Guidance and advice on the study of jurisprudence

Introduction

You are probably a student in your second or third year of study (the stage at which jurisprudence is taught at most universities). Having got this far, you have become hardened to the lecture/seminar/essay/examination ritual that remains the predominant mode of legal education in most countries. You have sussed out the system and learned to adapt to its demands. You know which lectures are worth attending, how to appear intelligent in seminars, and how to pass examinations with minimum effort. But jurisprudence comes as something of a shock. Unlike the 'black letter' courses you have taken (and miraculously passed) you are now expected to think, to read a great deal of often turgid - and even unintelligible - literature which has little connection with 'the law' and frequently presumes an understanding of philosophy, sociology, economics, and even anthropology. There is little security here: you long for the friendly reassurance of a statute or the simple pleasures of a court judgment. Suddenly you are plunged into the perilous depths of grand theory, a world inhabited by epistemology, teleology, and metaphysics. And your apprehension is compounded by the fact that some of your peers actually seem to understand it all!

The first and most obvious point is that no single book (even mine) is a substitute for your reading of the materials prescribed by your lecturer. No single text could ever achieve that objective. Nor should it. Jurisprudence is a rich and diverse subject in a constant state of growth; most textbooks (and, indeed, courses) cannot aspire to much more than an eclectic skimming of its vast depths.

Secondly, and almost equally obviously, no two courses in jurisprudence are the same. There are a number of theorists and theories that are common to most university or law school syllabuses, but beyond that, every teacher has his or her own preferences (conditioned by a wide range of factors) and you will inevitably be required to consult *several* books, essays and articles which pertain to these topics. My book is intended to develop your skills in getting to the heart of the matter and, though it deals only with the major strands of legal theory, it aims to equip you to apply similar techniques in respect of the more exotic issues covered in your particular course.

Thirdly, the affliction most commonly associated with the study of jurisprudence is lack of confidence. Overwhelmed by the enormity of the subject and its attendant reading materials, many students experience a combination of frustration and despair. Having ploughed through the often rarefied works of leading legal philosophers, they throw up their hands in resignation at their complexity, density, or their sheer

impenetrability. I hope that both the book and the materials on this site may, while avoiding oversimplification, facilitate a better understanding of the ideas so as to increase your confidence both in reading and writing about them.

Fourthly, many students fall at the last fence: the examination. There are a number of dos and don'ts which, if followed, will considerably improve your performance in the examination (as well as in essays you may be required to write). Some of the best and brightest students in seminar discussions turn out to be indifferent examinees as a result of their poor mode of expression, weak presentation of argument, superfluous discussion, and other avoidable (or, at least, curable) defects.

The combination of the book and this Online Resource Centre will help you to think more clearly about jurisprudence. They should encourage you to approach the literature with greater insight and understanding. And it may even enable you to *enjoy* the subject. To this extent, much of the pain will be relieved and any tears you shed will be crocodile ones.

Teaching Methods

The combination of lectures, seminars, and tutorials is - inevitably - the approach likely to be used in your university or law school. I shall say a little about each.

Lectures

Why bother? So many lectures are so indifferent that it is hard to blame students for preferring another cup of coffee (or even something stronger) to an hour's misery at the hands of a wretched lecturer who succeeds only in alienating you from his or her subject for ever! Things are changing and there is a growing awareness of the self-evident proposition that unless students actually *gain* something from lectures, they might as well be dropped altogether. Certainly many students feel that their time would be more profitably spent (rather than in the cafeteria or common room) in the library reading the material 'covered' in the lecture.

The teaching of jurisprudence calls, if anything, for more inspired, imaginative, and stimulating teaching methods than other subjects. A dreary lecturer can easily murder the subject and inflict grievous intellectual harm on his students. If you are among the minority who are in this unfortunate position (your complaints to the lecturer him/herself, the head of department, dean etc. having proved fruitless) you should nevertheless seriously consider *attending* these laborious sessions. This is because lectures should, in any event, *never* be regarded as note-taking exercises. However dynamic or dull your teacher may be, it is essential that you come to the lecture having done some preliminary preparation. Only by equipping yourself in advance to follow the general drift of the lecture can you really expect to achieve very much by attending. And in this respect, therefore, it is not so important (though none the less disappointing) if your lecturer is below average (unless he or she is downright incompetent).

In other words, you ought to regard *all* lectures as an opportunity to listen to (and where appropriate to take notes of) your lecturer's discussion or explanation of the subject-matter under consideration. This may sound like a counsel of perfection, but unless you are willing to relegate yourself to the role of automaton (which too many students are) you are wasting valuable energy which could be far better spent in gaining a proper *understanding* of the subject. You may find the chapters in this book useful in this respect. So, for example, if the lectures are devoted to legal positivism, it might be a good idea to read Chapters 3 and 4 to give you a general picture of the landscape that is likely to be traversed. You might follow this up with a closer reading of

the specific topics being discussed. Thus, if (as is fairly likely) your lecturer's first 'positivist' is Jeremy Bentham, you could read the section on Bentham in Chapter 3 and then look at the essay by Hart referred to (or the readings recommended by your lecturer), jotting down a few essentials to be used as the basis of your preparatory 'lecture notes'. In simple terms, therefore, the normal procedure is reversed: lecture notes are actually written *before* the lecture! Naturally, you will supplement your outline by specific observations, references, or criticism made in the course of the lecture. Your preparatory notes for the first lecture on Bentham might look something like this:

Bentham
Discovery of *Laws* in 1832. B more sophisticated positivist than Austin?
Def. of law: (See Wacks Ch. 3.)
Commands: Imperative & permissive laws. Penal & civil parts of law. (NB *Of Laws* 176–83.)
Sovereignty: May be limited and divided (advance on Austin). Refusal to obey = limitation on sov. (But see Hart *Essays* 228–39.) Judicial review? See const. law cases.
Sanctions: No necessity.

These very brief notes (which are likely to make sense only after you have read Chapter 3) will serve as an extremely useful outline in the lecture. So, instead of furiously attempting to scrawl down the lecturer's words (as most of your fellow students are doing), you may relax and reflect upon these points, adding the occasional enlightening comment that happens to fall from his or her lips (e.g., 'Higginbottom finds Hart's analysis of B on sov. unconvincing. Check Hart and B.).

You will find also that you have a far better grasp of the subject which will, in turn, provide an efficient means of preparing for seminar discussions, to say nothing of the examination later. A further important benefit of this system is that you will be reading *to some purpose.* Instead of losing your way in the labyrinth of Bentham's sonorous prose, you will be evaluating his arguments against the backdrop of a broad understanding obtained from your own reading combined with the guidance of your lecturer and tutor. The notes that you make of the primary and secondary texts will, as a result, be more concise, lucid, and pertinent to the course you are taking. Your final set of notes (from which you will eventually revise for the examination) will be considerably more reliable and accessible, and you will find them easier to remember when it comes to those crucial three hours.

Seminars and tutorials

Much turns on the method adopted by your tutor. The most common form of seminar or tutorial is the informal 'discussion' of material covered in the lectures. You are normally given a question or series of questions in advance, the 'answers' to which you are expected to prepare for the seminar. Some tutors favour the (generally less satisfactory) method of asking one or perhaps two students to prepare a 'paper' which is then read to the group and subsequently 'discussed' (frequently only by the presenter of the paper and the tutor, with the rest of the class as innocent bystanders). Whatever method is used, the general objective is to encourage you to participate in the discussion.

