, others do not take favour with their use given the apparent 'oral' nature of submissions. The best advice is to ask your criminal law tutor as to what style they prefer. Another word that often causes difficulty is that of 'arguably'. The phrase does not make it clear whether this is an argument you are making or not; rather, it denotes an image of 'fence-sitting' by a student who is not confident enough in the arguments that they are trying to make. Further, the phrase 'arguable' is often interpreted by academics as being one which tells the reader that an argument is possible, but not that the student necessarily agrees with it.

1.3.4.3 Critical engagement

The biggest problem for most students is that they fail to critically engage with both primary and secondary authority. This requires going beyond the simple statement that an authority is a proposition for something and actually engaging with the authority. Many students ask the question 'What does it mean to "engage" with an authority?'

Table 1.5 Critical engagement

What it means to 'critically engage'	How to 'critically engage'
What is your view about this source?	Do you agree or disagree with it? To what extent (ie whole-heartedly or partially)?
Why have you used this source?	Have you used this source to further your own argument? Have you used this source to offer an alternative argument?
What should I (the reader) think about this source?	Is your argument better than the argument in the source? Have you used this source to offer an alternative argument?

The manner in which you can engage with an authority can be helpfully divided into a four-step approach. You are advised to refer to **1.3.5.3** for a more detailed discussion of critical engagement. The four-step approach is as follows:

- (1) State the authority.
- (2) Make clear why you are stating this authority (ie what is its relevance to this issue).
- (3) State whether (and to what extent) you agree or disagree with the authority and why.
- (4) If you disagree with an authority, state why your argument is better than it.

An example of this may be:

'Thomas comments that as a result of R v Gomez, the law is of appropriation is "disproportionately wide" (*Step 1*). Thomas explains that the practical applicability of

appropriation is no longer existent given that the term now refers to any taking of the rights of the owner regardless of whether consent or authorisation is given (*Step 2*). Although Thomas' view is persuasive in this regard, I contend that he is misguided in his approach. Thomas focuses primarily on the "practical application" of the law and its "evidential backing" and appears to ignore the fundamental principle behind Gomez which ensures an appropriate focus is placed on the mental element of the offence, namely dishonesty (*Step 3*). Contrary to Thomas' view, the law is and should be concerned with whether the defendant is 'dishonest' in his appropriation. This is justified on the basis that whether an offence is proven will often turn on the presence of a dishonest mind and an intention to permanently deprive; the act of appropriation is to be considered as a necessary ingredient for the offence but not as the significant and determining factor. Following from this, it is my argument that Thomas' argument lacks persuasive force given its omission of the importance of dishonesty in the operation of the offence (*Step 4*).'

1.3.4.4 Relating back to the question

In addition to failing to make an argument, students also fail to relate their points or arguments back to the overall issue, ie the question being asked. Those students who do very well in making an argument often fall down in their assessments by failing to directly answer the question. Essentially, a student is required to make an argument and tell the reader how and why that argument is relevant to the question at hand.

In order to 'answer' the question, a student must substantiate the point they are making, and inform the reader why the point is being made, before then relating it back to this question at hand. A simple sentence will do, for example 'This demonstrates that as a result of the *Gomez*, the law on appropriation is so wide that it has become inoperable in practice.' This demonstrates to the marker that the student understands what they are talking about and they understand how their points are relevant to the question. The word 'relevance?' is often littered on an examination script that does not explain why a particular point is being made and how it relates back to the question asked.

1.3.5 Advice on structure and technique

As with problem questions, a key skill in answering essay-style questions is to adopt an appropriate structure. Once the structure is in place, a student's task simply becomes a matter of 'slotting in' the relevant information. Importantly, this structure is not absolute – in that it is not the only structure possible. Rather, essay questions are very much an expression of individual academic personality. As such, the structure of an answer to an essay will ultimately depend on your own personal style, preference and workings.

A number of useful mnemonics can be identified to assist students. These are detailed in Figure 1.8.

