



Law Student

//autumn 2005

10 top tips for effective time management

Financial guidance to help you survive

How to moot successfully

What is jurisprudence?

Your strategy for becoming a barrister

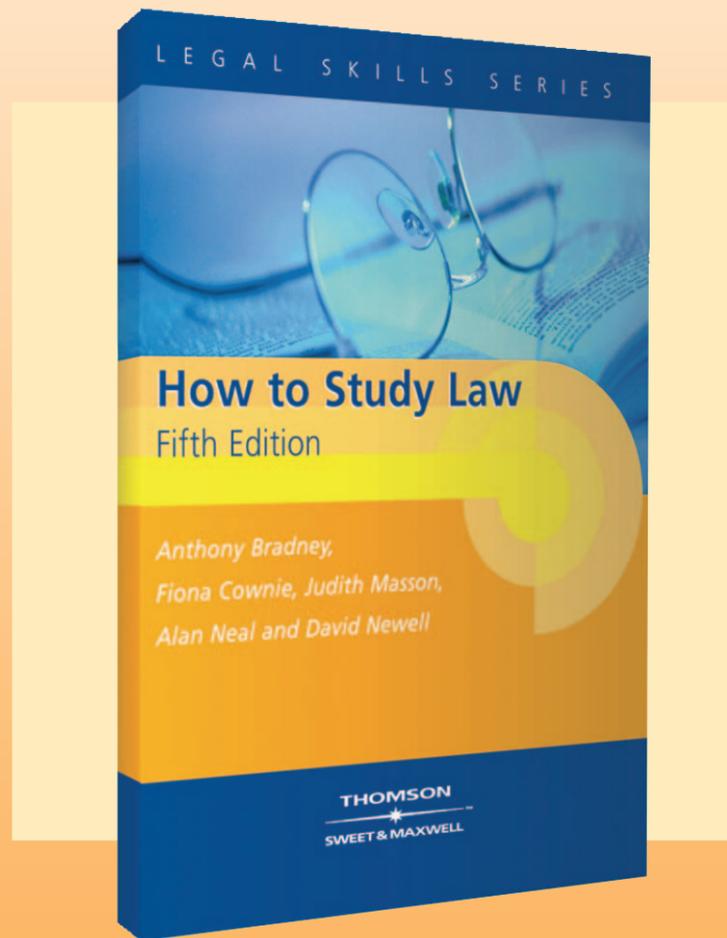
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Letter from the Editor



Welcome to the first issue of Sweet & Maxwell's new Law Student magazine. We've taken our 200 years of experience in professional legal publishing to create a new magazine designed exclusively for the needs of you – the law student.

As well as being designed to be a good read, the magazine aims to be highly informative, providing you with access to the information you need and that's of interest to you.

To kick off this first ever issue you'll find a short piece on Sweet & Maxwell's Law Prize. Each and every university is eligible to enter and nominate their top one or two students for either a £200 or £100 Sweet & Maxwell book voucher.

Mooting is something that you will have already, or will be going to take part in while undertaking your law degree. In our article on the Art of Winning, you can discover some of the skills of good advocacy and apply them to your mooting competitions.

An important issue for all students, not just law students, is money. You can find essential advice on how to best manage your finances, as well as some top tips on saving money and an estimate of how much it's going to cost you to live and study during the current academic year.

If you are finding juggling all the things you have to do is quite hard, or just want to learn more about how best to manage everything, then the article on Time Management will definitely be worth a read.

A thought-provoking interview with John Gardner, Professor of Jurisprudence at the University of Oxford is included in which he discusses a number of different issues, including the Hart-Dworkin debate, and the relationship between law and morality.

If you plan to train to be a barrister once you've finished your law degree then definitely read the article on page 12. It contains everything you need to know about how to get that pupillage.

ELSA (The European Law Student's Association) is the world's largest independent law students' association. It comprises a membership in excess of 25,000 students and recent graduates. ELSA operates primarily through its local groups, which are located at more than 200 universities throughout 37 countries in Europe. To find out more about them and details on joining, turn to page 13.

Finally, you want to ensure you have all the study and revision material you need to achieve the best grades possible. But, there are lots of different books to choose from so what do you buy? Check out our buyer's guide to law books.

I hope you enjoy this first issue of the Law Student.

