

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

82155

International Law for Management Study Guide

Academic Year 2021-22

6 Credits

Module Convenor:

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Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market Law (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, reading groups, and/or students’ activities. There will be 10 sessions of 3 hours each.

Classes take place as communicated.

Although the course is self-contained (i.e., no prior knowledge of economics or public international law is required), a basic knowledge of commercial law and public international law are, however, important for anyone taking this course. Those who have never studied commercial law or public international law before are required to do some background reading. Please read M. Shaw, International Law, (8th ed., Cambridge University Press 2017), Chapters 1-3 and 5.

Description of the module

The aim of the module is to introduce and critically assess the main rules of International Commercial Law and the available dispute resolution methods that can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. A focus on digitalisation and how it impacts on the applicable rules and existing business framework will be provided. This branch of the law comprises of the rules that govern the exchange of goods and services across countries and the governance of disputes that may arise. Given the lack of a globally unified legal system, international trade law relies on a plurality of sources, both national and transnational, which will be addressed in the module: national law, international agreements and conventions, transnational standards and business practices. In order to make sense of that complexity, the module is divided in two core blocks.

The first block will introduce the basic concepts, the economics and the politics of international trade. It will cover the international and regional legal frameworks under which international trade occurs, including the WTO, free trade agreements and the European Economic Area. The focus will be maintained on the substantive rules created under those agreements rather than on institutional and procedural aspects.

This part of the module will also examine the law governing commercial contracts for the exchange of goods in the transnational setting, including choice and conflict of laws rules, international sales law and rules on carriage of goods.

All in the context of digitalisation.

The second block aims at providing an understanding of the international dispute resolution system and offering candidates a basic understanding of the principles of good practice and procedure in international dispute management. After a general introduction of in-Court and out-of-Court mechanisms, this part of the module will concentrate on the general principles of international commercial arbitration and a comparison of the main alternative dispute resolution processes – arbitration, mediation and adjudication. It gives students the opportunity to analyse critically the use of arbitration to resolve international business and commercial disputes and provides them with a contextual analysis of international commercial arbitration through lectures, class readings, seminar discussions and group presentations. The theoretical material will be combined with practical examples for a better understanding of the unique characteristics of international commercial arbitration. Overall, the second block of the course will consider the ways in which the various benefits of international commercial arbitration and other dispute resolution methods can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. It purports to give candidates a basic understanding of the principles of good practice and procedure in international arbitration.

Objectives

At the end of the course the student is able to understand international contracts, the principles regulating them and the impact of digitalisation on business transactions. In particular, he/she is able to examine international commercial contracts in their regulatory context, with the aim to manage the internationalization of the company; he/she will also be able to focus on different solutions for different situations.

Class schedule

| <i>Date 2021</i> | <i>Hours</i> | <i>Lecture</i> | <i>Students' activities</i> |
|----------------------|--------------|--|--|
| 14 Feb | 3 hours | <p><i>Introduction</i></p> <p><i>Basic concepts in ICL, politics and economics of international trade</i></p> <p><i>The global institutional framework: UN and WTO law</i></p> | <p><i>Group reading</i></p> <p><i>Allocation of activities</i></p> <p><i>54 STUDENTS: 11 groups of 4 students AND 2 groups of 5 students</i></p> |
| 15 Feb | 3 hours | <p><i>Free Trade Agreements</i></p> <p><i>The European Economic Area</i></p> <p><i>Dispute settlement under the WTO</i></p> | <i>(Allocation of activities)</i> |
| 21 Feb | 3 hours | <i>International Contracting and Conflict of Laws</i> | <p><i>2 Groups – Dispute settlement cases</i></p> <ul style="list-style-type: none"> • <i>US – Tuna case of 3 September 1991</i> • <i>EC – Bananas, case of 12 April 1999</i> |
| 22 Feb | 3 hours | | <p><i>1 Group – Governing Digital Trade: a new role for the WTO?</i> https://www.econstor.eu/bitstream/10419/199841/1/die-bp-2019-06.pdf</p> <p><i>2 Groups: Digitalisation and the WTO. Adapting to the Digital Trade Era: Challenges and opportunities. Chapters 15 and 16 from</i> https://www.wto.org/english/res_e/publications_e/adtera_e.htm</p> <p><i>2 Groups: Trade digitalisation to support MSMEs financing</i> https://www.wto.org/english/res_e/booksp_e/tradedigitaltomsms_e.pdf</p> |
| 28 Feb | 3 hours | <i>International Transports/Carriage of Goods</i> | |
| 1 Mar | 3 hours | <p><i>Introduction to commercial arbitration</i></p> <p><i>The arbitration agreement</i></p> <p><i>Drafting the arbitration agreement</i></p> | <p><i>2 Groups: Blockchain and DLT in Trade</i> https://www.wto.org/english/res_e/booksp_e/blockchainrev19_e.pdf</p> |

| | | | |
|---------------|---------|--|---|
| 7 Mar | 3 hours | <p><i>Applicable laws and rules</i></p> <p><i>Judicial assistance</i></p> <p><i>The Tribunal</i></p> | <p>3 Groups: Can blockchain revolutionise international trade?</p> <p>https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf</p> |
| 8 Mar | 3 hours | <p><i>The arbitral proceedings</i></p> <p><i>The award</i></p> | <p>1 Group: Trade and data protection: the model of the EU (GDPR)</p> |
| 14 Mar | 3 hours | <i>State Investment Arbitration</i> | <i>Arbitration and Digitalisation</i> |
| 15 Mar | 3 hours | <i>State Investment Arbitration</i> | <i>Arbitration and Digitalisation</i> |

Attendance and Engagement

Attendance is compulsory.

Attendance will be checked at the beginning of every class.

Attendance must be at least 70% of the whole 30 hours course.

Reading guide

Readings will be taken from the following sources:

- Trebilcock MJ, *Advanced Introduction to International Trade Law* (Elgar Publishing, 2015)
- Carr I and Stone P, *International Trade Law* - 6th edition –(Routledge, 2018)
- Moses ML, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2017)
- Material provided in class

For relevant parts, students may also refer to the following textbooks (however, be careful that they are up-to-date):

- Chuah J, *Law of International Trade. Cross-Border Commercial Transactions* (Sweet & Maxwell, 2013)
- Goode R, Kronke H, McKendrik E, *Transnational Commercial Contracts. Text, Cases and Materials* (Oxford University Press, 2015)
- Van den Bossche P, Zdouc W, *The Law and Policy of the World Trade Organization. Text, Cases and Materials* (Cambridge University Press, 2013)
- Qureshi AH and Ziegler AR, *International Economic Law* (Sweet & Maxwell, 2011)
- Murray C, Holloway D and Timson-Hunt D, *Schmitthoff - The Law and Practice of International Trade* (Sweet & Maxwell, 2012)
- Bantekas I, *Introduction to International Arbitration* (Cambridge University Press, 2015)
- Born GB, *International Arbitration: Law and Practice* (2012)

Assessment

The assessment of this course will be:

- 50% by performance in class (group presentation); and
- 50% by submission of a written research project (coursework) of up to 3.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released in the last teaching week. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

All students are entitled to refuse the mark given, in which case they may resubmit for assessment on the basis of 100% submission of a new written research project (coursework) different from the one whose mark has been refused. All resubmissions shall be up to 8.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

For those who have been **exempted from attending**, the assessment on this course will be 100% by submission of a written research project (coursework) of up to 8.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

Written presentation of the Coursework

The coursework should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the coursework (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Bibliography

All written materials (published or unpublished) which have been used in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of coursework and penalties for exceeding word limit

The coursework is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the

footnotes/endnotes will be included. The bibliography is not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their coursework. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and that they reference their dissertations appropriately.

ADVICE ON WRITING COURSEWORK

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an area of law, or debates and conflicts, and you may take a tentative position, but "discuss or analyse" type questions are not the place for polemic or rhetoric.*

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

E.g. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

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| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

98629

International Business and Digital Law

Study Guide

Academic Year 2022/23 - 2023/24

6 Credits

Module Convenor:

Prof. Federico FERRETTI
F.Ferretti@unibo.it

Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market La (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, reading groups, and/or students’ activities. There will be 10 sessions of 3 hours each.

Classes take place as communicated.

Although the course is self-contained (i.e., no prior knowledge of economics or public international law is required), a basic knowledge of commercial law and public international law are, however, important for anyone taking this course. Those who have never studied commercial law or public international law before are required to do some background reading. Please read M. Shaw, International Law, (8th ed., Cambridge University Press 2017), Chapters 1-3 and 5.

