

Answers to practical exercises

Chapter 13: Essay writing

Page 297: Brainstorming

Remember that the most effective approach to brainstorming in preparation for an essay question is to split it into two stages: (1) brainstorm the topic and (2) filter the points that emerge to ensure that they are relevant to the particular question. The filtering stage is important because brainstorming sometimes takes you away from the main topic by dint of word association.

In the first example, which is based on the problem questions you encountered earlier in the chapter, you see that offer, acceptance and invitation to treat are listed. The postal rule is concerned with acceptance (of an offer) so invitation to treat is of no relevance and offer is only of limited relevance but these points emerge due to their strong association with acceptance. Similarly, in the second example, you see that parliamentary sovereignty if followed by the rule of law and the separation of powers. These have nothing at all to do with the question but still came out straight away in the brainstorming session as they are so closely linked with sovereignty as core constitutional principles. This is the point of brainstorming: it releases all the stored information in the mind that is associated with a particular topic. However, this is an indiscriminate release of information so filtering is needed as a second stage of the process to ensure that points that are not relevant to the question are eliminated before the research stage of the essay writing process gets underway.

1. The postal rule is outdated and has no place in modern contract law. Discuss.

Brainstorm the Postal Rule	Relevance to the Question?
Offer	Not really
Acceptance	Yes
Invitation to treat	No
Adams v. Lindsell	Yes
Revocation	Possibly
Contract formation	As background
Communication	Yes (of acceptance)
Instantaneous communications	Yes (this is one of the problems)

2. If the United Kingdom has a constitution at all, its central pillar is parliamentary sovereignty. Discuss this statement with particular reference to the European Community.

Brainstorm Parliamentary Sovereignty	Relevance to the Question?
Parliamentary sovereignty	Yes
Rule of law	No

Separation of powers	No
Constitutional conventions	No
Dicey	Yes
Unlimited legislative competence	Yes
Sir Ivor Jennings	Yes
Manner and form	Possibly
EC Act 1972	Yes
HRA 1998	No
Section 2(4)	Yes (ECA)
Factortame	Yes
Lord Bridge	Yes
Invisible clause	Yes
Metric martyrs	Not sure

3. Outline the approaches that a judge may take to statutory interpretation and consider their relevance following the enactment of the Human Rights Act 1998.

Brainstorm Interpretation	Relevance to the Question?
Canons of statutory interpretation	Yes
Golden rule	Yes
Literal rule	Yes
Mischief rule	Yes
Legislative process	No
Doctrine of precedent	Not really
Human Rights Act 1998	Only in terms of interpretation
Convention Rights	No
Right to privacy etc	No
HRA approach to interpretation	Yes
Section 3(1)	Yes
<i>Pepper v. Hart</i>	Not really: possible side issue??

STRUCTURE

Once you have completed some research into the essay topic, you will be able to draw up a draft structure for your essay that will help you when you come to start writing. It is important to remember that this is a draft only and that, when you start to write, your essay might take a different path. However, a very common weakness in essays is that they have meandered away from the main point and so have a weak focus on the main topic. If you have an outline structure for your essay, if you seem to be moving away from that structure you should take a moment to consider whether this is a necessary result of the way that you have developed your argument (in which case it is fine) or if it is because you have started to wander away from the central topic (in which case you should bring yourself back to a stronger focus straightaway even if this means discarding material that you have written).

1. The postal rule is outdated and has no place in modern contract law. Discuss.

- Brief explanation of contract formation.
 - Outline the role of offer and acceptance
 - Explain the postal rule
 - Provide examples of the traditional operation of the postal rule
 - Common on the original purpose of the postal rule.
 - Detail the difficulties of applying the postal rule to various forms of modern communication.
 - Evaluate whether the original justification for the postal rule applies to these forms of communication.
 - Assess whether the postal rule has a role in modern contract law.
2. If the United Kingdom has a constitution at all, its central pillar is parliamentary sovereignty. Discuss this statement with particular reference to the European Community.
- Brief explanation of the key constitutional principle.
 - Outline role of parliamentary sovereignty in an unwritten constitution.
 - Describe the traditional notion of parliamentary sovereignty (Dicey).
 - Give examples of the operation of the traditional doctrine.
 - Introduce ECA 1972 and outline relevance provisions
 - Address the impact of ECA 1972 including reference to relevant case law such as Factortame
 - Consider other factors that impact on PS such as HRA 1998 and devolution.
 - Evaluate whether the traditional role of PS in the constitution has changed as a consequence of the factors identified.
3. Outline the approaches that a judge may take to statutory interpretation and consider their relevance following the enactment of the Human Rights Act 1998.
- Set the context for the essay by explaining the general approach to statutory interpretation. This could include a brief mention of the relationship between Parliament and the courts.
 - Outline the traditional canons of statutory interpretation and explain the operation of each rule giving examples: literal rule, golden rule, mischief rule.
 - Explain the impact of HRA 1998 making particular reference to statutory provisions that introduce a different approach to statutory interpretation. Do not fall into the trap of including irrelevant detail about the HRA 1998 or the Convention rights themselves.
 - Evaluate whether there is any role of the traditional approaches to interpretation in light of the HRA.