You may be a retiring or diffident soul, reluctant to spellbind your tutor and fellow students with a profound exegesis on the mysteries of the *Grundnorm.* Or you may feel that the exercise is largely futile for you have understood (or, more likely, read) so little on the subject under discussion that you would prefer to give the whole thing a miss, preferring to leave such arcane matters for consideration until a few weeks before the examination. You would be misguided. *Discussion groups are the best means by which to test your own comprehension of a subject.* And if you have followed the advice above about 'lecture notes', you will seize the

opportunity afforded by seminars to ask questions, raise difficulties, make points, disagree with your tutor and your peers, and so on. This is also an ideal time to determine where the significant areas of controversy and debate lie (and these, needless to say, often surface in examination questions). Moreover, informal discussion groups provide an ideal method of gauging the performance of your fellow students ('how does she know *that*?') and the expectations of your tutor. Use the group to test your own ideas, to clarify difficult points you have encountered in the literature or lectures, and to further expand your 'lecture notes'.

I would go even further. I would suggest you form your own small discussion group in which (in an even more relaxed, less competitive atmosphere) you can really develop your understanding of the subject-matter being dealt with in the lectures. Books, websites, photocopies of articles, and even notes can be swapped, compared and talked about. You do not need me to tell you how valuable such 'extramural' education can be. And it is especially helpful in legal theory where, unlike the 'hard law' subjects, knowledge is constructed on a variety of foundations. You may be adept at logic, while another member of the group may have a sociological turn of mind. A third may have studied economics. Pooling these different backgrounds and abilities will not only assist all of you in reaching a better understanding of the literature, but it is more than likely to enhance your appreciation of jurisprudence and of law itself.

Introduction to reading, writing, and revising

You've heard it all before. The three Rs discussed here are not only common sense, but they are the stuff of a cornucopia of 'study guides', 'aids to effective learning', and the sagacious advice of teachers, elders, and betters. Nor will you be short of exhortations to sleep well the night before the examination (as if that were possible!), to participate in gentle physical exercise before the examination (as if you had the desire!), and to keep calm, relaxed, and clear-headed during the examination (as if you had the time!). These are, as you know by now, all sensible ideas; the problem is that the proverbial road to hell is paved with good intentions. You promised yourself *last year* that come *next year* you would not leave all your revision to the last minute, that you would keep up to date with the prescribed reading, that you would isolate yourself in the far corner of the law library (away from talkative friends) and devote yourself scrupulously to serious reading, and so on. And now - a week before the examination - as you gasp under a pyramid of unread books, illegible notes, and incomprehensible past examination papers, you are tempted to give it all up, wander down to the union bar, and make resolutions about *next year*!

Jurisprudence imposes its own special problems. Quite apart from the formidable demands it makes upon your time, you are expected, normally in the space of no more than (and often less than) 30 weeks, to become reasonably proficient in aspects of several, often diverse, disciplines. Moreover, much of what you are expected to read, absorb, remember, and write about is technical, complex, and often profoundly intimidating. How are you expected to stay afloat? I want to offer you a lifeboat. It obviously helps if you are able to swim, but even the strongest of swimmers may require help when the waters are rough. A quick disclaimer is, however, in order (I am not a lawyer for nothing!) I profess no special expertise nor even any scientific foundation for what follows. As a teacher of jurisprudence in three jurisdictions over the past three decades, I claim only that I have watched - often with surprise and even horror - while students have sought to keep their heads above water. Most have managed to do so. Some, sadly, have sunk without trace—and I think I know why. It is, in the hope that, by following my advice, you will not suffer a similar fate that I have attempted to identify the most important lessons that they have not learned.

Few students fail jurisprudence examinations, but many fail jurisprudence. They regard the subject with such disdain and displeasure that they are inevitably disappointed and even disenchanted. This is to fail

jurisprudence. It is the complaint of many teachers of the subject that, in order to maintain student interest (or even attention!), they try to 'spice up' their courses. There is nothing wrong with this if it means they attempt to relate 'dry theory' to 'relevant' practice. But sometimes it assumes a more disturbing form: 'difficult' areas of legal theory being oversimplified or avoided altogether. You may, as a student, applaud this phenomenon. It certainly makes life easier! But jurisprudence is not an easy subject. Indeed, I am always suspicious of any student who describes it as such. He or she must have missed something! The subject calls for a determined and sustained attack on a massive body of literature. But this does not mean that you should not make the effort. And I will suggest how you might approach this task. Secondly, since many courses in jurisprudence require students to write essays or produce written assignments of some kind, I shall consider not only how you might improve your writing of examination answers, but also how to develop your essay-writing skills. Thirdly, I shall suggest various methods of revising jurisprudence for the all-important examination.

Reading

It goes without saying that much of your time will be spent reading – either online (as you are now doing) or actually turning the pages of a book or journal. Paper has some important advantages. While you can, of course, highlight words on a screen, doing so on a page is likely to be far more effective. A word of caution. Highlighting books or articles (that are your property!) can become a fixation: vast tracts of text are liberally and luminously highlighted in almost every colour of the rainbow. I have often observed that students would appear at seminars or tutorials with their notes and materials copiously decorated in this way. Yet, as far as I could tell, while they had obviously applied their multicolour pens to paper, they had not necessarily understood what they had 'read'. Like the photocopier (which has usually been employed to produce personal copies of these texts) an otherwise valuable technical advance has been used as a substitute for genuine 'reading'. And this is as true of the profligate printing out of online materials.

You will, I think, know what I mean. If not, let me make myself clearer. Highlighting pens are undoubtedly useful for doing just that. But two problems seem to arise: first, many students appear to highlight almost *everything*—and often with more attention to the aesthetics of their colourful creation than to its meaning. Secondly, and more importantly, by using this method, students frequently imagine that because they have so adorned a text, they have actually *read* it! In the same way, there is a modern syndrome (as yet unrecognized by psychologists) that consists in the patient believing that what he has photocopied he has also read. And this is an affliction suffered not only by students. I have known several law teachers who store (completely unread) huge quantities of photocopied articles, reports of cases, extracts from books, or printouts from online sources which they are unlikely ever to read. Sufferers seem to labour under the delightful delusion that in the process of photocopying the material is instantaneously transferred to their brains. Would that it were true!

There is, I am afraid, no simple substitute for reading in order to understand. But there are certainly a number of ways in which you may improve your capacity to read *effectively*—to read *to some purpose.* Obviously, the faster you read, the more efficiently you will use the time you spend engaged in the process. And, by reading more rapidly, you are likely to improve your grasp of the argument being developed. John F. Kennedy, it is often claimed, was able to read complex government documents at the rate of 1,200 words per minute. That is roughly equivalent to two-and-a-half pages of this book—in one minute! This is probably apocryphal. Most of us read about 200–300 words per minute (unless it is Kelsen, you may be tempted to add). But there is no reason why, with practice, you should not be able to increase your speed well above 500 per minute. If you are genuinely handicapped by your slow reading, there are a number of courses available which claim to be able to teach you to read dramatically more quickly. I have no idea whether their claims are justified, though I doubt that they can do much harm. A useful, short book is *Read Better, Read Faster* by M. and E. De Leeuw. The trick

seems to be to learn to read intelligible groups of words rather than reading every word. You probably do this unconsciously anyway. Consider how you read a long judgment of the courts. Your eye picks out key concepts or groups of words, and this facilitates a better comprehension of the general drift of what is being said. You will, of course, examine certain passages (or even the entire judgment) more closely later. But your first reading is likely to be of the kind I am describing. And this unconscious process ought to become commonplace. It is neither necessary nor sensible to read every word—unless, of course, you are closely analyzing the subject-matter at hand.