Description of the module

The aim of the module is to introduce and critically assess the main rules of International Business Law and the available dispute resolution methods that can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. Due attention will be paid to digitalisation and its main governing laws.

The module will introduce the basic concepts, the economics and the politics of international trade, and its legal order. Also, it will examine the law governing commercial contracts for international business, including choice and conflict of laws rules. The main global issues relating to digitalisation are covered. The concluding part of the first part will address the process of global digitalisation, its key role in commercial agreements, and the key laws to be aware of. Digitisation has significantly impacted international business. The module covers the impact of digitisation on trade in services, the ensuing concept of 'digital services' and the different types of trade barriers these services face.

A part of the module aims at providing an understanding of the international dispute resolution system and offering candidates a basic understanding of the principles of good practice and procedure in international dispute management. After a general introduction of in-Court and out-of-Court mechanisms, this part of the module will

concentrate on the general principles of international commercial arbitration and a comparison of the main alternative dispute resolution processes – arbitration, mediation and adjudication. It gives students the opportunity to analyse critically the use of arbitration to resolve international business and commercial disputes and provides them with a contextual analysis of international commercial arbitration through lectures, class readings, seminar discussions and group presentations. The theoretical material will be combined with practical examples for a better understanding of the unique characteristics of international commercial arbitration. Overall, this part of the course will consider the ways in which the various benefits of international commercial arbitration and other hybrid dispute resolution methods can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. It purports to give candidates a basic understanding of the principles of good practice and procedure in international arbitration.

Objectives

At the end of the course the student is able to understand the legal order of international business, international contracts, the principles regulating them and the impact of digitalisation on business transactions. In particular, he/she is able to examine international commercial contracts in their regulatory context, with the aim to manage the internationalization of the company; he/she will also be able to focus on different solutions for different situations.

Class schedule

| <i>Date 2021</i> | <i>Hours</i> | <i>Lecture or topic</i> | <i>Students' activities</i> |
|----------------------|--------------|---|---|
| 13 Feb | 3 hours | <i>Introduction</i> <i>Basic concepts in ICL, politics and economics of international trade</i> <i>The global institutional framework: UN and WTO law</i> | <i>Group reading</i> <i>Allocation of activities</i> |
| 15 Feb | 3 hours | <i>Free Trade Agreements</i> <i>The European Economic Area</i> <i>Dispute settlement under the WTO</i> | <i>(Allocation of activities)</i> |
| 20 Feb | 3 hours | <i>Dispute settlement (Guest speaker online: Prof. Peter Petkoff, University of Oxford, UK)</i> <i>Digitalisation, Data, Privacy and Data Protection</i> | |
| 22 Feb | 3 hours | <i>Digitalisation, Data, Privacy and Data Protection</i> | |
| 27 Feb | | | <i>Group presentations - Dispute settlement cases</i> |
| 29 Feb | 3 hours | | <i>Group presentations - Dispute settlement cases</i> |
| 7 Mar | 3 hours | <i>Investment law and arbitration</i> <i>(Guest speaker: Prof. Peter Petkoff, University of Oxford, UK)</i> | |
| 8 Mar | 3 hours | | <i>Data protection test</i> |
| 12 Mar | 3 hours | <i>International Contracting and Conflict of Laws</i> <i>Introduction to commercial arbitration, the arbitration agreement, drafting the arbitration agreement</i> | |
| 14 Mar | 3 hours | <i>Applicable laws and rules, Judicial assistance, the Tribunal, the arbitral proceedings, the award</i> | |

Attendance and Engagement

Attendance is compulsory.

Attendance will be checked at the beginning of every class.

Attendance must be at least 70% of the whole 30 hours course.

Reading guide

Readings will be taken from the following sources:

- Trebilcock MJ and Trachtman J, *Advanced Introduction to International Trade Law* (Elgar Publishing, 2020)
- Moses ML, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2017)
- Material provided in class (if any)

For relevant parts, students may also refer to the following textbooks (however, be careful that they are up-to-date):

- Lloyd I, *Information Technology Law* (Oxford, 2020)
- Chuah J, *Law of International Trade. Cross-Border Commercial Transactions* (Sweet & Maxwell, 2013)
- Goode R, Kronke H, McKendrik E, *Transnational Commercial Contracts. Text, Cases and Materials* (Oxford University Press, 2015)
- Van den Bossche P, Zdouc W, *The Law and Policy of the World Trade Organization. Text, Cases and Materials* (Cambridge University Press, 2013)
- Qureshi AH and Ziegler AR, *International Economic Law* (Sweet & Maxwell, 2011)
- Murray C, Holloway D and Timson-Hunt D, *Schmitthoff - The Law and Practice of International Trade* (Sweet & Maxwell, 2012)
- Bantekas I, *Introduction to International Arbitration* (Cambridge University Press, 2015)
- Born GB, *International Arbitration: Law and Practice* (2012)
- Solanke I, *EU Law* (Cambridge University Press, 2nd ed. 2023)

Assessment

The assessment of this course will be:

- 50% by performance in class (intermediary test); and
- 50% by submission of a written research project (coursework) of up to 3.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a question released in the last teaching week. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including the use of chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam; and
- compulsory group presentation (pass/fail). Failure to contribute to the presentation and a poor presentation equal to a fail.

All students are entitled to refuse the partial or overall mark given, or may fail. In these cases they may resubmit for assessment on the basis of 100% submission of a newly given written research project (coursework) in the following exam session. All resubmissions shall be of a length between min. 6.000 words and max 7.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a question released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including the use of chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.

*For those who have been **exempted from attending**, the assessment on this course will be 100% by submission of a written research project (coursework) of a length between min. 7.000 and max 8.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a question released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.*

Written presentation of the Coursework

The coursework should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the coursework (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Bibliography

All written materials (published or unpublished) which have been used in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of coursework and penalties for exceeding word limit

The coursework is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the

footnotes/endnotes will be included. The bibliography is not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their coursework. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism or use of chatbots will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and use of chatbots, and that they reference their dissertations appropriately.

ADVICE ON WRITING COURSEWORK

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an*

area of law, or debates and conflicts, and you may take a tentative position, but “discuss or analyse” type questions are not the place for polemic or rhetoric.

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible

light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

E.g. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

| | | |
|--|--|--|
| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

96872

Regulation of Digital Markets

Study Guide

Academic Year 2022/23 – 2023/24

6 Credits

Module Convenor:

Prof. Federico FERRETTI

F.Ferretti@unibo.it

Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market Law (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, reading groups, and/or students’ activities. There will be 10 sessions of 3 hours each.

Classes take place as communicated.

Although the course is self-contained (i.e., no prior knowledge of European or international law is required), a basic knowledge of European law is, however, important for anyone taking this course. Those who have never studied EU law before are required to do some background reading. Please read Steiner & Woods EU Law (Oxford University Press, 2023), Part I.

The course includes a preliminary preparatory class of 2 additional hours on legal method for students outside the disciplines of law or economics.

Description of the module

The module aims to provide students with essential knowledge about the regulation of digital markets, as well as the theoretical rationales and policy arguments for their regulation within the context of the EU Digital Single Market.

The goal of the module is to introduce and critically assess the innovations brought by digitalisation and the resulting markets. In recent years technological innovation has brought many changes in markets for goods and services with a strong impact on public and private decision-making processes, business models, and market structures.

This is an interdisciplinary module on the legal, economic, policy and regulatory issues faced by the regulatory authorities, market players and policy makers in the electronic communications sector and the digital world. The module reflects on the main issues of digital markets and the complex relationship between existing rules and new technologies.

In order to allow students to enjoy a full understanding of the challenges of regulation in the technological realm, the first part of the module will look at the role and

rationales for market regulation. Thereafter, the module will present sectoral analyses of the core issues (e.g. data protection and the GDPR, legal and regulatory issues raised by artificial Intelligence, big data, cloud computing, security and blockchain technology)

Indicative areas covered include:

1) The first block will introduce the basic concepts, theories and principles of regulation, with particular reference to the regulatory strategies and challenges posed to policy and law makers by innovation and technologies.

2) The second block aims at providing an understanding of the impact of new technologies on markets and their regulation. In particular, it will explore the opportunities and the risks presented by digital technologies in various markets and their ensuing regulation. A pervasive feature of digital technologies is the use of personal data: Therefore, the module will study the latest generation of data protection laws presented by the General Data Protection Regulation, showcasing comparative perspective with models offered in other jurisdictions (e.g. the US).