P	oint	P	oint	T	opic	S	tate
E	laboration	E	laboration	E	xpansion	E	xplain
E	xample	E	xample	I	llustration	E	ngage
		L	ink	L	ink	L	ink

Figure 1.8 Mnemonics for essay-writing

These mnemonic devices are useful in the structuring of paragraphs within the essay and form part of the 'main body' of your answer (see below at 1.3.7). Paragraphs are essential to the creation of a strong essay, and they break down your 'overall argument' in small bite-size chunks, with each one containing a separate argument or point of consideration. It is essential that each paragraph flows from one to the other in a logical and consistent manner – the easiest way to think about it is that the following paragraph should progress on from the former.

A question often posed by students is 'how long should my paragraphs be?'. The difficulty with this question is that there is no 'right' or 'wrong' length of paragraph. Rather, the focus should be on ensuring that the points made are logical, concise and relevant. By following one of the mnemonic devices listed above, a student can ensure that their paragraphs remain at an appropriate level.

The mnemonic that I teach my own students is the latter of the four, my own device namely 'SEEL'. Consider the following essay-style question and see how SEEL and the other mnemonic devices can be used.

example

'The meaning of appropriation in the law of theft has been expanded beyond practical application and is a wholly unsatisfactory concept in modern criminal law.' (Thomas M, 'Made Up Article' (2015) Journal of Law 200, 205).

Critically discuss.

1.3.5.1 State

The first element of 'SEEL' requires the student, quite simply, to state their argument. Essentially, this very short task requires the student to sign-post the central point of the paragraph. This task may often require a very brief explanation of what the present situation is within the law.

example

previous arguments made

'A further point requiring consideration is the extent which consent plays in appropriation. Under the present legal scheme, where consent is provided by one party that permits the other party to deal with or take certain goods, this still amounts to appropriation for the purposes of the TA 1968: this

approach demonstrates a clear expansion of the term “appropriation” beyond its original intention and pinpoints a lack of practical thought to its application.’

This is a rather lengthy, yet clear, example of how one might state one’s particular argument. Here, it can be seen that the paragraph is immediately sign-posted by explaining that it is to do with consent and appropriation; a brief explanation of the law is provided to allow the reader to understand why the argument is being made; and reference is made back to the writer’s ‘overall argument’. In many cases, the ‘state’ part of ‘SEEL’ can be much shorter and merely make it clear what the purpose of this paragraph will be.

1.3.5.2 Explain

The next stage of ‘SEEL’ is to explain your argument in more detail. This may require a few sentences and simply requires the student to elaborate and expand on the points previously made. A good approach to take under this section is to tell the reader why this argument is being made and why it is a good argument. In essence, the student will be justifying why their argument is relevant to the question being asked. Ultimately, the ‘explain’ element depends on your own particular style. A word of warning, however – a common pitfall, as identified earlier, in the ‘explain’ stage is for a student to be overly descriptive, ie they describe the law beyond what is necessary in order to explain the point made.

example

‘State’ element of SEEL

‘In circumstances where an individual has consented to or authorised another to act in a certain way to a property right, this would not ordinarily be described as an appropriation. This is because an appropriation would typically be described, especially for the purpose of the criminal law, as an ‘unlawful’ appropriation (ie without consent). Following the cases of Lawrence and Gomez, however, consent and authority are now to be considered as immaterial to appropriation. The effect of this is to overrule such cases as Eddy v Niman which held that a theft could not be completed as everything the defendant had done up to that point was in the shopkeeper’s implied consent.’

In this example, the legal position relating to consent and appropriation is laid out clearly and succinctly. It is evident from the wording of this example that the writer is focused on the irrelevance of consent to the definition of appropriation, and it is clear that the writer will go on to consider the difficulties with this approach in greater detail.

1.3.5.3 Engage

Quite frankly, the most important element of an answer to an essay-style question is the ‘engagement’ that is made to the question. The ‘engage’ step of ‘SEEL’ is designed to focus on the personal argument of the writer by engaging with the present law and legal authorities. In essence, this stage provides support for the argument that is being presented – it is the student’s opportunity to be more persuasive. It is essential at this stage that the writer includes legal authorities (ie case law and statutory provisions) but also non-legal authorities (ie academic opinion, newspaper or media reports etc). These academic/secondary materials are pivotal in ensuring that your answer is critical, logical and reasoned.