Suppose you settle down to read Professor Dworkin's important essay 'Hard cases', which is Chapter 4 of his *Taking Rights Seriously.* It is a fairly substantial piece (of some 50 pages) which may seem a little intimidating at first. Before you begin to attack it, page through the whole essay. It is divided into six sections. And Dworkin helpfully provides headings and even subheadings. Write these down as follows:

1. Introduction
2. The rights thesis
    - A. Principles and policies
    - B. Principles and democracy
    - C. Jurisprudence
    - D. Three problems
3. Rights and goals
    - A. Types of rights
    - B. Principles and utility
    - C. Economics and principle
4. Institutional rights
5. Legal rights
    - A. Legislation
        - i. The constitution
        - ii. Statutes
    - B. The common law
        - i. Precedent
        - ii. The seamless web
        - iii. Mistakes
6. Political objections

You have now, in a matter of minutes, reduced a large body of forbidding text to a workable skeleton which provides a useful anatomical plan of the whole essay. Now read the introduction. You will see that Dworkin provides (as all good writers—including students—should) a lucid and concise statement of what is to follow in the next 50 pages. So (at p. 81) he states plainly, 'I shall argue that even where no settled rule disposes of the case, one party may nevertheless have a right to win'. And he expands on this a little in the next few sentences. We now know what to expect: Dworkin is seeking to show that in 'hard cases', contrary to the theory adopted by legal positivism, judges have no 'discretion'. Now proceed to the first section on the 'rights thesis.' Before you begin to read it glance at the four subheadings in this section; this will provide a clue to how the argument will develop. Then start reading. Always have a pencil in your hand; this will enable you to draw the inevitable question mark or to jot down any points in the margins. Try to read quickly: this does not mean that you should skim the pages, but that if (or, more likely, when) you encounter something you do not fully understand, you should scribble a question mark in the margin and proceed. You will return to these problems later. Underlining

is extremely helpful—but within reason (see above discussion of the Technicolor treatment). So, looking at my own copy of the book, I see that on p. 82, I have underlined only two words: in the last paragraph the words 'policy' and 'principle' are underlined. This instantly directs my eye to this passage which contains Dworkin's important distinction between arguments based on these two conceptions. Sometimes a whole sentence warrants underlining (or, if you insist, highlighting). So, turning the page, I notice that on p. 84 I have underlined the first sentence of the third paragraph: 'I propose, nevertheless, the thesis that judicial decisions in civil cases, even in hard cases like *Spartan Steel,* characteristically are and should be generated by principle not policy'. This seems to be the only *really* important sentence on this page. It instantly jumps out at me when I look at this page.

Occasionally an 'NB' is merited. But they are to be used sparingly. I have sometimes bought second-hand books in which the previous owner has scrawled 'NB' alongside almost every line. Nothing is *that* important! And, of course, this lack of discrimination is self-defeating. You will have your own system of asterisks, squiggles and symbols which will have their own special meaning to you. One symbol that I have used for years is 'e'. This signifies that, despite its apparent complexity, the sentence or passage in question is actually 'easy'. This reminds me that I have (at least once) understood the argument in the text. It is a source of considerable security and comfort.

Apply the above treatment to the remainder of this section of Dworkin's book (which takes you to p. 90). Now flip back through the 10 pages you have read, looking only at the headings and your underlining and markings. Think for a few moments about what you have read. If any questions or general difficulties come to mind, write them down at once. Then proceed to the next section, 'Rights and goals'. And so on until you have completed the chapter. Then go back to the beginning and commence a leisurely read-through, taking in the underlined or marked sentences or passages, and halting at any question marks. Do they *still* signify your inability to grasp a particular point of Dworkin's or, having read the whole essay, do you now understand what is being said: can you now replace any of the question marks with an 'e'?

Before leaving the chapter read *slowly* any section which you have identified as important. Add any further notes to your list (which you will incorporate into your notes or raise with your tutor) and then, for good measure, have one last look at your list of headings. This is no money-back guarantee. But I believe that by following this systematic approach to reading, much of your pain and tears will be obviated. It goes without saying that when (or perhaps, if) you attack a whole book, you would apply similar principles: listing chapter titles, headings, subheadings etc. In an ideal world, you should follow up any reading with the sort of group discussion suggested above. As I said there, reading or discussion groups are the best way of consolidating what you have read, and dealing with any problems you may have encountered.

Writing

We all have a voice. Whether we are speaking or writing, each of us has a unique manner of communicating what we want to say. And no one should be allowed to stifle your distinct mode of expression. Yet there are certain guidelines that should be followed, if only to make yourself clear and intelligible. In the words of Confucius: 'If language is not correct, then what is said is not what is meant: if what is said is not what is meant, then what ought to be done remains undone'. And, without putting too fine a point on it, what ought to be done in your case is to succeed at jurisprudence—or, at any rate, pass the examination.

It has become commonplace to lament the decline in standards of written English. Nowadays elegant prose that heeds the canons of grammar is indisputably a rarity. Dreadfully constructed sentences, ill-chosen words,

appalling punctuation, and atrocious spelling are by no means confined to students' examination scripts! Open this morning's newspaper. I suspect, though, that every generation decries the erosion of accepted standards. But it is especially painful to find law students, who ought to have developed a slightly deeper respect for language, mercilessly slaughtering it. And you will doubtless agree that your poor usage is likely to be more conspicuous in jurisprudence essays or examinations than in 'black letter' subjects. What is to be done? For a start, the more you read good writing, the greater the prospect of your absorbing and developing similar habits. Jurisprudence, like any discipline, has its own identifiable voice or voices. Try to listen to it. By reading the works of writers who express themselves with admirable clarity and intelligibility (Hart, Dworkin, MacCormick are examples of jurists whose writing rarely justifies the charge of obscurity) your own style ought to improve. I am not, of course, suggesting that you *copy* their mode of expression, merely that you learn to recognize a well-constructed sentence, a well-chosen word and a concise, uncluttered argument. A useful guide to the rules of grammar and to clear expression is Gowers' classic, *The Complete Plain Words* (revised by Sidney Greenbaum and Janet Whitcut). Though primarily intended for civil servants, it contains a wealth of invaluable advice and many an answer to the interminable debates about proper usage. Keep it close at hand at all times, next to your dictionary.

I shall not attempt to provide what books like *The Complete Plain Words* do with great skill. My concern is principally with writing in *jurisprudence.* Though I discuss how you should approach writing in the examination as well as in essays, there is one principle (I hesitate to call it a 'rule') which is common to both. It may strike you as somewhat idiosyncratic or even daft, but I urge you to follow it. Or at least to give it a try. *Use the present tense.* Students, when describing particular theories, tend to employ the past tense. They say, for example, 'Raz said that there is no prima facie moral duty to obey the law' or 'Finnis's account was based on Aquinas's theory of natural law'. This is hopeless. You must—unless the context requires otherwise—express the views of writers in the present tense—even if they are dead! This is, I think, a generally acknowledged, unwritten (and perhaps even unconscious) canon which good students adopt automatically. You will rarely find professional jurists lapsing into the past tense, unless, of course, the context requires it. Thus, in his essay 'Diamonds and String: Holmes on the Common Law', in *Essays in Jurisprudence and Philosophy,* Professor Hart employs the past tense when introducing the subject of his review (*The Common Law* by the long-deceased Oliver Wendell Holmes): 'In his preface of 1881 Holmes told his readers that his object in writing the book … was to construct a theory' (p. 279). But once he begins to analyze the book, he switches to the present tense, for instance: 'He asserts that society frequently treats men as means' (p. 283). And you should adopt the same grammar. This sounds like a counsel of unmitigated triviality; it will, however, raise the standard of your writing—at a stroke.