Objectives

The module provides opportunities for students to develop and demonstrate knowledge and understanding, qualities, skills and other attributes in the following areas:

Learning outcomes

a. Knowledge and understanding

- 1. Demonstrate a sound understanding of, and familiarity with, the basic role and rationales of market regulation.*
- 2. Demonstrate a sound understanding of, and familiarity with, the structure and fundamental rules which govern the digital domain, developing skills which are useful in business and administration.*
- 3. Demonstrate an understanding of the main features of digital markets and the legal issues that they raise vis-à-vis traditional market regulation.*
- 4. Demonstrate a critical approach to the themes discussed.*
- 5. Demonstrate an understanding and an ability to apply knowledge of principles of regulation and laws to a number of business areas, as well as complex problem and essay questions.*

b. Cognitive skills

- 1. Demonstrate an ability to analyse the relevant law in relevant business scenarios.*
- 2. Demonstrate an ability to assess critically, where relevant, the law and policies underlying digital markets.*

c. Key skills

- 1. Demonstrate ability to research and assemble information and materials that are relevant to the law and business, as well as to policy when relevant.*
- 2. Demonstrate an ability to produce a structured, logical, analytical and accurately referenced synthesis of relevant materials.*
- 3. Demonstrate ability to present cogent oral and written arguments.*

d. Professional skills

- 1) *Be able to learn from the feedback provided to become an independent learner.*
- 2) *Be able to provide constructive feedback to others.*
- 3) *Be able to apply knowledge of law and regulation to a number of areas of the digital market.*

At the end of the module, students will be able to

- demonstrate a sound understanding of, and a critical approach to, the basic role and rationales of market regulation of digital technologies, the main features of digital markets and the legal issues that they raise vis-à-vis traditional market regulation, including the structure and fundamental rules which govern the digital domain, thus developing skills which are useful in business and administration, as well as in in-house legal professions;*
- develop an ability to apply knowledge of principles of regulation and laws to a number of business areas.*

Class schedule

| <i>Date</i> 2021 | <i>Hours</i> | <i>Lecture</i> <i>Topic</i> | <i>Students' activities</i> |
|----------------------------|--------------|--|-----------------------------|
| 12 Feb | 3 hours | <i>Introduction: About this module, Class engagement and activities, Assessment.</i> <i>The Law and the Digital Single Market: European Institutional and Legislative Framework</i> | |
| 15 Feb | 3 hours | <i>Privacy and Data Protection</i> <i>The GDPR</i> | |
| 19 Feb | 3 hours | <i>The GDPR</i> | |
| 22 Feb | 3 hours | <i>The GDPR</i> | |
| 26 Feb | 3 hours | <i>Data Law: Data Ownership or Control?</i> | |
| 29 Feb | | <i>Consumer protection in digital markets</i> <i>(Guest Speaker: Prof. Francisco de Elizalde, IE University, Spain)</i> | |
| 4 Mar | 3 hours | <i>The Single European Data Space</i> <i>The Data Act</i> | |
| 7 Mar | 3 hours | <i>The Digital Markets Act</i> | <i>Group presentation</i> |
| 11 Mar | 3 hours | <i>The Digital Services Act</i> | <i>Group presentation</i> |
| 14 Mar | 3 hours | | <i>Data protection test</i> |

Attendance and Engagement

Attendance is not compulsory but strongly encouraged. Attendance will be recorded. For those who attend at least 70% of classes, there will be an assessment different from that of non-attending students (see below).

All students are expected to attend classes regularly as those who fail to attend classes often get lower marks than those who do attend, and actively participate. It is in class where students learn subject matter and skills that they will be assessed on and receive feedback. In addition, when writing references members of staff often comment on a student's performance in classes.

Students will be asked to take an active part in classes and prior preparation is essential.

Reading guide

Readings will be taken from the following sources:

- *Lloyd I, Information Technology Law (Oxford, 2020)*
- *Other texts and materials could be suggested or provided during the course.*

For relevant parts, students may also refer to the following textbooks:

- *Van Alsenoy B, Data Protection Law in the EU: Roles, Responsibilities and Liability (Intersentia, 2019)*

Assessment

For those who attend at least 70% of the classes, the assessment of this course will be:

- 50% by performance in class (intermediary test); and
- 50% by submission of a written research project (coursework) of up to 3.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released in the last teaching week. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including the use of chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam; and
- compulsory group presentation (pass/fail). Failure to contribute to the presentation and a poor presentation equal to a fail.

All students are entitled to refuse the partial or overall mark given, or may fail. In these cases they may resubmit for assessment on the basis of 100% submission of a given written research project (coursework) in the following exam session. All submissions shall be of a length between min. 6.000 words and max 7.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a question released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including the use of chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.

*For those who **do not attend**, the assessment on this course will be 100% by submission of a written research project (coursework) of a length between min. 6.000 and max 7.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a question released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be*

accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.

Written presentation of the Dissertation

The dissertation should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the dissertation (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Abstract

This is a summarised outline of the dissertation and its main findings and arguments. This outline has to be stated in 150-200 words and should appear immediately after the title page and, if necessary, the acknowledgments. The abstract is not included in the word limit.

Bibliography

All written materials (published or unpublished) which have been used or cited in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of dissertation and penalties for exceeding word limit

The dissertation is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the footnotes/endnotes will be included. The abstract and bibliography are not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their dissertation. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and that they reference their dissertations appropriately.

ADVICE ON WRITING THE DISSERTATION

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an*

area of law, or debates and conflicts, and you may take a tentative position, but “discuss or analyse” type questions are not the place for polemic or rhetoric.

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible

light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

ADVICE ON WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

Eg. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

| | | |
|--|--|--|
| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

75977

International Commercial Law Study Guide

Academic Year 2021-22

6 Credits

Module Convenor:

Prof. Federico FERRETTI

F.Ferretti@unibo.it

Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market Law (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, group readings and student presentations. There will be 10 sessions of 3 hours each.

Classes take place on Wednesdays 15-18 pm and Thursdays 9-12 am

*Although the course is self-contained (i.e., no prior knowledge of economics or public international law is required), a basic knowledge of public international law is, however, important for anyone taking this course. Those who have never studied public international law before are required to do some background reading. Please read M. Shaw, *International Law*, (8th ed., Cambridge University Press 2017), Chapters 1-3 and 5.*

The course includes a preliminary preparatory class of 2 additional hours on legal method for students outside the disciplines of law or economics.

Description of the module

The aim of the module is to introduce and critically assess the main rules of International Trade Law and the available dispute resolution methods that can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. A focus on digitalisation and how it impacts on the applicable rules and existing business framework will be provided. This branch of the law comprises of the rules that govern the exchange of goods and services across countries and the governance of disputes that may arise. Given the lack of a globally unified legal system, international trade law relies on a plurality of sources, both national and transnational, which will be addressed in the module: national law, international agreements and conventions, transnational standards and business practices. In order to make sense of that complexity, the module is divided in two core blocks.

The first block will introduce the basic concepts, the economics and the politics of international trade. It will cover the international and regional legal frameworks under

which international trade occurs, including the WTO, free trade agreements and the European Economic Area. The focus will be maintained on the substantive rules created under those agreements rather than on institutional and procedural aspects. This part of the module will also examine the law governing commercial contracts for the exchange of goods in the transnational setting, including choice and conflict of laws rules, international sales law and rules on carriage of goods. The concluding part of the first block will address some of the current issues of international trade policies, e.g. labour and human rights, the environment, investments, developing countries etc.

All in the context of digitalisation.

The second block aims at providing an understanding of the international dispute resolution system and offering candidates a basic understanding of the principles of good practice and procedure in international dispute management. After a general introduction of in-Court and out-of-Court mechanisms, this part of the module will concentrate on the general principles of international commercial arbitration and a comparison of the main alternative dispute resolution processes – arbitration, mediation and adjudication. It gives students the opportunity to analyse critically the use of arbitration to resolve international business and commercial disputes and provides them with a contextual analysis of international commercial arbitration through lectures, class readings, seminar discussions and group presentations. The theoretical material will be combined with practical examples for a better understanding of the unique characteristics of international commercial arbitration. Overall, the second block of the course will consider the ways in which the various benefits of international commercial arbitration and other dispute resolution methods can be combined to provide an effective, dynamic and integrated system of dispute resolution in international business and commerce. It purports to give candidates a basic understanding of the principles of good practice and procedure in international arbitration.

Objectives

At the end of the course the student is able to understand international contracts, the principles regulating them and the impact of digitalisation on business transactions. In particular, he/she is able to examine the International Commercial Contracts of the typical distribution sector, also according to the contractual and corporate antitrust law and joint venture agreements, with the aim to the internationalization of the company and the digital revolution; he/she will also be able to focus on different solutions for different situations.