Sam Siddle
Editor

Law Student



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Law Student autumn 2005

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Sweet & Maxwell's Law Prize

The prestigious Sweet & Maxwell Law Prize enables law schools to award their top students with the gift of books published by Sweet & Maxwell – worth between £100 and £200. The prize is open to all law schools in the UK.

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Once your law school is registered your lecturers will pick the winner or winners – you could be one of them. As one of the winning pupils you get to choose from the range of great titles we have on offer. You can also purchase books worth more than the value of the prize and just pay the difference.

If you can't decide what books to spend your money on straight away, or have already purchased all the books you need for your current academic year, you can

always wait or spend some of the prize money. If you spend just part of your prize, the rest will be credited to be used against future purchases. You have three years in which to use up all of your prize money.

How to get your law school entered

To stand a chance of winning the Sweet & Maxwell Law Prize, all you need to do is tell one of your lecturers about the prize and get them to register your law school. They can do this by emailing us at sweetandmaxwell.lawprize@thomson.com. We'll send a confirmation email to them and then wait to hear who wins.

All you need to do after getting your law school to register is win the prize!

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The Art of Winning

Mooting gives you the chance to practice the skills of advocacy and gives you a taste for what it's like to argue cases in court. It's essential to take place in mooting whilst at university. It will help improve your legal skills and is a must for anyone who wants to go on to be a barrister. This article, taken from *The Devil's Advocate*, by Iain Morley, provides you with a fresh approach to some do's and don'ts of advocacy.

When you take place in a moot you most certainly want to win. There are the rules of evidence and the rules of law but, here, Iain Morley presents the rules of winning that if followed, will hold you in good stead for your future career:

Being an advocate is about WINNING WITHIN THE RULES. Perhaps it shouldn't be. But it is.

The goal is to win; the means of winning is by being persuasive. We each strive, and should strive, to win, but always always always within the rules. There are the rules of evidence and the rules of law. You are assumed to know these. Nothing more will be said about them here.

It appears to me there are also three primary professional rules. These are really about attitudes of mind. I am not trying here to rewrite the Codes of Conduct for solicitors or for the Bar. The Codes need careful reading and you are assumed to know them. I am simply emphasising the seemingly most important beacons of integrity which ought to burn bright in every lawyer, and should guide the way we think. And I think there are three beacons. They are commandments of behaviour.

The first is THOU SHALT NOT MISLEAD THE COURT

You are assumed to know this. It is a long subject and will have been studied at law school. Always remember to consult colleagues and if necessary your professional body telephone help-line, which you ought to know off by heart, if in any doubt. Always consult.

Misleading the court is serious misconduct and will, and rightly should, lead to formal proceedings of censure. Just don't do it. I won't say anymore about it as it is so huge an issue, it need only simply be mentioned to make the point of how important it is.

The second rule however is not such a formal one. But is it pretty much just as important.

THOU SHALT NOT USE SHARP PRACTICE WITH YOUR COLLEAGUES

This is a difficult area. You have a duty to the client. But equally, that duty cannot be fulfilled if you are sharp with your colleagues as they won't trust you, and this will make running your case to the advantage of the client very difficult.

Generally, the trick is it is better to refuse to be drawn on what you will do, it is better to say nothing and make it clear you are saying nothing, than to say you will do one thing and then do another. If you say you will do something, then do it; if you say you will not do something, then don't do it.

If you wish to raise a matter of law, give your opposition at least some notice. If you have legal authorities on which you will rely, alert the opposition early, not at the moment of submission. It is often a question of how it's done, not what is done.

Maintain politeness and clarity

A rule of thumb is it is best to deal with your opposition, as you would want them to deal with you. Why not confound them? The answer is clear. As advocates, we spend our working lives together. Clients usually come but once or twice. However, we encounter each other all the

time. It is professional suicide to have a reputation for being sharp. Reputation travels quickly. Lawyers love to gossip. There will come a time when meeting a new advocate, we see eyes narrow, and inexplicably co-operation is withdrawn. Sadly they have heard about us.

In Britain and Ireland, and most of the Commonwealth and Common Law world, we rightly pride ourselves on the level of co-operation between advocates against each other. Outside court, decisions are taken which speed up the smooth running of trials and allow the parties and the court to focus quickly on the real issues. Long may this continue. Don't blow it by being sharp.