There is another (almost indefinable) weakness that, in my experience as jurisprudence examiner, afflicts a very large number of students, especially (but by no means exclusively) in examinations. It consists, I suppose, in what might best be called, 'crude reductionism'. It demonstrates an almost total insensitivity to complexity. Ideas are expressed in a breezy, often journalistic manner, with almost no attempt at substantiation. Sophisticated or subtle nuances are entirely ignored. No one expects you (particularly in an examination) to express profound or original thoughts, but you should *never* state any proposition without supporting it. Nor should you employ phrases like 'Kelsen's pure theory is rubbish', 'Dworkin is great' or 'the American realists were stupid'—however true they may be. I am not, by the way, inventing these examples. Consider the following opening passages from two (genuine) answers to the same examination question on the Marxist view of the rule of law.

> Marxism is a good theory of law because it recognises class conflict which is present in our capitalist societies. The Marxists are opposed to the rule of laws [sic] because they argue that it is a con trick.

> There is an economic base which determines the system of law which is unnecessary in a socialist society where law and state withers [sic] away and there is no oppression.
>
> It would be misleading to talk in terms of a single Marxist *theory* of law and state, for Marxists are themselves divided about the extent to which the rule of law should be endorsed. It is true that certain Marxists reject the very idea of the rule of law as being incompatible with a class-based explanation of society. Legality is a mask that conceals the real inequalities of the capitalist mode of production

Without even considering which passage is 'right', you will immediately observe how the first inspires little confidence. Imagine yourself as an examiner at midnight surrounded by a pile of scripts (which seems to grow every time you look at it). You are weary. You have already marked 50 scripts. Only 100 to go! You open the next script and begin reading the first passage above. The opening words inform you that you are in the hands of an oversimplifying reductionist. He (or she: there is only a number on the script) has not said anything profoundly 'wrong', but the way it has been said is so sloppy that you will be unlikely to read what follows with any great interest or enthusiasm. You probably know what the writer is trying to say in the last sentence, but it is said with so little precision or care that you will be inclined to doubt whether the student understands the point at all. Now compare the second extract. It starts with such confidence that you are willing to be swept along with what is likely to be a good answer. Two important morals arise for the student. First, your opening sentences create an initial impression which will probably stay with the examiner throughout the answer, if not the whole script. A sharp, arresting first sentence is (within obvious limits) a desirable goal. Secondly, avoid being silly (a theory can rarely be described as 'good' in this sense), avoid colloquialisms ('con trick'), avoid long, meandering sentences which confuse several ideas. Strive for clarity, short sentences (each containing a single idea), and, above all, treat the subject-matter in a less cavalier way. At least *appear* to recognize the subtleties of legal theory.

Examinations

Few law schools now rely *exclusively* on formal examinations. But, at least where the British model is followed, the majority have *some* form of examination, though the extent to which it counts toward the final mark obviously differs widely.

All examinations are artificial tests of your knowledge, but jurisprudence examinations are more so. Many expect you to answer five questions in three hours. This means that, after say ten minutes to read through the paper to decide which questions to attempt, you have 34 minutes to answer each question. And even if, as is often the case, you are required to answer only four questions, you have less than 43 minutes per question. To answer satisfactorily almost any question asked in a conventional three-hour examination in this period of time, requires a range of skills which are not necessarily a fair reflection of your understanding. Thus, you will need to be able to compress a considerable amount of information into a fairly short space; you have to recall it and write it down pretty swiftly; and you must do all this under the pressure that inevitably accompanies all examinations. Nor is there much consolation in Isaiah Berlin's observation that 'Everything in life, including marriage, is done under pressure'. The premium on time in the examination hall means that there is little time to gaze into space and reflect on the verities of life or law. In fact, as I often tell my students (half seriously), if you have time to think in the examination, you must be doing something wrong. Far from inviting you to engage in the sort of philosophical cogitation that legal theory ought to encourage, the three-hour examination frequently seems to assess only your ability to succeed in examinations.

I shall resist the temptation to identify and evaluate the numerous limitations of examinations as a means of

testing - in three hours - your knowledge and understanding of a year's work - this will hardly assist you. There is, I am pleased to report, an increasing acceptance by law teachers of the weaknesses of the examination - especially as an *exclusive* test of skill (as it once was). Hence, it is highly likely that you will be asked to write an essay or paper which will constitute 25 per cent or more of your final mark. And I discuss these below. Nevertheless, the examination still constitutes the *principal* mode of assessment in most law schools. So you will have to learn to live with it for a while yet. My misgivings about examinations should not, however, be taken to imply that I think they are devoid of merit. A well-set examination paper can certainly test a variety of skills which unquestionably provide useful evidence of the candidate's level of understanding and knowledge. In particular, the manner in which you *interpret* the question posed is a good index of your grasp of the material being sought. It goes without saying, therefore, that the question which asks you to 'write notes on' Savigny's *Volksgeist* does not exactly offer a satisfactory means of testing much more than your memory. Such questions are (happily) becoming rare, and examiners are, if anything, displaying considerable ingenuity and creativity in setting questions in jurisprudence. Yes, I know you'd prefer the former kind!

The first step to success in any examination obviously lies in careful and thorough preparation and revision (see below), but so many well-prepared students destroy their hopes of success in the three hours during which they are actually taking the examination, that I want to consider this subject first. You do not, at this stage of your career, need to be told about the importance of reading the whole question paper closely, before selecting the questions you wish to answer (or, in the case of many students, which questions you want to *avoid*). However, there are eight points that warrant emphasis.

(a) *Scribble as you read.* It is a curious phenomenon, but as you read the examination paper, ideas, thoughts or information may (assuming you have them) flood into your mind. Yet, when - a few moments later - you attempt to recall them, they are gone - for ever (or at least until a few seconds after the examination is over). My advice is simple. As you read each question, jot down anything that comes to mind. Many students have told me they have found this helpful.

(b) *Read questions with suspicion.* Suspend your trust. The examiner does not deliberately set out to trick you, but the manner in which you interpret the question is crucial - for at least two important reasons. First, if you misinterpret the question you may decide *not* to answer it or, worse still, you may decide *to* answer it. Secondly, if you follow the latter course, your answer may win few marks. You know the feeling. In the course of the post-mortem, several friends reveal that question 8 required X, while you (vainly and weakly) insist that it called for Y. Had you read the question more carefully, you might have avoided it altogether and answered question 3 instead (to which you would have given a brilliant answer). Alternatively, you may have given a *good* answer to question 8 for (as you now confess with horror) you actually 'knew' *that* aspect of Nozick's theory far better. These problems cannot be entirely obviated, but you can at least reduce the possibility of their arising by spending a little longer analysing the questions *before* you make the (almost irrevocable) selection from the menu. Table 2.1 (which I have adapted from H. Maddox, *How to Study,* pp. 119–20) should alert you to the range of directive words employed by examiners, and their meaning. Note that they apply equally to essay topics which are often formulated in the same way as examination questions.

Table 2.1 Directive words in examination questions

Analyse	Show the essence of something, by breaking it down into its component parts and examining each part in detail.
Argue	Present the case for and/or against a particular proposition or theory.