Class schedule

| <i>Date 2021</i> | <i>Hours</i> | <i>Lecture</i> | <i>Students' activities</i> |
|------------------|--------------|--|---|
| 16 Feb | 3 hours | <i>Introduction</i> <i>Basic concepts in ICL, politics and economics of international trade</i> <i>The global institutional framework: UN and WTO law</i> <i>Digitalisation</i> | <i>Group reading</i> <i>Allocation of activities</i> |
| 17 Feb | 3 hours | <i>Free Trade Agreements</i> <i>The European Economic Area</i> <i>Dispute settlement under the WTO</i> | <i>(Allocation of activities)</i> |
| 23 Feb | 3 hours | | <i>Group presentations – Dispute settlement cases</i> |
| 24 Feb | 3 hours | <i>International contracting and Conflict of Laws</i> | <i>Group presentations: Digitalisation and the WTO.</i> |
| 2 Mar | 3 hours | <i>International Transports/Carriage of Goods</i> | |
| 3 Mar | 3 hours | <i>Introduction to commercial arbitration</i> <i>The arbitration agreement</i> <i>Drafting the arbitration agreement</i> | <i>Group presentations: Digitalisation and the WTO.</i> |
| 9 Mar | 3 hours | <i>Applicable laws and rules</i> <i>Judicial assistance</i> <i>The Tribunal</i> | <i>Group presentations: Digitalisation and the WTO.</i> |
| 10 Mar | 3 hours | <i>The arbitral proceedings</i> <i>The award</i> | <i>Group presentations: Digitalisation and the WTO.</i> |
| 16 Mar | 3 hours | <i>State Investment Arbitration</i> | <i>Arbitration and digitalisation</i> |
| 17 Mar | 3 hours | <i>State Investment Arbitration</i> | <i>Arbitration and digitalisation</i> |

Attendance and Engagement

Attendance is not compulsory but strongly encouraged. Attendance will be recorded. For those who attend at least 70% of classes, there will be an assessment different from that of non-attending students (see below).

All students are expected to attend classes regularly as those who fail to attend classes often get lower marks than those who do attend, and actively participate. It is in class where students learn subject matter and skills that they will be assessed on and receive feedback. In addition, when writing references members of staff often comment on a student's performance in classes.

Students will be asked to take an active part in classes and prior preparation is essential.

Reading guide

Readings will be taken from the following sources:

- Trebilcock MJ, Advanced Introduction to International Trade Law (Elgar Publishing, 2015)
- Carr I and Stone P, International Trade Law - 6th edition –(Routledge, 2018)
- Moses ML, The Principles and Practice of International Commercial Arbitration (Cambridge University Press, 2017)
- Material provided in class

For relevant parts, students may also refer to the following textbooks (however, be careful that they are up-to-date):

- Goode R, Kronke H, McKendrik E, Transnational Commercial Contracts. Text, Cases and Materials (Oxford University Press, 2015)
- Chuah J, *Law of International Trade. Cross-Border Commercial Transactions* (Sweet & Maxwell, 2013)
- Van den Bossche P, Zdouc W, *The Law and Policy of the World Trade Organization. Text, Cases and Materials* (Cambridge University Press, 2013)
- Qureshi AH and Ziegler AR, *International Economic Law* (Sweet & Maxwell, 2011)
- Murray C, Holloway D and Timson-Hunt D, *Schmitthoff - The Law and Practice of International Trade* (Sweet & Maxwell, 2012)
- Bantekas I, *Introduction to International Arbitration* (Cambridge University Press, 2015)
- Born GB, *International Arbitration: Law and Practice* (2012)

Assessment

For those who attend at least 70% of classes, the assessments on this course will be as follows:

- 50% by performance in class (2 group presentations); and
- 50% by submission of a written research project (coursework) of up to 2.500 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released in the last teaching week. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

For those who do not attend or attend less than 70% of classes, the assessment on this course will be 100% by submission of a written research project (coursework) of up to 8.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

All students are entitled to refuse the mark given, in which case they may resubmit for assessment on the basis of 100% submission of a new written research project (coursework) different from the one whose mark has been refused. All resubmissions shall be up to 8.000 words in length (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the exam date at 12 (noon). Coursework will not be accepted after that time and date!

Presentation of the Coursework

The coursework should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the coursework (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Bibliography

All written materials (published or unpublished) which have been used in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of coursework and penalties for exceeding word limit

The coursework is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the

footnotes/endnotes will be included. The bibliography is not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their coursework. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and that they reference their dissertations appropriately.

ADVICE ON WRITING COURSEWORK

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an area of law, or debates and conflicts, and you may take a tentative position, but "discuss or analyse" type questions are not the place for polemic or rhetoric.*

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

ADVICE ON WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

Eg. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

| | | |
|--|--|--|
| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

94294

THE LAW AND ECONOMICS OF FINTECH

Study Guide

Academic Years 2021/22 – 2022/23 – 2023/2024

6 Credits

Module Convenor:

Prof. Federico FERRETTI

F.Ferretti@unibo.it

Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market Law (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, reading groups, and/or students’ activities. There will be 10 sessions of 3 hours each.

Classes take place as communicated.

Although the course is self-contained (i.e., no prior knowledge of European or international law is required), a basic knowledge of European law is, however, important for anyone taking this course. Those who have never studied EU law before are required to do some background reading. Please read Steiner & Woods EU Law (Oxford, 2020), Part I.

The course includes a preliminary preparatory class of 2 additional hours on legal method for students outside the disciplines of law or economics.

Description of the module

The module aims to provide students with essential knowledge about financial technologies and their uses, as well as the theoretical rationales and policy arguments for their regulation within the context of the EU Digital Single Market.

Indicative areas covered include:

- *Fintech and the EU single market*
- *Fintech and big data*
- *Personal Data Protection*
- *Case studies. E.g. Robo advisors, crowdfunding, open banking*

The module introduces and critically assesses the innovations brought by digitalisation and financial technologies, and the resulting markets. In recent years technological innovation has brought many changes in financial markets with a strong impact on decision-making processes, business models, and market structures.

This is an interdisciplinary module on the legal, economic, policy and regulatory issues faced by the regulatory authorities, market players and policy makers in the financial technological sector and the digital world. The module reflects on the main issues of digital financial markets and the complex relationship between existing rules and new technologies.

In order to allow students to enjoy a full understanding of the challenges of regulation in the technological realm, the first part of the module will look at the role and rationales for market regulation. Thereafter, the module will present pervasive analyses of core issues (e.g. data protection and the GDPR, legal and regulatory issues raised by artificial Intelligence, big data, cloud computing, security and blockchain technology), as well as sectoral analyses of business models and case studies.

Objectives

The module provides opportunities for students to develop and demonstrate knowledge and understanding, qualities, skills and other attributes in the following areas:

Learning outcomes

a. Knowledge and understanding

- 1. Demonstrate a sound understanding of, and familiarity with, the basic role and rationales of market regulation.*
- 2. Demonstrate a sound understanding of, and familiarity with, the structure and fundamental rules which govern financial technologies, developing skills which are useful in business and administration.*
- 3. Demonstrate an understanding of the main features of fintech and the legal issues that they raise vis-à-vis traditional market regulation.*
- 4. Demonstrate a critical approach to the themes discussed.*
- 5. Demonstrate an understanding and an ability to apply knowledge of principles of regulation and laws to a number of technologies and uses, as well as complex problem and essay questions.*

b. Cognitive skills

- 1. Demonstrate an ability to analyse the relevant law in relevant business scenarios.*
- 2. Demonstrate an ability to assess critically, where relevant, the law and policies underlying digital markets and fintech innovations.*

c. Key skills

- 1. Demonstrate ability to research and assemble information and materials that are relevant to the law and business, as well as to policy when relevant.*
- 2. Demonstrate an ability to produce a structured, logical, analytical and accurately referenced synthesis of relevant materials.*
- 3. Demonstrate ability to present cogent oral and written arguments.*

d. Professional skills

- 1) Be able to learn from the feedback provided to become an independent learner.*
- 2) Be able to provide constructive feedback to others.*
- 3) Be able to apply knowledge of law and regulation to a number of fintech and their uses.*

At the end of the module, students will be able to

- demonstrate a sound understanding of, and a critical approach to, the basic role and rationales of market regulation of financial technologies, the main features of digital financial markets and the legal issues that they raise vis-à-vis traditional market regulation, including the structure and fundamental rules which govern the digital domain, thus developing skills which are useful in business and administration, as well as in in-house legal professions;*
- develop an ability to apply knowledge of principles of regulation and laws to a number of business areas.*