PROCESS

Process words are the words that tell you what do to in an essay and provide an indication of the skills that are required. The general rule is that an essay title will provide at least one instance of an instruction to you that involves a process word and some subject

matter. It gives rise to the question 'do what to what' or 'what does this essay require me to do (skill) and to what piece of law (information)'.

1. The postal rule is outdated and has no place in modern contract law. Discuss.

Process word: Discuss
Subject: The role of the postal rule in modern contract law

This sort of question that involves a statement or quotation and the instruction 'discuss' is quite difficult to unpick using the 'do what to what' technique as the result is too general: discuss the statement! Try to remember that you cannot discuss (a high-level process word in the evaluation category) a concept unless you have described it (a low-level process word in the knowledge category) first so you can break the question down into two elements by rewriting the essay title and identify process words from the reformulated question(s). This may give you the following breakdown which is more useful:

Process word: Describe (knowledge)
Subject: The operation of the postal rule
Process word: Appraise (evaluation)
Subject: Its role in modern contract law

This should give you a clear indication that the first part of the essay is more straightforward than the second. This does give rise to the temptation to focus more attention on the first part of the essay because it is easier but it is essential that you remember that all aspects of the essay must be tackled in order to attain good marks.

2. If the United Kingdom has a constitution at all, its central pillar is parliamentary sovereignty. Discuss this statement with particular reference to the European Community.

This is another 'discuss' question which means 'evaluate the statement'. Again, remember that any question that contains only a higher level process word inevitably contains a requirement of some lower level skill because you cannot evaluate any concept until it has been described. As such, break the question down to help you to see what is required and to differentiate between description (straightforward) and analysis (more challenging).

- Outline the role of sovereignty in the UK constitution.
- Assess whether this has changed as a result of ECA 1972

Process word: Outline (knowledge)
Subject matter: Sovereignty
Process word: Assess (analysis)
Subject matter: The impact of ECA 1972

3. Outline the approaches that a judge may take to statutory interpretation and consider their relevance following the enactment of the Human Rights Act 1998.

Process word:	Outline (knowledge)
Subject matter:	Approaches to statutory interpretation
Process word:	Consider (analysis)
Subject matter:	Relevance of these approaches after HRA

INTRODUCTIONS

The introduction is an important part of the essay. It is the first impression that the marker gets of the quality of your work so it stands to reason that you should make sure that this impression is a good one.

The following exercises contain several examples of introductions with some commentary on their strengths and weaknesses. Why not read through the introductions and rate them out by giving them marks out of a possible ten and then see how your opinion compared with those contained in the commentary.

1. *The postal rule is outdated and has no place in modern contract law. Discuss.*

Introduction 1

It is a fundamental aspect of contract formation that an offer is made and that acceptance of the offer is communicated to the offeror in order for a binding agreement to be established. The postal rule is an exception to this to the extent that it permits acceptance to be valid despite not being communicated to the offeror. This essay will outline the circumstances that gave rise to the postal rule and consider its application in case law. It will then consider whether there is a role for the postal rule in modern contract law and address how the rule might apply to modern forms of communication.

Introduction 2

This essay will consider whether the postal rule is outdated and it will consider whether there is a place for the postal rule in modern contract law.

Introduction 3

The postal rule was developed in *Adams v. Lindsall* to deal with situations in which the offeree had posted acceptance of the offer to the offeror but this acceptance has not reached the offeror due to problems in the postal service. A great many letters go astray every year so it is important that contract law takes this into account and can determine whether or not a binding contract exists if posted acceptance does not reach its destination.