Importantly, a student should not simply state an authority and move on. Rather, the authority and legal principle should be stated before the student then uses that authority and engages with it. I often adopt the phrase 'critical engagement' to denote the task that is to be undertaken by a student at this stage. Refer back to Table 1.5 at **1.3.5.3** as to what is meant by critical engagement in this context.

example

'State' and 'explain' elements of SEEL

'The present operation of law in the context of consent demonstrates that the concept of appropriation has been expanded beyond comprehension. Indeed, this is the view taken by Ormerod and Laird who argue that appropriation has been so widely interpreted that the actus reus has been 'reduced to vanishing point'. As a result of this, I submit that the law of theft, through the concept of appropriation, has intervened too early. A defendant can never, and should never, be said to have appropriated property where his appropriation is within the rights permitted to him by another. ...

... In the case of Morris, an individual could satisfy the actus reus of theft simply by touching the products on a shop shelf. This is impractical and is an extension of the term beyond belief. It is my argument that it is only when the appropriation is complete (eg when an individual leaves the store), or when he has gone beyond his permission (eg like swapping the labels in Morris), should the Theft Act come into play. Such reasoning was agreed with in obiter by Lord Roskill in Morris and has been described, quite accurately, by the likes of Clarkson and Keating as 'patently ridiculous'.

There are, of course, arguments in favour of the decisions in Gomez and Lawrence. For instance, Gardner argues that that the outcome in both cases was 'desirable' since the conduct involved will be morally blameworthy regardless of consent. This view has been furthered by Glazebrook who argued that appropriation is a neutral term applying to all circumstances, and an individual is only to be considered as a thief in circumstances where their appropriation is dishonest. In that respect, it makes no difference whether appropriation is made with or without consent. Although these arguments may appear persuasive, they are both fundamentally flawed on account that they place too much emphasis on the mental element of a crime, ie dishonesty. To do so displaces theft from its practical environment. In the circumstances where an individual possess the relevant dishonesty and intention to permanently deprive but has yet to demonstrate that mental element through their actions, the layperson would not characterise them as a thief. Further, without this "demonstration" of their guilty mind, the police are unlikely to arrest and the CPS are unlikely to charge an individual with an offence given the sheer lack of evidence that proves an offence was committed (Thomas). This matter of evidence goes to the heart of the issue, namely that appropriation is no longer a term capable of 'practical application'.

In the case of a shopper who has the intention to steal a can of beans, unless and until that person goes beyond what they are ordinarily entitled to do as a shopper – eg they exit the store without paying or conceal the goods – it is inappropriate and impracticable to refer to them as having "appropriated" goods. This approach is evident from such pre-Gomez cases as Hircock and Kaur; in both cases no appropriation could exist where the defendant remained within the remits of the

permission granted by the owner of the goods. The effect of Gomez is to turn theft into, what Ormerod refers to as, a “thought crime”.

This is by no means an example of a ‘perfect’ engagement; this is because the differences in approach and style will ultimately impact upon how you engage with subject matter. A number of points can be made evident from this example:

- Academic authority is provided both in favour, and against, the arguments of the writer.
- Where authority is provided that is against the arguments of the writer, the writer ensures that they deal with those arguments and explain why they are not as persuasive as they may first appear.

1.3.5.4 Link

This final step is to be used to conclude your particular argument and relate (or ‘link’) it back to the overall argument you are making in answer to the question. In doing so, it is advised that the student uses the wording of the question in making their point. By doing this, the reader knows that the student is directing their answer towards the question asked. Your final sentence may also link to the next paragraph, should there be one.

example

‘State’ ‘explain’ and ‘engage’ elements of SEEL

As a result of the decisions in Gomez and Lawrence, the definition of appropriation in the context of consent is so broad that it offends practical sense. With the overextension of appropriation into cases where consent or authorisation is present, it is evident that the scope of appropriation is indeed a “wholly unsatisfactory concept” and has been expanded beyond practical application.