Class schedule

| <i>Date</i> 2021 | <i>Hours</i> | <i>Lecture</i> Topic | <i>Students' activities</i> |
|----------------------------|--------------|--|---------------------------------|
| 12 Feb | 3 hours | <i>Introduction: what is Fintech; what is new and what is not; key players, overview of products/services and trends; regulatory challenges.</i> | <i>Allocation of activities</i> |
| 13 Feb | 3 hours | <i>Privacy and Data Protection</i> <i>The GDPR</i> | |
| 19 Feb | 3 hours | <i>The GDPR</i> | |
| 20 Feb | 3 hours | <i>Data Law: Data Ownership or Control?</i> | |
| 26 Feb | 3 hours | <i>Payments and Open Banking</i> | <i>Group presentation</i> |
| 27 Feb | 3 hours | <i>Data protection and Intellectual Property</i> <i>(Guest speaker: Prof. Irene Calboli, Texas A&M University, US)</i> | |
| 4 Mar | 3 hours | <i>Credit and crowdfunding</i> | <i>Group presentation</i> |
| 5 Mar | 3 hours | <i>Robo advice</i> | <i>Group presentation</i> |
| 11 Mar | 3 hours | <i>Blockchain</i> | <i>Group presentation</i> |
| 12 Mar | 3 hours | <i>Crypto Assets</i> | <i>Group presentation</i> |

Attendance and Engagement

Attendance is not compulsory but strongly encouraged. Attendance will be recorded. For those who attend at least 70% of classes, there will be an assessment different from that of non-attending students (see below).

All students are expected to attend classes regularly as those who fail to attend classes often get lower marks than those who do attend, and actively participate. It is in class where students learn subject matter and skills that they will be assessed on and receive feedback. In addition, when writing references members of staff often comment on a student's performance in classes.

Students will be asked to take an active part in classes and prior preparation is essential.

Reading guide

Readings will be taken predominantly from the following sources:

- *Lloyd I, Information Technology Law (Oxford, 2020)*
- *Madir J, FINTECH – Law and Regulation (Edward Elgar, 2019)*
- *Chiu H-Y and Deipenbrock (eds.), Routledge Handbook of Financial Technology and Law (Routledge, 2021)*

Assessment

For those who attend at least 70% of classes, the assessment of this course will be 50% by performance in group presentations, AND 50% by submission in writing of a research project (dissertation) of up to 2.500 words in length (excluding abstract, bibliography and/or bibliographical references in the footnotes) on a topic of own choice within the syllabus. The dissertation shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the established exam date at the given time. Dissertations will not be accepted after that time and date! Equally, dissertations will not be accepted for failure to register for the exam.

All students are entitled to refuse the mark given, in which case they may resubmit for assessment on the basis of 100% submission of a new research project (dissertation) different from the one whose mark has been refused. The research project (dissertation) shall be of a length between min. 5.000 words and max 6.000 words (excluding abstract, bibliography and/or bibliographical references in the footnotes) on another topic of own choice within the syllabus. The dissertation shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by one of the following available exam dates at the given time. Coursework will not be accepted after that time and date! Equally, dissertations will not be accepted for failure to register for the exam.

*For those who **do not attend**, the assessment will be by submission of a research project (dissertation, following the advices and structure below in this guide) of a length between min. 8.000 words and max 10.000 words (excluding abstract, bibliography and/or bibliographical references in the footnotes) on a topic of own choice within the syllabus. The dissertation shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by one of the available exam dates at the given time. Dissertations will not be accepted after that time and date! Equally, dissertations will not be accepted for failure to register for the exam.*

Written presentation of the Dissertation

The dissertation should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the dissertation (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Abstract

This is a summarised outline of the dissertation and its main findings and arguments. This outline has to be stated in 150-200 words and should appear immediately after the title page and, if necessary, the acknowledgments. The abstract is not included in the word limit.

Bibliography

All written materials (published or unpublished) which have been used or cited in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of dissertation and penalties for exceeding word limit

The dissertation is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the footnotes/endnotes will be included. The abstract and bibliography are not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their dissertation. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and that they reference their dissertations appropriately.

ADVICE ON WRITING THE DISSERTATION

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an*

area of law, or debates and conflicts, and you may take a tentative position, but “discuss or analyse” type questions are not the place for polemic or rhetoric.

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible

light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

ADVICE ON WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

Eg. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

| | | |
|--|--|--|
| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*

ALMA MATER STUDIORUM UNIVERSITÀ DI BOLOGNA

94455

European and International Privacy and Data Protection Law

Study Guide

Academic Years 2021/22 – 2022/23 - 2023/24

6 Credits

Module Convenor:

Prof. Federico FERRETTI

F.Ferretti@unibo.it

Jean Monnet Chair of Digital Market Law (E-DSM)



About this module

When & how is the course taught?

This is a module under the Jean Monnet Chair “EU Digital Market Law (E-DSM)”.

The Chair is financed by the European Union.

The course is taught in 30 hours of lectures, seminars, reading groups, and/or students’ activities. There will be 10 sessions of 3 hours each.

Classes take place as communicated.

Although the course is self-contained (i.e., no prior knowledge of European or international law is required), a basic knowledge of European law is, however, important for anyone taking this course. Those who have never studied EU law before are required to do some background reading. Please read Steiner & Woods EU Law (Oxford University Press, 2023), Part I.

The course includes a preliminary preparatory class of 2 additional hours on legal method for students outside the disciplines of law or economics.

Description of the module

The module aims to provide students with essential knowledge about the theoretical rationales and policy arguments for both privacy and data protection legislation. Data protection is a pervasive issue affecting most sectors. Therefore, the module will be suitable for students of all disciplines across the University (e.g. computer science, economics, social sciences, medicine, engineering, law).

Generally, the module will cover the following areas:

- Historical and social origins of privacy and data protection;*
- concepts of privacy and basic principles of privacy law;*
- concept of data protection and basic principles of EU data protection law (GDPR);*
- nature and scope of such rights;*
- procedures, both national and supranational, for the granting and recognition of the rights (supervision and enforcement);*
- Case studies and the commercial side of data protection law;*

- *Case studies and fundamental/human right side of privacy and data protection;*
- *data protection, IT law and IP law;*
- *EU data protection and the relationship between the EU and third countries;*
- *Selected privacy and data protection legal frameworks outside the EU (e.g. the US, ASEAN, China).*

Objectives

The module provides opportunities for students to develop and demonstrate knowledge and understanding, qualities, skills and other attributes in the following areas:

A Knowledge and Understanding

- 1. Demonstrate an understanding of the rationale underlying the protection of privacy and personal data, as well as the underlying rights at national, EU, and international level*
- 2. Demonstrate an understanding and an ability to apply knowledge of privacy and data protection rights to a number of areas of law, as well as complex problem and essay questions.*

B Cognitive (thinking) Skills

- 3. Demonstrate an ability to analyse the relevant law.*
- 4. Demonstrate an ability to assess critically, where relevant, the law and policy underlying it.*

C Other Skills and Attributes (Practical/Professional/Transferable)

- 5. Demonstrate ability to research and assemble information and materials that are relevant to the law and policy.*
- 6. Demonstrate an ability to produce a structured, logical, analytical and accurately referenced synthesis of relevant materials.*
- 7. Demonstrate an ability to present cogent written arguments.*

Class schedule

| <i>Date</i> 2021 | <i>Hours</i> | <i>Lecture</i> <i>Topic</i> | <i>Students' activities</i> |
|----------------------------|--------------|--|--|
| 14 Feb | 3 hours | <i>Introduction: origins and historical context</i> | |
| 16 Feb | 3 hours | <i>Film screening: Data Protection and the making of the GDPR</i> <i>Discussion</i> | |
| 21 Feb | 3 hours | <i>Institutional and legislative framework, and enforcement structure</i> | |
| 23 Feb | 3 hours | <i>The GDPR – Structure, concepts, principles and processing criteria</i> | |
| 28 Feb | 3 hours | <i>Data protection and Intellectual Property</i> <i>(Guest speaker: Prof. Irene Calboli, Texas A&M University, US)</i> | |
| 1 Mar | 3 hours | <i>The GDPR – Rights of data subjects, and data governance obligations</i> | |
| 6 Mar | 3 hours | <i>Data Law: Data Ownership or Control?</i> | |
| 8 Mar | 3 hours | <i>The global reach of data protection law</i> <i>The Restrictive Effect of the Legal Mechanisms for Data Transfers in the European Union</i> | <i>Group presentations</i> <i>Chapter 2</i> https://link.springer.com/book/10.1007/978-3-031-19893-9#toc <i>Chapter 3</i> https://link.springer.com/book/10.1007/978-3-031-19893-9#toc |
| 13 Mar | 3 hours | | <i>Data protection test</i> |
| 15 Mar | 3 hours | <i>Individual projects from the Research Handbook on EU Data Protection Law</i> | |

Attendance and Engagement

Attendance is not compulsory but strongly encouraged. Attendance will be recorded. For those who attend at least 70% of classes, there will be an assessment different from that of non-attending students (see below).