Evaluation

The second introduction is weak as it does very little other than to repeat the question. It does not communicate the writer's understanding of the requirements of the question nor

does it give any indication of how the question will be tackled. It is so uninformative that it is, quite frankly, a waste of words and it could have been omitted altogether as it makes no contribution to the essay. The third introduction takes this approach of leaving out the introduction altogether as it makes an immediate start on the substance of the essay by explaining the role of the postal rule. The first introduction provides the best example as it unpicks the question by explaining what it is about and it gives a clear breakdown of what issues will be addressed in the body of the essay. The marker is left in no doubt as to what the writer will be doing in their essay and this gives a positive first impression.

- 2. If the United Kingdom has a constitution at all, its central pillar is parliamentary sovereignty. Discuss this statement with particular reference to the European Community.*

Introduction 1

The United Kingdom has an unwritten constitution in the sense that there is no single document that contains the rights and responsibilities of citizens in relation to the State. However, this does not mean that the United Kingdom lacks a constitution; rather, that it is dispersed across a range of sources. One of the key sources is the doctrine of parliamentary sovereignty. This essay will provide an explanation of the role of parliamentary sovereignty in an unwritten constitution and it will conclude by assessing whether or not the United Kingdom is in need of a written constitution.

Introduction 2

The United Kingdom has an unwritten constitution in the sense that there is no single document that contains the rights and responsibilities of citizens in relation to the State. In the place of a written constitution that is the ultimate source of law, the United Kingdom has parliamentary sovereignty. This principle will be explained in this essay.

Introduction 3

The United Kingdom has an unwritten constitution in the sense that there is no single document that contains the rights and responsibilities of citizens in relation to the State. In this essay, I will explain how the unwritten nature of the constitution makes parliamentary sovereignty particularly important and I will then explore whether the European Community has changed the role of sovereignty in the constitution.

Evaluation

The second introduction starts well enough by introducing parliamentary sovereignty and linking it with the absence of a written constitution which is a good point to make in terms of capturing the essence of the question. However, it fails to go on to give any indication of how this links to the second part of the question that mentions the European Community and it does not give the marker any clues about what issues will be tackled in the essay. The first introduction is vulnerable to the same criticism but to a greater extent because not only does it fail to incorporate reference to the second part of the question about the European Community, it actually suggests that it is going to focus on the issue

of whether the United Kingdom needs a written constitution which is not what the question asks at all. The third introduction does better in terms of making a link with the European Community as the question requires but, of course, should not be written in the first person.

3. *Outline the approaches that a judge may take to statutory interpretation and consider their relevance following the enactment of the Human Rights Act 1998.*

Introduction 1

Statutory interpretation is concerned with judicial interpretation of legislation enacted by Parliament. This essay will outline the various approaches to interpretation that are used by the courts to explore the meaning of legislative provisions: the literal rule, the mischief rule and the golden rule. It will identify the problems that can be caused by use of these approaches to interpretation and it will consider whether it is appropriate for judges to make reference to Hansard when seeking the meaning of legislation.

Introduction 2

This question is concerned with the impact of the Human Rights Act 1998 on statutory interpretation. This is a wide-ranging question as the Human Rights Act 1998 requires that all legislation is interpreted in such a way that Convention rights are upheld and this can mean that the content of legislation that is incompatible with Convention rights should no longer be applied. This essay will use the cases concerning the right to freedom of expression and the use of the Public Order Act 1988 to limit this right. It will conclude by comparing how these provisions would have applied if the Human Rights Act had not been introduced.

The first introduction started well by explaining the nature of statutory interpretation and identifying the traditional approaches to interpretation that would be addressed in the essay. It then seemed to move away from the issue raised by the question – how the traditional approaches to interpretation are effected by the Human Rights Act – and considers an entirely different issue: the problems of these approaches to interpretation and whether judges should consult Hansard. This gives the marker the impression that the essay has ‘gone wrong’ right from the start. The second introduction gives another indication that the essay is likely to take a very wrong approach to tackling the question. Although it starts well by identifying the central issue of the question and stating that the Human Rights Act 1998 has introduced a new approach to statutory interpretation, it deteriorates thereafter by making an incorrect statement of law (that law that is incompatible with the Convention cannot be applied) and by taking a wrong turn in terms of subject matter. This essay is about approaches to statutory interpretation in general not the specifics of the interpretation of particular legislative provisions.