Compare	Look for similarities and differences between propositions or theories.
Criticise	Give your judgment about the merit of theories or opinions about the truth of facts, and support your judgment by a discussion of the evidence.
Define	Set down the precise meaning of a term or phrase. Show that the distinctions implied in the definition are necessary.
Describe	Give a detailed account.
Discuss	Investigate or examine by argument, sift and debate, giving reasons for and against.
Enumerate	List or specify and describe.
Evaluate	Make an appraisal of the worth of something, in the light of its apparent truth or utility; include your personal opinion.
Examine	Present in depth and investigate the implications.
Explain	Make plain, interpret, and account for in detail.
Illustrate	Explain and make clear by the use of concrete examples, or by the use of a figure or diagram.
Interpret	Bring out the meaning of, and make clear and explicit; usually giving also your own judgment.
Justify	Show adequate grounds for decisions or conclusions.
Outline	Give the main features or general principles of a subject, omitting minor details, and emphasizing structure and relationship.
Prove	Demonstrate truth or falsity by presenting evidence.
Relate	Narrate/show how things are connected to each other, and to what extent they are alike or affect each other.
Review	Make a survey of, examining the subject critically.
State	Specify fully and clearly.
Summarise	Give a concise account of the chief points or substance of a matter, omitting details and examples.
Trace	Identify and describe the development or history of a topic from some point or origin.

I cannot, of course, warrant that your examiner will use these terms with the precision indicated in this table. It might be a good idea to show it to him or her—just to make sure! But it will give you a sensible starting-point from which to launch your attack on the questions set.

(c) *Err on the side of a narrow construction.* It is a common fault of students to seize upon a question as a vehicle to 'show off' their wide knowledge of a subject. This could be fatal. There is a natural tendency to want to *use* the information which you have so diligently stored in your memory bank. But, more often than not, this is counter-productive: it may lead your examiner to think (with some justification) that because you cannot see the target you are spraying arrows in a wide arc in the hope that some of them might hit. When trying to discern what it is the question is actually seeking, unless you are convinced to the contrary (and the actual directive words used will be a useful guide—see Table 2.1), assume that the examiner is asking for *less* rather than more. And this has important consequences for the *manner* in which you answer the question (a point that I stress throughout this book). Questions are obviously 'pitched' at different levels, from the broadest to the narrowest. Thus, consider the following development in descending degrees of generality:

Realism
Scandinavian realism
Alf Ross

'Valid law'
'Feeling bound'

From a broad question on realism in general (which would call for a fairly rapid sketch of a map of the vast territory of the 'realist movement', including its American and Scandinavian varieties) we move down through a less ambitious question confined to the latter 'school', to the theory of a single member of that group, and a particular aspect of his theory, and eventually down to a very specific element of that aspect. It does not require me to tell you that Ross's identification of 'valid law' by reference to 'feeling bound' would be unlikely to merit more than a mention in a question on realism in general. Your brief account of Ross in such an answer would obviously assume a very different form. Yet I find a disturbing tendency among students to blur this distinction: many answer a general question with an attention to detail that is hopelessly inappropriate. Needless to say, they inevitably run out of time and their answer is a truncated jumble of detail which inspires little confidence in the author's ability to see the wood for the trees.

(d) *Tell the examiner what you take the question to mean.* Once you have arrived at the conclusion above, it is essential that you make this *explicit.* I cannot emphasize too strongly the importance of *telling* the examiner how (and even why) you propose to answer the question in the way you intend to. I do not mean that you should devote pages to a detailed exegesis upon the semantics of the question, its ambiguities, and possible interpretations. A short paragraph will suffice. So, for example, the following question appeared in a fairly recent examination paper of an English university which provides a well-subscribed external LLB degree:

> Evaluate critically the following statement concerning Roscoe Pound: 'For him, jurisprudence is not so much a social science but a technology' (Charles Conway).

At first blush this question could involve a wide-ranging discussion of Pound's jurisprudence. But a closer reading reveals two important factors. First, the directive word is 'evaluate' (see Table 2.1)—with the somewhat redundant adverb 'critically'—but (consequently and thankfully) there is no possible tension or contradiction between the quotation and the actual question posed (see below), and, secondly, the quotation itself supplies an important clue to the limits of your answer. In other words, the reference to 'technology' may legitimately be regarded as an invitation to traverse not the entire field of Pound's sociological jurisprudence which includes a detailed evaluation of his analysis of 'law in action', his 'jural postulates', and his account of 'social interests' (see chapter 8) but, while *referring* to these aspects, to concentrate on the technological 'social engineering' advanced by Pound, and the limitations of his arguments. You might therefore conclude that your answer should give a brief introduction to Pound's assault on analytical jurisprudence and his concern to harmonize 'law in books' with 'law in action', and a general sketch of his attempt to classify social interests under various heads. But the focus of your answer would be upon his argument that by identifying and protecting these interests, the law ensures social cohesion: his analysis of the various legal means by which they are secured, how they are to be weighed or balanced against each other, and how the recognition of new interests is to be tested by reference to certain 'jural postulates of civilization'. A large part of your answer would, of course, be devoted to the many criticisms that have been made of his (and other) attempts at 'social engineering'. But, however you construe the question, make sure you *inform* the examiner. Thus, you might begin by saying something along these lines:

> Since the quotation in the question refers to Pound's conception of jurisprudence as 'technology', I shall evaluate his analysis of 'social engineering' and the extent to which his theory of social interests provides a satisfactory account of 'law in action'.

Even if your interpretation is misguided, your examiner will be so impressed by your confidence and assertiveness that he may even mistake them for brilliance!

(e) *Give primacy to the directive words.* It often happens (but should not) that a question contains a quotation the import of which is at variance with the directive words of the question. This will not arise where, as in the question just considered, the directive is simply to 'evaluate' or, more frequently, simply to 'discuss'. But where the actual question posed is more detailed, problems can arise. There are many forms this sort of difficulty may take. Usually, the quotation is considerably wider than the question posed, as in the following example:

> 'American realism provided the bridge between sociological jurisprudence and the sociology of law' (A. Hunt).

What are the principal contributions to legal theory of the American realist movement?
The problem is that Hunt's observation is a large one whose substantiation would require a fairly detailed analysis of both the main elements of the American realist movement as well as a discussion of *the other two movements.* A tall order! But the directive (fortunately) restricts the scope of the question fairly considerably. The best you can (and should) do is, while considering the leading American realists (see Chapter 6), to emphasize their contribution to the sociology of law and how far they succeeded in developing sociological jurisprudence in this direction. In other words, though you ought always to obey the command in the question, you must take into account the quotation on which it is (apparently) based. You should assume that the quotation has been included *for some purpose*—even if (as I am sometimes inclined to suspect since I am sure I have myself committed this sin) it seems that the only reason was that it was such a juicy quote that the examiner found its inclusion in the examination paper irresistible!

A slightly more serious problem arises where you actually *recognize* the quotation—and realize that (accidentally or by design)—it does not 'jell' with the question posed. This could be because the quotation has been taken out of context or because it does not represent the view of the author who uttered it. An example will explain what I mean.

> 'The law is, perhaps more clearly than any other cultural or institutional artifact, by definition a part of a 'superstructure' adapting itself to the necessities of an infrastructure of productive forces and productive relations. As such, it is clearly an instrument of the *de facto* ruling class: it both defines and defends these rulers' claims upon resources and labour-power—it says what shall be property and what shall be crime—and it mediates class relations with a set of appropriate rules and sanctions, all of which, ultimately, confirm and consolidate existing class power. Hence the rule of law is only another mask for the rule of a class.' (E. P. Thompson.)
>
> Examine this account of law and the rule of law.