In this example, the link is quite blunt and clear, using the language of the question to make the argument. In this example, there has been no link to a subsequent paragraph; however, that is simply a matter of preference for the writer. Upon proceeding into the next paragraph in your main body, follow the ‘SEEL’ process once more.

1.3.6 Putting it all together: example structure

As with problem questions, an appropriate structure is needed when drafting essays. Figure 1.9 provides an overview of the necessary structure, which is then further detailed below. The examples given are based on the essay question provided at **1.3.5**.

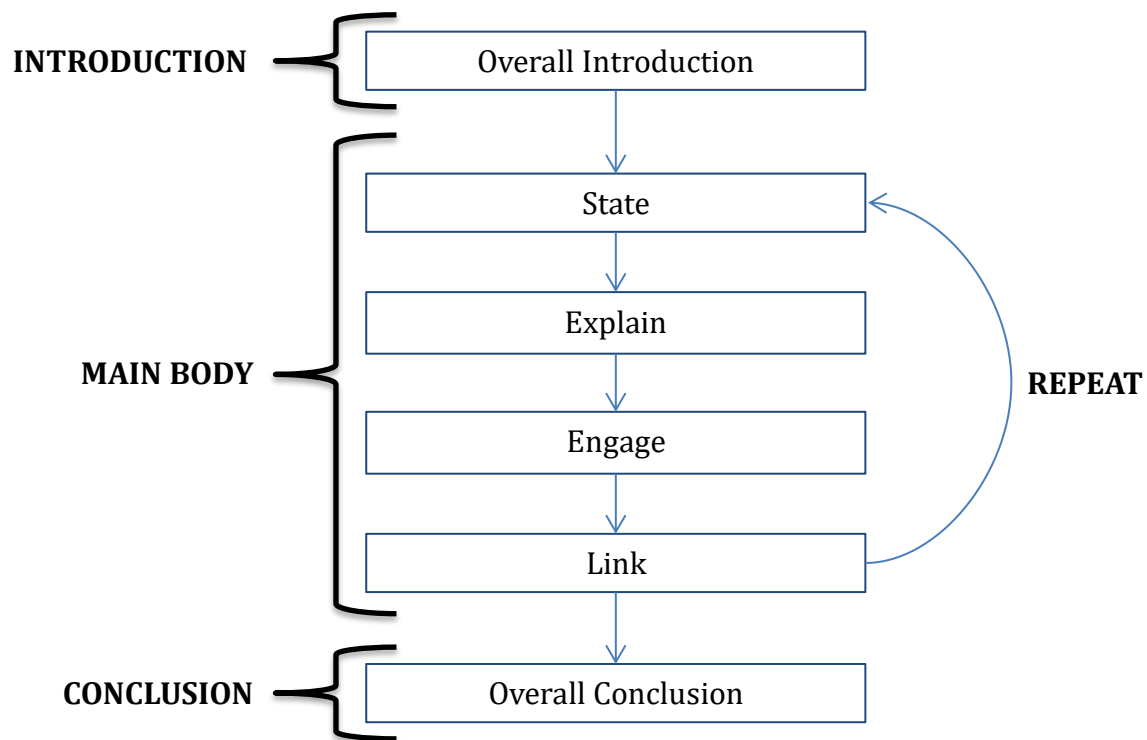


Figure 1.9 Example structure for an essay question

1.3.6.1 Overall introduction

As a starting point, students should introduce the topic and unpack the issue that needs addressing. Essentially, students should explain what it is the question is seeking to be answered. Although very much a matter of academic preference, it is advised that students state their argument in relation to the statement or question at the very start. As discussed above at **1.3.4.2**, an argument does not have to be whole-heartedly in favour of or against a statement – a person may find favour and critique in numerous elements of the question. Most importantly, however, a student must not sit on the fence – a discussion is designed to test a student’s ability to offer insightful thought or opinion into the operation of a point of law.

The language of an introduction is always key. The introduction does not need to be expressed in terms of ‘I agree’ or ‘I disagree’ with the statement; rather, a student may find more favour by making an argument in the same language used by the question. For example, an introduction may begin: ‘This essay argues [or, ‘I argue’] that ...’. Using the wording of the question in making your overall argument will demonstrate a direct approach to answering the question at hand.