Iain Morley's three golden rules for winning

We each strive, and should strive, to win, but always, always, always within the rules:

Do not mislead the court

Do not use sharp practice with colleagues

Always try to think like the tribunal

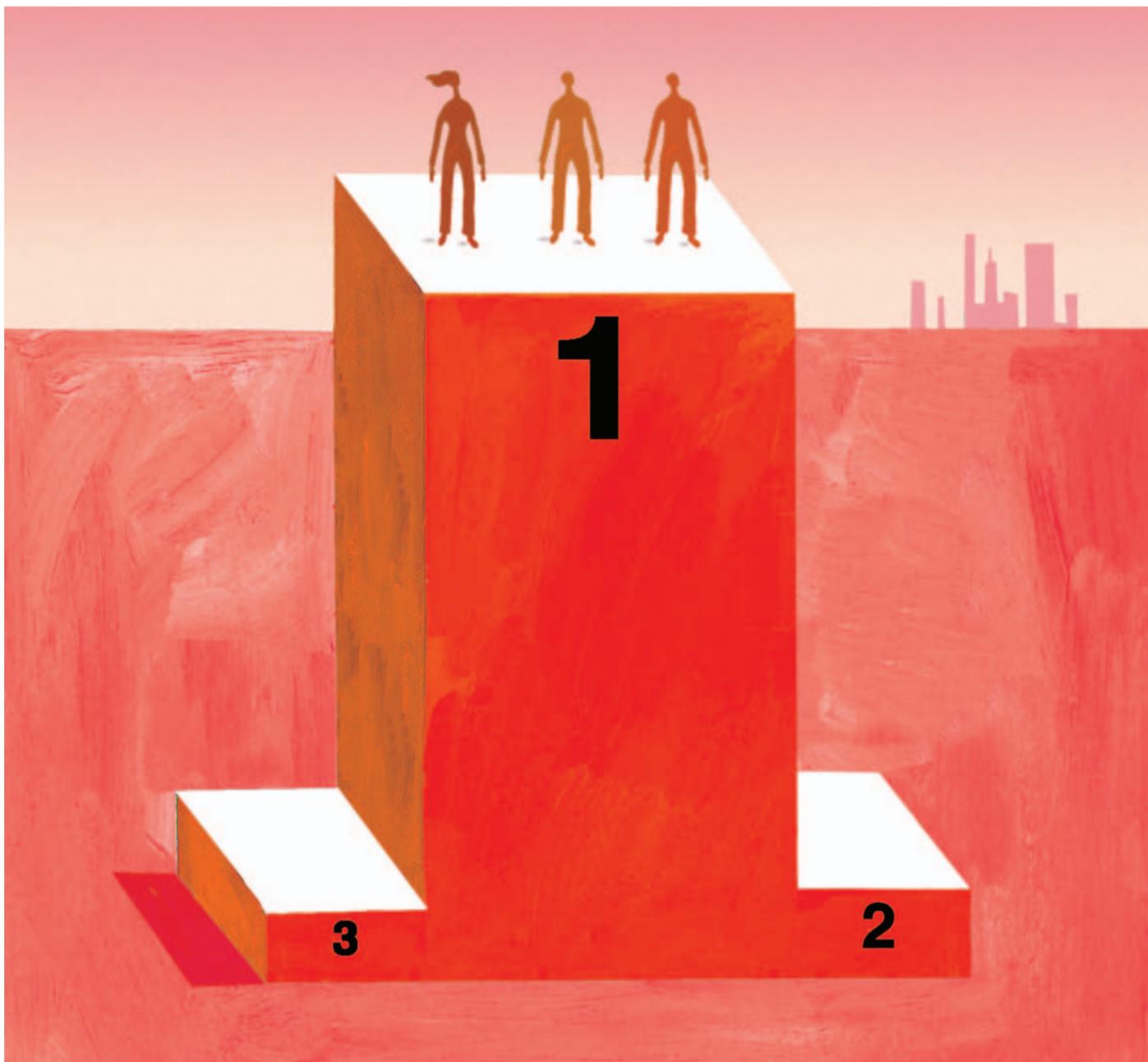
Please don't confuse this with selling your client out to keep in with your lawyer friends. This is not what is being suggested. Your duty to your client is paramount, but remember, it must be within the rules. The rules require you do not mislead the court. In the same way, there is an unspoken rule you do not deliberately mislead your colleagues.

Don't lie. Don't u-turn on what you have promised, without very, very good reason which you must then explain fully. Don't say things intending to renege on them later. As I say, it is better to say nothing, and point out you are saying nothing, than to say something you later change.