You will, I hope, have recognized that Thompson's elegant denunciation of the rule of law (from *Whigs and Hunters*) is the precise *opposite* of his own view of the ideal as an 'unqualified human good' (see Chapter 9). If you did *not* know this you might imagine that the attack on the rule of law represents Thompson's actual view, when in fact he is here describing the account which he subsequently rejects. So what? At worst, it could expose, as it would in this case, a major lacuna in your knowledge. At best, where the quotation is not fundamental to the question posed, you could look a little silly. The best course of action is: if in doubt, do not

rely on the quotation to advance your argument. Refer to it, analyse and examine it, by all means, but do not slip into the self-made trap of assuming that the words cited actually represent the view of the writer to whom it is attributed.

(f) *Draw comparisons.* Some questions, of course, explicitly ask you to compare two or more theories, concepts or ideas. But even where they do *not,* you should always attempt to do so *where this would illuminate your answer.* This is often inevitable anyway, and hardly requires stating. So, for instance, a question that calls for a general survey of a particular subject ('What is natural law?', 'Is justice synonymous with law?', 'Analyze Marxist theories of law and State', 'Does legal positivism clarify thinking about law?') obviously requires you to examine a number of theories, issues or ideas, and, in doing so, you will often explain the differences (and similarities) between them, rather than simply stating them. And often a question, though it explicitly refers to only *one* theory etc., nevertheless requires a comprehensive comparison with one or more other theories etc.

Take the following question:

> Hart claims that the indeterminacy of legislative aim and the open texture of language guarantee that there will be 'hard cases' when 'the rules run out'. What does Hart mean? What implications does Hart draw regarding adjudication in such cases? Is his account correct?

You will at once understand that, notwithstanding the question's preoccupation with Hart, your answer would obviously need to compare, in fair detail, Dworkin's alternative account of 'hard cases' (see Chapter 5), and, of course, in so doing, assess the validity of Hart's positivism in the light of Dworkin's attack.

It is impossible (and undesirable) to offer cast-iron rules here. You will have to use your judgment. But, in general, it is fair to say that your examiner will regard pertinent comparisons as persuasive evidence of your wider grasp of legal theory. So, even though a question is manifestly limited to a *single* subject ('How pure is the Pure Theory?', 'Does Austin's sovereign really exist?', 'How does Bentham analyze commands?', 'In what sense is Hart's description of 'social rules' hermeneutic?', 'Is Hume's non-cognitivism destructive of all natural law thinking?'), your answer can only be improved by *brief* and *relevant* comparative references. Hence, in the case of the question about the pure theory, you might, in demonstrating some of the 'impurities' that creep into Kelsen's system (e.g., how do we *measure* 'by and large effectiveness' except by reference to *factual* circumstances?—see chapter 4), mention the American realist or sociological method of determining whether laws are actually being obeyed or effectively enforced. Or, in answering the question on Austin's sovereign, you might, for example, compare his account of sovereignty with Olivecrona's theory of law as fact or refer to Hart's attack on (and refinement of) Austin's argument that sovereignty is based on 'habitual obedience', or compare Austin's illimitable, indivisible sovereign with Bentham's model. And so on. I will suggest below that an essential part of your revision is the drawing of comparisons of this kind.

(g) *Refer to examples from the substantive law.* Where it will clarify or illuminate your argument, draw on cases or statutory principles from your 'black letter' law courses. I have tried to suggest some ideas in the chapters that follow. There are obvious opportunities for doing this (Kelsen and cases dealing with illegal regimes, Dworkin and examples of 'hard cases') but you should find your *own* illustrations from contract, tort, criminal law, land law and so on. A good use of common law cases in an unexpected area is to be found in Hugh Collins's *Marxism and Law.* He uses (pp. 59–60, 71, 86, 99) the case of *Sagar* v *H. Ridehalgh & Son Ltd* [1931] 1 Ch 310 to demonstrate how the Court of Appeal when faced with a conflict between 'pre-capitalist' conceptions of the master-servant relationship, on the one hand, and the doctrine of 'freedom of contract', on the other,

compromised by finding that the term (which permitted an employer to deduct money from an employee's pay for poor workmanship) had been incorporated into the contract by virtue of long-established custom. And there are equally felicitous applications of a criminal law decision on rape (*R* v *Miller* [1954] 2 QB 282) to show (pp. 64–6, 68–9, 72, 108, 113) how the 'dominant ideology' affects legal doctrine, and of the nuisance action in *Duke of Buccleuch* v *Alexander Cowan & Sons* (1866) 5 M 214 (CSess), (1876) 2 App Cas 344 (HL) to demonstrate (pp. 79–85, 90, 93) the limitations of the base-superstructure model (see chapter 9). Dig into your own mine of common law cases and materials for similar explanatory devices. The major textbooks on jurisprudence will provide you with some helpful clues; thus Lloyd's table of cases runs to some 500 decisions. Examine them to discover how they have been employed in a subject which, for many law students and lawyers, has almost no practical relevance. Few things will warm your examiner's heart more than your providing evidence that his or her subject is not merely dry, abstract theory.

(h) *Always give your own views.* It is never adequate merely to regale the examiner with the views of others. Every question (often explicitly, but otherwise implicitly) calls for some statement of your own position on the subject. This does not mean that you have a licence to discuss *only* your own views, as some students have discovered to their cost. The examiner is interested in your reflections upon natural law, but only once you have considered the classical doctrine of Aquinas, the development of the theory in political theory, Finnis's account of the matter and so on. The most sensible (and obvious) approach is to examine the various views of jurists etc. and then to submit (with the requisite humility expected from law students) that 'in my view' or 'it seems to me' that natural law provides a useful yardstick against which to measure positive law or whatever. There is no uniquely correct answer to any question; you may therefore proffer your own views with confidence - provided, of course, you support what you say.

Essays

Much of what I have said above about your approach to writing examination answers applies to the writing of essays or assignments. But essays are, of course, designed to test a range of different skills: your ability to research a particular question and to produce a sustained argument of a reasonable length. They are also a relatively successful method of compelling students to read material they might otherwise be tempted to avoid. A well-set essay ought to encourage its victims to spend a few weeks poring over primary and secondary sources in search of a coherent, systematic analysis of a problematic subject. But, while they serve different purposes from examinations, there is no good reason why an examination question could not serve as the topic of an essay. Where this is the case, your essay will, of course, assume a different form from the answer to a question under examination conditions. In particular, your essay will draw on a variety of sources and examine the matter in far greater depth. This does not mean, however, that you are free to ramble at will; the attention to the purpose and scope of the question (discussed above) is no less crucial. And at least nine other principles (discussed below) should be observed. Much has been written on the subject of essay writing. Two useful guides are R. Lewis, *How To Write Essays,* and C. Turk and J. Kirkman, *Effective Writing.* You will also find helpful chapters in L. A. Marshall and F. Rowland, *A Guide to Learning Independently,* and R. Palmer, *Brain Train: Studying for Success.* You may feel that it is too late in your career to begin learning about writing essays. I shan't make the obvious comment, but I am afraid very few students that have come my way could legitimately claim that they are not in need of improvement. The following nine points may be of some assistance.