All students are expected to attend classes regularly as those who fail to attend classes often get lower marks than those who do attend, and actively participate. It is in class where students learn subject matter and skills that they will be assessed on and receive feedback. In addition, when writing references members of staff often comment on a student's performance in classes.

Students will be asked to take an active part in classes and prior preparation is essential.

Reading guide

Readings will be taken from the following sources:

- *Lloyd I, Information Technology Law (Oxford, 2020)*
- *Kosta E and Leenes R, Research Handbook on EU Data Protection Law (Edward Elgar, 2022)*
- *Naef T, Data Protection without Data Protectionism (Springer, 2023), Open Access at <https://link.springer.com/book/10.1007/978-3-031-19893-9#toc>*
- *Other texts and materials could be suggested or provided during the course.*

For relevant parts, students may also refer to the following textbooks:

- *Van Alsenoy B, Data Protection Law in the EU: Roles, Responsibilities and Liability (Intersentia, 2019)*

Assessment

For those who attend at least 70% of the classes, the assessment of this course will be:

- 50% by performance in class (intermediary test); and
- 50% by performance in individual project presentations and submission in writing of the presented research project (dissertation) of up to 2.500 words in length (excluding abstract, bibliography and/or bibliographical references in the footnotes) on a topic of own choice within the syllabus, and
- compulsory group presentation (pass/fail). Failure to contribute to the presentation and a poor presentation equal to a fail.

The dissertation shall be submitted in WORD format (for the check of the number of words) via email to f.ferretti@unibo.it by the established exam date at the given time. Dissertations will not be accepted after that time and date! Equally, dissertations will not be accepted for failure to register for the exam.

All students are entitled to refuse the partial or overall mark given, or may fail. In these cases they may resubmit for assessment on the basis of 100% submission of a given written research project (coursework) in the following exam session. All submissions shall be of a length between min. 6.000 words and max 7.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including the use of chatbots) via email to f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.

*For those who **do not attend**, the assessment on this course will be 100% by submission of a written research project (coursework) of a length between min. 6.000 and max 7.000 words (excluding bibliography and/or bibliographical references in the footnotes) on a topic released on the virtual learning environment 3-4 weeks before the exam date. The coursework shall be submitted in WORD format (for the check of the number of words and plagiarism, including chatbots) via email to*

f.ferretti@unibo.it by the exam date at the stated time. Coursework will not be accepted after that time and date! Equally, coursework will not be accepted for failure to register for the exam.

Written presentation of the Dissertation

The dissertation should be typed in double line spacing format, except for indented footnotes/endnotes and quotations of more than 4 lines in length, where single line spacing may be used.

All pages must be numbered in one continuous sequence from 1 onwards.

Title Page

This page should include

- a) The title of the dissertation (in capital letters)*
- b) The name of the student author and student number*
- c) Course code/number, course title, and academic year*

Abstract

This is a summarised outline of the dissertation and its main findings and arguments. This outline has to be stated in 150-200 words and should appear immediately after the title page and, if necessary, the acknowledgments. The abstract is not included in the word limit.

Bibliography

All written materials (published or unpublished) which have been used or cited in the dissertation must be listed alphabetically by author at the end of it.

Students should also include a separate list for web sources, if and when used. They should make sure they cite the date they have retrieved the web link.

Footnotes

Footnotes constitute the requested form of reference.

Citations

Students are free to choose any appropriate style, so long as they are consistent in its use throughout their dissertation (as discussed in class).

Length of dissertation and penalties for exceeding word limit

The dissertation is expected to be no longer than stated above in these guidelines (depending on attendance and class presentation).

Source references (i.e. the details relevant to the publication: name of author, title, editor etc.) do not count towards the word limit, but, anything else in the footnotes/endnotes will be included. The abstract and bibliography are not included in the word limit either. The word limit is NOT a target, but a limit.

Students must also include a word count at the end of their dissertation. If that count indicates a figure over the required words, or the marker counts the number of words to be over, the work will be assessed ONLY up to the required length and anything in excess will be considered as not been written.

NOTE ON PLAGIARISM

Plagiarism: “To take and use as one’s own the thoughts, writings or inventions of another” (Oxford English Dictionary) – Two elements:

- 1. Taking another’s work*
- 2. Using the work as your own*

Three types of plagiarism (intentional or unintentional):

- 1. Intra-corporal plagiarism – for example, from another student on the same course*
- 2. Extra-corporal plagiarism – for example, from a web page, book or journal*
- 3. Auto-plagiarism – for example, submitting a previous essay or article as new work. Includes ‘essay banks’.*

Dissertations containing plagiarism will be marked ZERO

It is important that students understand the rules and regulations with regards to plagiarism and that they reference their dissertations appropriately.

ADVICE ON WRITING THE DISSERTATION

The following is an advice (tip) only.

Do enough reading

It is virtually impossible to get a good mark having only read the textbook. This is because, in order to answer the question, students need to be able to synthesise the debates surrounding the subject and they therefore need to understand the range of opinions expressed. Students should be looking further afield: an advice is to start with the further reading recommended in this guide; then, students should look at further reading lists in textbooks; they should follow up footnote references; they should browse the major journals and make full use of the (online) library. Students are advised to not simply read three or four textbooks; the depth of opinion expressed is unlikely to be sufficient. Students should not expect academics to give them all the information; any decent textbook contains a list of further reading for each topic and there is no secret source of information which the textbook writers don't have. This all takes time, but is absolutely essential. Students do not get credit for just doing the minimum in terms of reading. A so-called "bibliography" containing only the names of one or two textbooks is not acceptable to get a decent mark.

An important note: *Don't read just anything. Don't do random Google searches in order to find obscure facts. The point of reading is not to find out more information. The point of reading is to inform yourself about the ideas and debates which surround the subject. Read, as a priority, material with proper academic credentials.*

Set a research question and answer it. *It means that you must identify a suitable research question that interests you. Of course, you will have to attempt a credible answer to it. This doesn't mean that, at some point in your essay, probably the conclusion, you write one or two sentences stating the answer as you see it. Identify the set of fact and or laws/legal sources, followed by arguments "for" and "against" a proposition, finishing with a conclusion with your answer. Weigh up facts and arguments and come to your own conclusion. What else you are actually expected to do also involves taking a position. Construct an argument in favour of the position you take and be persuasive of the rightness of your position. This involves gathering and marshalling evidence in favour, whilst referring to and countering evidence against; discuss and analyse. You need to take a general perspective, remain objective and explore all aspects of the problem. You may find yourself identifying weakness in an*

area of law, or debates and conflicts, and you may take a tentative position, but “discuss or analyse” type questions are not the place for polemic or rhetoric.

Remember that it is your whole essay which is the response to the question, not simply the conclusion. In fact, it is good practice to state your research question and position in the introduction, rather than leave the reader in suspense until the end.

Do not think that it is sufficient simply to paraphrase a textbook or repeat back what has been taught during classes. Students should not expect to get a decent mark for this type of parrot-fashion work. You need to have your own ideas and arguments, informed and supported by what you read and apprehend in class. You need to take an argued, balanced and rational position, informed by wide reading on the subject. It will never be a sufficiently good approach to an essay, or part of an essay, simply to repeat back the content of a chapter or a class. Students should be able to engage in synthesis: the ability to gain information and ideas from a range of different sources and turn them into something of their own.

Get the basics right

We do not give you much credit for reciting basic, uncontroversial legal facts which can be found in any textbook. We do penalise you for getting those facts wrong. This is partly because one of the objectives of legal studies is to grasp the basic legal rules. It is also because, once you have made one basic error, it is difficult for you to persuade us of the rightness of the rest of your argument; we lose trust in you.

Cite sources correctly

Remember that there are two main types of referencing:

- *Primary sources: every time you make a statement as to what the law says, you need to back this up with reference to an Article or a Treaty, piece of legislation or case (not to a textbook or other secondary source). If you are unsure of how to cite legal sources, look at the table of cases and table of legislation in your textbook.*
- *Secondary sources: when you are using words or ideas from something you have read, you must cite it to avoid plagiarism or paraphrasism. This requires you to distinguish your own arguments from those you have taken from other sources. You need to give full citations of books and journals.*

Write in clear, grammatical and correctly spelled English

If your writing is poor, however interesting your ideas are, the reader will be distracted and negatively influenced by the errors. To present your thoughts in the best possible

light, your writing must be clear, direct and error-free. Legal academics in particular tend to prefer a simpler style; avoid too much in the way of flowery language. If you find your essay stretching beyond the word limit, a remarkably effective solution is to remove as many adjectives and adverbs as possible.