The third rule is THOU SHALT ALWAYS TRY TO THINK LIKE THE TRIBUNAL

Why? Because if you do this, you will automatically become less partisan. Being perceived to be less partisan is really very important. You will become more reliable in the eyes of the judge or jury and your later arguments are more likely to succeed.

You should try to take decisions with this thought in mind: "What should the judge do about this problem?", or "what is the jury likely to make of the general circumstances of this case, or appearance of the defendant, or the presentation of his mother as a character witness?". The thought should not be: "What would I like the judge to do?" nor is it "I wonder if I can get this past the jury?" nor is it "I'll have a go".



Or another way of looking at it is ask yourself: "If I were the tribunal, what would I think?" The thing to avoid here is trying to think like the client. You are paid to predict and influence what will happen in court. Whoever it is, be it a burglar, the local constabulary, a multi-million pound business, the client wants you to think for him. And he wants you to work out what will best serve his interests while he lies in the power of the court.

However, there is sometimes a tension created by the client appearing to tell the advocate what he wants done in court. Remember, without becoming arrogant, you will usually know what is best for the client if you can develop an understanding of how the tribunal thinks. If we all did everything clients insisted upon, court could descend into a circus.

Your job is to straddle the fine line between pleasing the client and pleasing the court. Pleasing the court will usually benefit the client. Don't roll over, but at the same time don't undermine the entire courtroom process by becoming the unthinking mouthpiece of a difficult or inexperienced client. If you can anticipate the way the tribunal is thinking, you can craft so much of your presentation to meet its expectation, and soothe its concerns. You are the one with the training. Don't forget it.

If we follow the rules, then within their constraint, it is your job to win. The constraining rules are the rules of evidence, the codes of conduct, and the rules of advocacy. You're assumed to know the rules of evidence. You're assumed to know the codes of conduct. But you'll be learning the rules of advocacy throughout your whole career. So, within those rules, it is your job to win. But not at any cost. Keep the three beacons burning.

And with them burning, now you must fight your case. And really fight it. Simply detachedly presenting the case is insufficient. An advocate must try to be totally committed. Of course we may lose in the end, but it will be fearlessly, bright eyed, and not for want of trying. And remember. There are some who will say expansively with an easy smile they are not interested in winning, but just in presenting the evidence. It is a fashionable thing to say. It makes them seem harmless. Don't believe a word of it.

The above extract is taken from *The Devil's Advocate* by Iain Morley. The book provides you with a fresh approach to the do's and don'ts of advocacy, taking you through the practical applications of advocacy and the techniques you need to become a seriously good advocate.

Iain Morley is a barrister of 16 years call in well-known London chambers and in daily practice in serious crime in the Crown Courts where he prosecutes and defends, including on occasion in high-profile cases. In addition, he teaches advocacy skills pro-bono to all Inner Temple juniors, organises their courses, writes much of the teaching materials, presents training abroad, and teaches the teachers who teach the silks and judges.

The Devil's Advocate (0 421 91480 7) is priced just £12.95 and is available from all good booksellers.



What Legal Week has to say

In a recent review in Legal Week, Charles Hollander QC, a member of Brick Court Chambers said of *The Devil's Advocate*:

"As someone who has never generally found books on advocacy much use, I would be genuinely happy to recommend this work. It is easy to pick up and flick through. It is nothing if not fun to read. You could happily read it on the beach... you could probably read it before breakfast one morning. It rams home some mostly basic, but nevertheless intelligent and important propositions, which even the best advocates often lose sight of.

Nor would I confine the book's use to those of less than five years' experience. Certainly, it should be used by pupils and junior barristers, but we can all learn from its wisdom. Advocacy skills are built up with experience and there is no substitute for experience. But we would all benefit from spending time thinking about our advocacy skills and how they can be improved. Have you ever thought of videoing your advocacy when preparing a case and then playing the video camera back? We might all find some uncomfortable surprises.

Mr Morley tells us that he has written the book in pretty much his style of speech from when he teaches advocacy students. It sounds as though going to one of his classes might be rather interesting. Any takers?"

Did You Know?

Xenotransplantation is the transplanting of organs, eg a heart, from one species to another

- Taken from the new, 10th edition of Osborn's Concise Law Dictionary (0421 900504) available from good booksellers price £9.95

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Don't Let Your Finances Get in the Way of Gaining Your Degree

Are you already worrying about how you are going to manage financially while studying for your degree? Help is at hand with some money-managing advice:

Get a bank account

If you haven't already done so, open up a student bank account. There are lots available so shop around. Remember to look past the incentives on offer and find the real benefits – such as an interest free overdraft. Try to avoid increasing your overdraft or going over it, as this is where you'll start to incur charges.