As a matter of style and the student’s own preference, a student can consider setting out what they are going to discuss. This is particularly useful if the question is phrased in a broad fashion, so that the student can indicate from the start how they intend to approach their answer.

example

'A person can be guilty of the offence of theft under s 1(1) of the Theft Act (TA) 1968 if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. A key element of this definition is the word "appropriates" which is defined in s 2 of the 1968 Act as an assumption of the rights of the owner. Despite its prominence as the fundamental conduct element of the offence, appropriation is a term of art that is subject to considerable controversy. Through judicial interpretation over the years, the phrase has been over-extended, over-defined and has been rendered impracticable. I will argue that although the term is not 'wholly' unsatisfactory, it is most certainly an issue that requires addressing by the law-makers of the country. In making this argument, I shall consider how appropriation has been defined when applying it to:

- the circumstances when consent to appropriate is given;
- the circumstances when the property is apparently given by way of gift; and
- the unfortunate overlap that exists between theft and the offence of obtaining property by deception.'

1.3.6.2 SEEL

Examples of using SEEL in relation to this question have been provided above at **1.3.5**.

1.3.6.3 Overall conclusion

Your overall conclusion should summarise the arguments that you have previously made and should provide an answer to the question asked. The conclusion is the student's final opportunity to explain in succinct and clear fashion why their argument is persuasive and, in some respects, right.

example

'In conclusion, this essay has considered whether or not the current definition of appropriation in the law of theft remains a satisfactory term for use in criminal law and retains a practical significance. Throughout this essay, it has been my argument that the term is no longer of satisfactory use, nor is it applicable in modern criminal law. The term has been defined beyond what can be accepted as logical developments and has strayed into the path of irrelevance when considering the offence of theft as a whole. The term lacks practical application given that theft is mainly a crime now determined by the mental elements of the offence and remains unsatisfactory in its broad and over-reaching scope.

Until Parliament steps in to correct the position, appropriation will remain a concept lacking any real value in the criminal justice system.'

This conclusion neatly sums up the arguments of the writer, namely that appropriation is a term that is no longer useful in the law of theft. Notice that reference has been made to specific words from the question itself, for example 'significant'. The writer concludes with a strong statement furthering their view on appropriation in theft.

1.4 Concluding thoughts

It is hoped that this chapter will assist you in tackling the problem and essay-style questions that you may face on your criminal law modules. It was never intended that this chapter act as the 'be-all and end-all' of how to answer questions in an examination; however, it is hoped that it has gone some way in clarifying for you what is sought after by examiners, the tips and tricks to adopt in structuring your answers and the rationale behind the presence of the style of assessment in the first place.

I would strongly advise that, having read this chapter, you consult your module handbook/syllabus for guidance on how to answer questions and speak to your module tutor to confirm whether a particular approach is appropriate on the module you are sitting.

1.5 Further reading

Brest and Kreiger, *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policymakers* (OUP, 2010).

Finch and Fafinski, *Legal Skills*, 6th edn (OUP, 2017).

Foster, *How To Write Better Law Essays*, 4th edn (Pearson, 2016).

Higgins and Tatham, *Successful Legal Writing*, 3rd edn (Sweet & Maxwell, 2015).

McBride, *Letters to a Law Student: A guide to studying law at university*, 3rd edn (Pearson, 2014).

Nathanson, *What Lawyers Do — A Problem-Solving Approach to Legal Practice* (Sweet & Maxwell, 1997).

Slorach, Embley, Goodchild and Shephard, *Legal Systems & Skills*, 3rd edn (OUP, 2017).

Smith, *Glanville Williams: Learning the Law*, 16th edn (Sweet & Maxwell, 2016).

Strong, *How to Write Law Essays & Exams*, 4th edn (OUP, 2014).

University of Leicester, Learning Development, *Essay Terms Explained* (2011). Available at:

www2.le.ac.uk/offices/ld/resources/writing/writing-resources/essay-terms