(a) *Plan carefully what you are going to say.* The heat is off. Unlike the circumstances under which you have to think and write in an examination, your essay is written under relatively calm conditions. Having interpreted the question posed (with the considerations above taken into account: it will be just as important, for instance, to err on the side of a narrow construction or to draw illuminating comparisons), set about planning how you

might approach the subject. You will need to consider: your purpose, your principal arguments or theses, the most appropriate approach to adopt, the most likely sources to consult, how you will introduce and conclude the essay.

(b) *Plan carefully which sources you will consult.* This is not normally a major problem (the reverse is usually the case—how to *reduce* the material to be consulted). Your first port of call is obviously the standard textbooks on jurisprudence. You will scour their texts, footnotes, and bibliographies for appropriate references which will, in turn, lead you to further references. The *Index to Legal Periodicals* and, for British journals, the *Legal Journal Index* is likely to be useful. Online sources such as www.findlaw.com and www.austlii.edu.au are invaluable. There are some excellent jurisprudence blogs. See, for example, Professor Brian Leiter's blog at leiterlegalphilosophy.typepad.com/leiter/

(c) *Start in the middle.* We all know that any introduction is best written *last,* and the conclusion can only be written *after* you have written the main body of the essay. It is therefore quite logical and sensible to begin sketching the middle *first.* Once you have drafted the main body of your essay, you may then go on to think about what conclusions may legitimately be drawn from your arguments. Having done this, you may write the introduction.

(d) *If stuck, write.* You may have what is loosely known as a 'mental block'. You sit for hours staring at the endless pages of notes you have photocopied or scrawled down—and nothing happens! You cannot decide what to *say.* The so-called method of 'free writing' is suggested by educationists as a means of coping with this malady. The idea is that, like the process of brainstorming, you simply allow your mind (and pen) to run freely. Keep scribbling down whatever comes into your mind about the subject, and then edit what you have written. It may be that you will have to discard much of what you have written, but it ought to assist you to clarify your mind.

(e) *Argue.* This is the single most important piece of advice I can give. The overwhelming majority of essays consist in the regurgitation of large tracts of texts that have barely been paraphrased. Think of an essay as an *argument:* you are engaged in developing, step by step, an argument towards a conclusion. It is essential and perfectly proper, in marshalling your argument, to draw on the work of relevant jurists, but you are doing so only in order to strengthen the case you are presenting. Some essays, you may object, do not lend themselves to the presentation of a case. You should nevertheless attempt to interpret the topic in such a way that it enables you to progress through the stages of a reasoned argument.

(f) *Do not plagiarize.* In referring to the thoughts of others, do not present them *as your own.* This is plagiarism. And the reader of your essay is unlikely to be fooled. Yet many students - despite a hundred warnings - persist in this foolhardy practice. I have even had students passing off *my own* published writing as theirs. It is a pointless exercise. There is no objection to *quoting* from the works of a writer (provided, of course, you acknowledge the source in the accepted way; see below), but a good practice is to limit the quantity of quoted material. A distinguished Oxford law professor who was – many years ago - my supervisor advised me never to quote more than six lines from any source. And, I have noticed that he himself, in his prodigious writings, always follows his own counsel. But I have, needless to say, breached this admirable rule (both in this book and elsewhere) on many occasions. Some quotations capture so effectively the essence of the author's views that to truncate them is easily resisted! Be brutal. If you really must quote, then edit the quotation by the liberal use of dots, or, while attributing the ownership of the idea, simply paraphrase it. But do not extract huge chunks from book to essay. If you suffer from this weakness, an effective treatment is to read the section concerned, set the book aside,

and express the idea in your own words.

(g) *Evaluate your rough draft.* Having produced a complete first draft, subject it to close scrutiny, asking the questions (adapted from L. A. Marshall and F. Rowland, *A Guide to Learning Independently*), below:

The purposes

Does the draft reflect your purposes in:

(a) Undertaking the essay or assignment in the first place?
(b) Writing this particular essay or assignment?
(c) Selecting this particular topic?
(d) Selecting your theme and focus within the topic?

The content

(a) Is your topic clearly defined?
(b) Does your definition fit in with the topic?
(c) Is your material relevant to your definition?
(d) Do you have adequate (or inadequate) material for the length of the assignment? Do you repeat yourself often?
(e) Does the material you have selected reflect your approach to the topic?
(f) Have you selected your material too subjectively or partially?
(g) Have you incorporated your own ideas and supported them?
(h) What are the main points or arguments of your essay?
(i) Have you included reasons or evidence or examples to support your main points?
(j) Are quotations and examples which you have used integral to your assignment?
(k) Have you plagiarized?
(l) Have you clearly defined any central concepts or terms?

The structure

(a) What is the structure of your essay or assignment?
(b) Does your structure logically and effectively develop your arguments about and definition of the subject-matter?
(c) Have you clearly indicated to the reader the stages by which you develop your thesis/argument/theme?
(d) Does your introduction accurately outline your definition of the subject-matter and is it sufficiently inviting?
(e) Are your main arguments presented as clearly and fully as necessary?
(f) Is there a balance between your main arguments?
(g) Have you linked your main arguments clearly?
(h) Does each paragraph contain only one main idea?
(i) Have you clearly connected your paragraphs?
(j) Does your conclusion:
    (i) Reflect the material presented in the essay?
    (ii) Relate to your introduction?
    (iii) Finish smoothly?
    (iv) Suggest any further areas or questions to be followed up without introducing any major new ideas?
(k) If you are expected to conform to a certain format, have you done so?

Your style

(a) Have you expressed yourself clearly and simply?

(b) Is your writing style your own?

(c) Have you incorporated any formal style requirements into your writing (proper references to cases etc.)?

(h) *Ensure all citations are correct.* This means both that you have cited the work properly (according to convention) and correctly (the details of the work cited, the page numbers etc.). You will, by now (I hope), know the accepted mode of citing cases, books, and articles. Just in case, I shall state the main principles below. One mistake that seems fairly common is to confuse the citation of a book (the title of which is always underlined, italicized, or put in capital letters) with that of an article (the title of which is always placed within quotation marks).

(i) *Provide a bibliography.* Your reader wants to know what works you have consulted (or, at any rate, *claim* to have consulted). It may also save you repeating the full title of the works to which you have made reference or from which you are quoting. This is because there is no reason (unless you are instructed otherwise) why you should not follow the sensible practice, long used in social science literature, of merely stating in the text 'Bohannan (1967)'. In your bibliography, of course, you will have a fuller reference: Bohannan, P. (ed.), *Law and Warfare* (1967)'.

Strictly speaking, you should, in your bibliography include more information than this. It is normal to give also the place of publication and the name of the publisher. There are no hard and fast rules; journals adopt slightly different styles or modes of citation. But in the United States several of the leading law reviews and journals adopt the style of the Blue Book. For the rules, see: www.legalbluebook.com

A number of other journals follow the Chicago Manual: www.chicagomanualofstyle.org

The 'British' style (adopted by many, but not all, publications in the UK, the British Commonwealth, and other jurisdictions) is, as follows:

Book

Author's surname, followed by forename or initials.
Title (underlined, italicized or perhaps in capitals).
Place, publisher, date.

Note, too, the correct punctuation.

Essay, article or chapter in book or journal

Author's surname, followed by forename or initials.
Title of essay or chapter, enclosed by quotation marks.
Author or editor of book in which the item is found.
Title (underlined, italicized or in capitals) of the book, journal etc. from which the item was taken.
Publication details of book.
Page numbers of article, chapter, or essay.