ADVICE ON WRITING LAW ESSAYS: COMMON FEATURES AND PROCESSES

Introduction

This guide is designed to help all students understand and develop the required features of law essays. It looks at:

Common mistakes - and how to avoid them

What 'good' law essays look like

Audience and purpose

Analysing the question

Understanding the task

Structuring an essay

Presenting an argument

Presenting your research findings

Critical analysis

Common mistakes - and how to avoid them

Common mistakes in student essays - and ones that can be costly in terms of marks include:

- *Not answering the set question or neglecting part of the question*
- *Essay structure and argument are weak (or non-existent)*
- *Including too much background or description, not enough critical analysis*
- *Points are not substantiated (backed up with evidence, reasons and/or authorities)*

You are less likely to make these mistakes if you:

- *Examine models of the type of writing you are aiming to produce*
- *Consider the audience you are writing for and the purpose of the document*
- *Analyse the question with care and understand your task*
- *Give thought to how you might best structure (organise) your material*
- *Adopt a questioning, evaluative approach when reading*
- *State your 'best answer' to the question in both the introduction and conclusion*
- *Record sources of quotes, ideas and arguments meticulously*

The other sections in this tutorial provide more details on these tasks.

What 'good' law essays look like

A legal research essay is more than an assessment task. It is also an apprenticeship in academic legal writing. In this respect, the model for the type of writing you are aiming to produce is a scholarly journal article.

Scanning the latest issues of leading legal periodicals will provide you with many examples of 'good' essays. Look for articles that explore particular issues or evaluate a current area of law rather than those that offer practice updates.

It's also worth looking at the 'good' student essays from previous years, kept on reserve in the Legal Resource Centre. At first glance, you'll notice that they seem very different from one another, even when addressing the same topic. This is because there is rarely, if ever, a single 'correct' approach or answer to an essay topic.

'Good' essays do have common features, however. In general, they:

- *Show that the topic has been comprehensively researched*
- *Consider a range of arguments or points of view on the issue*
- *Demonstrate a depth of understanding of the topic*
- *Present a coherent and well-supported argument*
- *Provide authoritative sources, accurately cited*
- *Communicate complex ideas and information clearly and succinctly*

Audience and purpose

The audience for your writing and your purpose in writing should guide decisions about what to include in a document and what to leave out. For a law essay, your assumed audience is an intelligent reader within the legal community (as it would be if you were writing a journal article). Do NOT write for a general reader or member of the public.

Because you can assume that your reader already has considerable general and legal knowledge, you do not have to provide basic information. Indeed, you need only to inform your reader how key cases, concepts, events and definitions relate to the topic generally and your argument in particular.

Tip: If you are unsure whether you need to include certain information, ask yourself: Does my reader need this information in order to understand the issue or follow my argument?

When writing your essay, aim to develop a style and tone similar to that used in legal journals (where the implied author-reader relationship is one of equality) rather than the style and tone used in textbooks (where the implied author-reader relationship is expert-novice).

You do this because your purpose in an essay is not to instruct your reader about the particular area of law (as a textbook would do). Instead, your purpose is to raise a particular issue for discussion by offering information, arguments and analysis for the reader's consideration.

Analysing the question

Your first task in preparing an essay is always to read the question carefully. It's useful to identify 3 aspects of the question: the topic, your task and any limits. Review the following examples.

Question: Evaluate Blackstone's conception of the common law.

- *Topic: Blackstone's conception of the common law.*
- *Task: Evaluation, which involves judging merits and limitations.*

- *Limits: Blackstone's conception of the common law (and no one else's) must be the primary focus of the essay. His conception of the common law and not his thinking in general must be the focus of the essay.*

Question: Is the common law theory of legal change endorsed by Coke similar or different to that endorsed by Hale?

- *Topic: common law theories of legal change.*
- *Task: identify similarities and differences, that is, compare and contrast.*
- *Limits: the theories of legal change (not common law generally) endorsed by Coke and Hale (not others) must be the primary focus of the essay.*

Question: Assess the arguments in favour of further legalising marijuana.

- *Topic: the further legalisation of marijuana.*
- *Task: assessment, which involves identifying strengths and weaknesses.*
- *Limits: the strengths and weaknesses of arguments in favour of further legalising marijuana should be the focus of your analysis. Arguments opposing further legalisation will only need to be considered insofar as they effectively counter arguments in favour.*

Understanding the task

Law essay questions can engage you in a range of tasks. For example, you may be asked to:

Explain and evaluate

Eg. Explain the current state of the law on X and evaluate reform proposals.

Review and assess

Eg. Review the aims and objectives behind a piece of legislation and assess the extent to which the new provisions meet those objectives.

Identify and analyse

Eg. Identify the causes and effects of a particular legal problem and analyse proposed solutions.

Compare and contrast

Eg. Compare and contrast specified theories, approaches or legislative frameworks.

The words in the question that instruct you about the required task/s are called 'directives' - explain, analyse, evaluate, compare and so on. Be sure to notice these words and frame your essay accordingly.

Structuring an essay

The information, points and opinions you present in your essay need to be organised in a logical and accessible way - they need to be given some structure. The structure of a text links the parts together, ensuring they work cohesively to form a whole. Most students understand that, at the most basic, an essay needs an introduction, a body and a conclusion. The difficulty usually comes with structuring, or organising, the material in the body. How you structure the body of your essay will depend on your task and your approach to the topic. For example, an essay question that asks you to evaluate arguments or reform options might be structured as follows:

| | |
|---|---|
| <i>Introduction</i> <i>Brief background to issue</i> <i>Argument 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Argument 4</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or counter arguments</i> <i>Evaluation of overall strengths/weaknesses</i> <i>Conclusion</i> | <i>Introduction</i> <i>Brief background to issue</i> <i>Reform option 1</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 2</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Reform option 3</i> <ul style="list-style-type: none">• <i>Strengths or points in favour</i>• <i>Weaknesses or difficulties</i> <i>Evaluation of overall strengths/feasibility of options and formulation of recommendation</i> <i>Conclusion</i> |
|---|---|

A comparative essay might be structured in either of the following ways:

| | |
|---|--|
| <i>Introduction</i> <i>1. Approach X</i> <ul style="list-style-type: none">• <i>Strength 1</i> | <i>Introduction</i> <i>1. Criterion A</i> |
|---|--|

| | |
|--|--|
| <ul style="list-style-type: none"> • Strength 2 • Weakness 1 <p>2. Approach Y</p> <ul style="list-style-type: none"> • Strength 1 • Strength 2 • Weakness 1 • Weakness 2 <p>3. Comparison of the strengths and weaknesses of X and Y</p> <p>Conclusion</p> | <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>2. Criterion B</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>3. Criterion C</p> <ul style="list-style-type: none"> • Strengths and weaknesses of approach X • Strengths and weaknesses of approach Y • Comparative evaluation <p>Conclusion</p> |
|--|--|

Although there is no single way to structure an essay, the structure you adopt should always facilitate your reader's understanding of the material you present. If your current structure necessitates repetition or fails to draw all the material together, think about how you can reorganise the information to make it as clear and intelligible as possible.

Presenting an argument

Even in research essays you are expected to present an argument rather than merely report on the relevant legal precedents or statutes. In short, you are expected to formulate an opinion about the topic - an informed legal opinion, of course, not a personal point of view.

Your opinion represents your best answer to the question. Consider the following examples.

Question: 'Recent anti-terrorist measures are totally inadequate: they afford Australians almost no protection from the very real threat of terrorist attack. Discuss.

After conducting your research and assessment you may argue that:

Recent anti-terrorist measures, while not perfect, are comprehensive and provide Australians with a reasonable measure of protection, proportional to the threat of a terrorist attack.

Question: 'In Australia, tort decisions involving claims against schools have resulted in schools becoming virtual insurers of students' safety. Discuss.

After conducting your research and assessment you may argue that:

The imposition of a more stringent duty than that to take reasonable care departs from the basic principles of negligence by dismissing considerations such as the practicability of precautions and the probability and likely gravity of potential injury. Further, the negligence schools are charged with sometimes seems 'far removed from the moral concept of the term'. They may be held accountable more as a means of loss spreading than as a result of blame, and in this sense are treated as insurers.