So: Nagel, Thomas, 'Rawls on Justice', in Daniels, Norman (ed.), *Reading Rawls: Critical Studies on Rawls' A Theory of Justice* (Oxford: Basil Blackwell, 1975), pp. 1–16.

Or: Kantorowicz, H. U., 'Savigny and the historical school of law' (1937) 53 LQR 326.

There are a variety of 'modern' forms of punctuation (for example, full stops are now unfashionable). It does not matter which practice you adopt—*provided you are consistent.* Note, too, that if you choose to provide a reasonably full reference in the text (as opposed to the brief 'social science' method suggested above) certain differences in usage are necessary. In particular, reference notes in the text normally give the author's surname *after* his or her name or initials; they normally omit full publication details; and there are certain differences in the punctuation used. You should ask your teacher what the preferred style in your law school is. Ideally, you should be provided with a full guide of the 'house style'.

This may be an appropriate place to mention the use of other conventions. I shall confine myself to the 'famous five' abbreviations most likely to be encountered in texts on legal theory (and much loved by students):

et seq.	'and following' (as in 'pp. 94 et seq.').
ff.	'and the following' (pages).
ibid.	'in the same work' (as previously cited).
loc. cit.	'in the same place [already] cited' (this means in the same passage referred to in a recent reference note),
op. cit.	'in a work [recently] cited'.

use them sparingly. I am not sure that I always do!

Revision

If you follow the advice offered in the previous section about adopting a systematic approach to lectures and classes, you will need to expend considerably less time and feverish energy in the run-up to the examination itself. If, on the other hand, you do not, you will end up furiously attempting to cram a year's work into a few frenzied weeks. I shan't preach, but you *know* which approach makes sense. In either event, you will still need to process your data into a form that may be easily recalled for examination purposes. There are as many techniques as there are students. But I shall suggest a few tips that may lighten the burden a little.

Why do we remember certain things and forget others? Is it possible to improve our capacity to remember? Are some of us born with superior memories? Though our brain works in mysterious ways, a fair amount of research has shed light on the processes of memory. An important distinction is between short-term memory (STM) and long-term memory (LTM). The former enables us to perform our daily tasks (it tells you, for instance, that today is Thursday or that you have a lecture at 10 o'clock). LTM, on the other hand, stores data for a very long time (it tells you, for instance, that 10 years ago you broke your arm). In Palmer's *Brain Train,* Richard Falmer has compared STM to a handbag which contains all the material we need to remember for a short time for 'immediate, imminent, or temporary use (p. 29). LTM, however, is like a deep-freeze: it is filled with materials that can be stored indefinitely: 'You can ignore its contents for months on end if you want to, and then raid it for something which can be cooked at once' (p.31). The importance of this dichotomy lies in the fact that your LTM contains the data you really *know.* In addition it seems that, like a freezer, the more you store in it, the better it operates.

The process of learning really consists in transferring material from your STM to your LTM. But these fascinating questions are not your principal concern. (A readable introduction is P. Russell's *The Brain Book*.) You would like a simple method of securing this transfer or, in other words, of remembering more effectively. There is, as far as

I am aware, no such thing. But there are, as you will yourself know by now, a variety of devices that may assist you. Repetition, mnemonics, visual aids, songs, symbols, cartoons, and a score of other *aide-mémoire* have won the hearts and minds of generations of students. I shall not attempt to discuss these here. As a student, I always relied on mnemonics (especially to assist in memorizing case names). Do not scorn these devices; even the great American realist (and amateur poet), Karl Llewellyn (see Chapter 6) used verse, as a means of remembering the limits of federal jurisdiction:

> Dangerous weapon, intent to kill,
> Killing in either shape,
> Robbery, burglary, larceny, will
> Go to the Feds, like rape
> And burning down a barn or house
> Or screwing family, like a louse.
> Embezzlement, fraud and fornication
> Are safe, within the reservation.
> (Quoted in W. Twining, *Karl Llewellyn and the Realist Movement,* p. 474.)

It is up to you to devise the method that best suits your personality. Many students report that they remember better the things that they *say:* they therefore read their notes aloud, sometimes strutting around the room (simulating perhaps an impassioned lecturer). Others use tape recorders to record the material, though I never believed the student who claimed he listened to recordings of my lectures on his Walkman! I can only suggest that you experiment with all these methods. They certainly cannot do any harm.

The single most important thing is to ensure that, by the time the actual revision process begins, you have a comprehensive, clear and reliable set of notes from which to study. To rely on a host of sources - textbooks, notes, photocopied articles - is likely only to precipitate panic and alarm. It is, I believe, essential to have a *single* source to use as the basis of your intensive, final preparation for the examination. And this is true of all subjects. I strongly urge you to begin, as early as possible in the year, to *summarize* your lecture notes, embellishing, expanding, and improving on them by drawing on published material to which you are referred or which you regard as important. Having a concise, consolidated set of notes will save you considerable pain and suffering, and will, almost certainly, improve your performance in the examination substantially.

In preparing this summary you will draw comparative tables between different, or even similar, concepts, theories, or theorists. And you will find a number of examples of these tables in my book. They will not only assist your comprehension of the subject-matter concerned, but they are an excellent means of equipping yourself to answer comparative, or even other, questions that require or permit comparisons to be drawn. Make a habit of doing this throughout the year.

Finally, an obvious point. Obtain past examination question papers. These, of course, provide considerable insight into what your examiner expects of you, and even if they were set by someone else, they are nevertheless an invaluable guide to what the examination will be like. You may be sure that your examiner will consult these, or, at the very least, he or she will look at last year's paper when setting this year's. The style of questions and the rubric of the paper are very unlikely to change radically from one year to the next. But past papers are not merely for purposes of detection, you should attempt to *answer* them and, if possible, ask your teacher to *mark* your efforts. If this seems like a recipe for making yourself instantly unpopular with your teacher, fear not. So few students avail themselves of this 'service' that it will not be regarded as a burden. On

the other hand, if too many readers follow my advice, I risk making *myself* instantly unpopular with harassed jurisprudence teachers everywhere.

Further reading

There are some excellent books available that provide valuable advice on the general approach to almost every aspect of the learning process. The following are among the best:

Kirton, Bill and McMillan, Kathleen, Just Write: An Easy-to-use Guide to Writing at University *(Abingdon:: Routledge Study Guides, 2007).*

Fairbairn, Gavin J. and Fairbairn, Susan A., Reading at University: A Guide for Students *(Buckingham: Open University Press, 2001).*

Northedge, Stephen, The Good Study Guide *(Milton Keynes: The Open University, 2005).*

De Leeuw, Manya, and De Leeuw, Eric, *Read Better, Read Faster: A New Approach to Efficient Reading* (Harmondsworth: Penguin, 1977)

Maddox, Harry, *How to Study* (London: Pan Books, 1988).

Redman, Peter, *Good Essay Writing: A Social Sciences Guide*, 3rd ed., (London: Sage Publications Ltd, 2005).

Cottrell, Stella, *The Study Skills Handbook*, 3rd ed., (London: Palgrave Macmillan, 2008).

Lewis, Roger, *How to Write Essays: The Secret of Success* (London: Kogan Page Ltd, 1979).

Marshall, Lorraine A., and Rowland, Frances, *A Guide to Learning Independently*, 3rd ed., (London: Longman, 2001).

Palmer, Richard, *Brain Train: Studying for Success*, 2nd ed., (London: Taylor & Francis, 1996).

Russell, Peter, *The Brain Book* (London: Routledge & Kegan Paul, 1979).