Your opinion, or the central contention of your argument, must be developed and supported throughout your essay.

Stating your opinion

Your opinion - the central contention of your argument - should be stated early in the essay.

Tip: Read some articles in legal journals and look for where the author previews their argument (usually in the latter half of the introduction).

Your argument statement does not need to be provocative or contentious. For example:

Labour law is a neglected area in human rights discourse.

But it can be. For example:

"Parental consent" is a legal mechanism used to safeguard the "right" of the (white, Anglo-Australian) state to judge and intervene in Aboriginal lives.

You may prefer to adopt a moderate tone. For example:

Border and immigration policies are making it difficult to promote and protect the human rights of people being trafficked in Europe.

Whether you adopt a passionate or an objective tone is a matter of personal preference. The important thing is that you back up your contentions and assertions with reasons and evidence.

Presenting your research findings

Your reader is not interested in your personal thinking on the essay topic, only in your legal opinion informed by thorough research and analysis. For this reason, when developing an argument in a research essay, you need to explicate the research findings that led you to form your opinion. Points in support of your position need to be developed and explained; counter-arguments also need to be examined and evaluated. Remember that your legal opinion will only be as good as the sources on which it is based so ensure that you are using the most authoritative and up-to-date statutes and cases. Always check the date of publication when using secondary sources such as textbooks, websites and journal articles. When presenting your research findings, you need to be meticulous about citing your sources. You must also adhere to the formatting conventions of the designated referencing style (for example, the Australian Guide to Legal Citation). A citation is needed for all material quoted directly or indirectly. 'Indirect' quotations include paraphrases and summaries where you have rewritten material in your own words. 'Direct' quotations must reproduce the original wording exactly either in quote marks (short quotes) or in an indented paragraph (quotes longer than 3 lines). For more information about acknowledging sources in your writing, see the Plagiarism section (above).

Critical analysis

While thorough research is essential if you are to develop an accurate understanding of a particular legal topic, a research essay requires more than a summary of the relevant legislation and judgements.

In addition, you need to provide some analysis of your sources and of the issues raised by the topic. 'Analysis' in this context can comprehend a range of activities:

| | | |
|--|--|--|
| <i>evaluating</i> <i>testing</i> <i>justifying</i> <i>critiquing</i> <i>enumerating</i> <i>highlighting</i> | <i>contrasting</i> <i>identifying</i> <i>defining</i> <i>tracing</i> <i>comparing</i> <i>distinguishing</i> | <i>discussing</i> <i>examining</i> <i>classifying</i> <i>applying</i> <i>considering alternates</i> <i>countering arguments</i> |
|--|--|--|

In short, critical analysis refers to the comments, ideas and insights you offer your reader to assist their understanding and consideration of the topic and the issues it raises.

For example, consider the following essay extract reviewing the duty of care owed by schools to their students. Notice that the writer goes well beyond mere reporting of the relevant cases: s/he contrasts not only the outcomes of the two cited decisions but also the standards imposed by the courts before concluding that the outcomes of claims against schools are 'extremely unpredictable'.

*It sometimes appears, with respect, that the obligations imposed by the courts with the benefit of hindsight may be somewhat unrealistic. In *Vandescheur v New South Wales Cole AJA*, in dissent, argued that taking the precautions advocated after the fact would, at the time, have been an 'officious, unnecessary and unreasonable act'.(insert footnote). Yet in other cases the courts appear quite lenient in terms of the obligations imposed, as in *Australian Capital Territory Schools Authority v El-Sheik* where Wilcox J stated that a school's duty does not extend to preventing a student from receiving 'playfight kicks ... even painful play fight kicks'.(insert footnote). The outcomes of claims against schools in the tort system are extremely unpredictable.*

Timelines for essay writing

How long do you expect to spend preparing a 2,000 words essay? A 6,000 words essay? Some people write well when under pressure and some people need time to reflect on a subject before they can write about it - so there are no hard and fast rules about how long it will take you to write an essay. However, if you have no idea how much time an essay will take you, as a very rough guide, allow around 20 hours to research and prepare a 2,000 words essay. Remember that you need to schedule time to go to the library or search online, collect materials, read and take notes, and undertake some preliminary planning and thinking - all before you start to write your first draft. Because some materials may be on-loan, it's best to start your research at least 3 or 4 weeks before the essay is due. Another rough guide: around 60% of your time should be allocated to analysis of the question, planning, research and note-taking. 20% should go to preparing the first draft and 20% to revision and editing. Again, these figures are estimates only. But you won't do justice to your research if you write the entire paper in an evening; and your paper won't be very useful if you haven't done adequate research - even if it's beautifully written.

Standard essay writing steps

Reflect on the steps you have taken when preparing essays in the past. Compare your usual approach to the following ten-step process.

- 1. Analyse the question or topic and make sure you understand what you are required to do*
- 2. Formulate search terms and conduct preliminary research*
- 3. Read generally and get a sense of the main issues and approaches to the topic*
- 4. Develop a tentative essay plan and argument*
- 5. Conduct more focussed research and reading on the issues you have identified*
- 6. Revise and detail your plan and argument to reflect your research and analysis*
- 7. Prepare a first draft*
- 8. Review your draft for structure, argument and coherence*
- 9. Edit your draft for clarity of expression, grammar, spelling and punctuation*
- 10. Check all references and prepare the bibliography*

Tip: it pays to spend time developing a plan with sub-headings, discussion points, questions and references for each section of your essay.

Note-taking

The ideal is to take notes only on material that will be relevant and useful to the task of drafting your essay. To this end:

- Note points relevant to your argument or the set task; not items of general interest or background on the topic.*
- Try taking notes in relation to your tentative section headings, rather than preparing a summary or review of each document you read.*
- Think about how your notes can be organised to aid understanding and writing up - for example, dividing your pages into columns headed 'for' and 'against' or 'advantages' and 'disadvantages'. A flow chart may help to map processes or procedures; a timeline will help to map chronological development.*

- *As well as noting key points and information from the texts you are reading, note your comments, thoughts and any questions that occur to you when reading - these will help to develop the original material in your essay.*

Remember that most essay topics require your research and thinking to go beyond identifying what the current law is to consider what the law could or should be. For this reason, you need to read for, and note, both exposition and evaluation of the specific area of law and the issues it raises.

Preparing a first draft

Your notes should provide you with a basis for your first draft. If you have not already done so, allocate notes and materials to sections according to your tentative essay plan - post-it notes or index cards with major points and references can help with this process.

Tip: Planning the sections of an essay in a way that enables you to see the relations between parts is not particularly easy to do in Word. Mind-mapping software is more useful.

Try to write an entire section or sub-section of your essay in a sitting so that you follow through a train of thought. Don't worry about polishing and editing as you write the first draft - concentrate instead on getting the information and ideas down.

Also, don't worry if your first draft is up to one and a half times the word length - cutting material later is generally easier than adding it.

Reviewing and editing your draft

It's important to allow sufficient time to revise and edit your first draft - much can be achieved at this point! First, review your draft for structure, argument and coherence. Ask in particular:

- *Have you answered the question and addressed all the assessment criteria (if provided)?*
- *Is your position/argument well articulated, clear, persuasive?*
- *Have you addressed counter-arguments and considered alternatives?*

- *Do the sections of your essay connect? Is the whole cohesive? Are any sections too short? Off the point? Irrelevant? Repetitive?*
- *Does each paragraph have a point and make a contribution to the essay?*
- *Have you done in the essay what you said you would in the introduction?*

Next, you need to edit your writing for clarity of expression, grammar, spelling and punctuation.

Editing is best done with a 'fresh eye' - try to have a revised draft completed 3-4 days before the due date. If that's unrealistic for you, try reading backwards, sentence by sentence - this way you are more likely to see what you have actually written, rather than what you intended to write.

Reflection - an important step

Essay writing generally becomes easier with practice. If you are not happy with your results, however, or if you simply want to improve your writing skills, it's useful to reflect on each essay you prepare after it has been assessed and returned.

Review your lecturer's comments carefully then re-read your essay - don't rely on memory at this point. Based on what you wrote:

- *Did the essay accurately reflect your knowledge and understanding of the topic?*
- *Do you feel you communicated the information and ideas effectively?*
- *Do you understand the points your lecturer is making?*
- *What strengths did your lecturer identify?*
- *What weaknesses did your lecturer identify?*
- *Do the lecturer's comments seem justified?*
- *Can you think how you might develop knowledge or skills in your weaker areas?*
- *What practical steps can you take to ensure improvement in the next essay?*