Try not to get a credit card

Credit cards may seem like a good idea but it's easy for the amount you spend to rack up. If you really want one, try to use it for emergencies only.

Be savvy and you'll be able to save money

Shop around to find the best providers of services and you should be able to save money. Ensure you are with the best mobile-phone network and if you are renting ensure that your utility providers are the cheapest around.

Use your student status to your advantage

One great thing about being a student is all the discounts you are entitled to:

- **NUS discount card** – use your NUS card to get discounts at a full range of shops including Topman and Topshop (10%), HMV (10%), Pizza Hut (20%). A full list can be found on the NUS website at nusonline.co.uk
- **Health care** – Did you know that 60% of students who apply for help with NHS services including dental treatment, optician's costs and prescriptions get them free? Even if you don't qualify you may be entitled to a discount. You can pick up a HCI form from your local hospital, by phoning 08701 555 455, or by visiting www.ppa.org.uk
- **Travel** – The Young Persons Railcard costs just £20 a year and offers a third off to all full-time students (and anyone between 16 and 25). A coach card costs just £10 and entitles you to up to 30% off National Express Coaches. Check if your town or city offers other discounts, for example students in London can get up to 30% off London Transport
- **Work** – if you decide to work part-time to help supplement your studies, you will not have to pay tax if you earn less than your personal income of £4,475 (in some instances you may be charged tax and will have to claim it back at the end of the tax year)
- **Children** – If you have children, make sure you're claiming for all your child tax credits

What does it really cost to be a student in 2005/2006?

You can't budget effectively without having a rough idea of what things cost. Drawing upon a report from the Department for Education and Skills, the NUS have estimated what your average expenditure is likely to be for the current academic year.

AVERAGE EXPENDITURE	Inside London	Outside London
Course Costs		
Tuition fees	£1,175	£1,175
Other fees	£14	£14
Books, equipment etc	£325	£136
Travel to and from University	£641	£452
Sub-total	£2,155	£1,777
Living Costs		
Rent	£3,085	£2,215
Utility bills	£813	£813
Food	£1,287	£1,138
Household goods	£477	£310
Insurance	£78	£34
Clothing	£455	£455
Travel (leisure)	£657	£582
Leisure	£1,486	£1,486
Sub-total	£8,338	£7,033
TOTAL EXPENDITURE	£10,493	£8,810
Potential Income Loan (for 39 week period – excludes amount for long vacation)	£3,881	£3,146
SHORTFALL	£6,612	£5,664

For more information and statistics on student spending, student loans and bursaries entitlement, student debt and student work, visit nusonline.co.uk

Don't let problems escalate

If you are really struggling don't feel that you are on your own, there are places you can turn to for support and advice. In the first instance, talk to your union welfare service, they'll be able to advise you on your options, including the 'access to learning' fund (a non-repayable grant designed to help those in financial difficulties) and gaining sponsorship from charities.

Top Tips for surviving

- Only join the clubs you are really interested in at the freshers' fair – otherwise you'll find yourself spending too much money and you may find you don't have enough time for studying
- Pay big bills such as rent in advance or put the money aside – this way you won't end up spending the allocated money and you'll know how much you have left to budget with
- Transfer your student loan into a separate savings or bank account – you'll gain more interest in a savings account and separating it out will stop the temptation of spending more than you should
- Share tips with other students and discover all theirs – you may find out about a great but cheap night out or the best place to grocery shop
- Switch off appliances when you aren't using them – leaving your TV or lights on is easy to do but you could save pounds by being more conscious (and help save the environment at the same time)





“So how did I spend my time at university? First of all I worked on my tattoo collection, then I worked on my music collection...

...then, I have to admit, I spent a bit of time on my education and built up quite a text book collection.

I wasn't really sure where my social science degree would take me so I decided that one more year wouldn't do me any harm and I took a law conversion course.

Thankfully most of my clients don't mind my tattoos – entertainment law puts me in touch with a lot of rock stars, so most of them have more body art than me. It usually makes them feel at ease knowing that I'm looking after their contracts.

So I kept my books and my tattoos. After all, they've both helped me get to where I want to be... right here.”

David Oliver

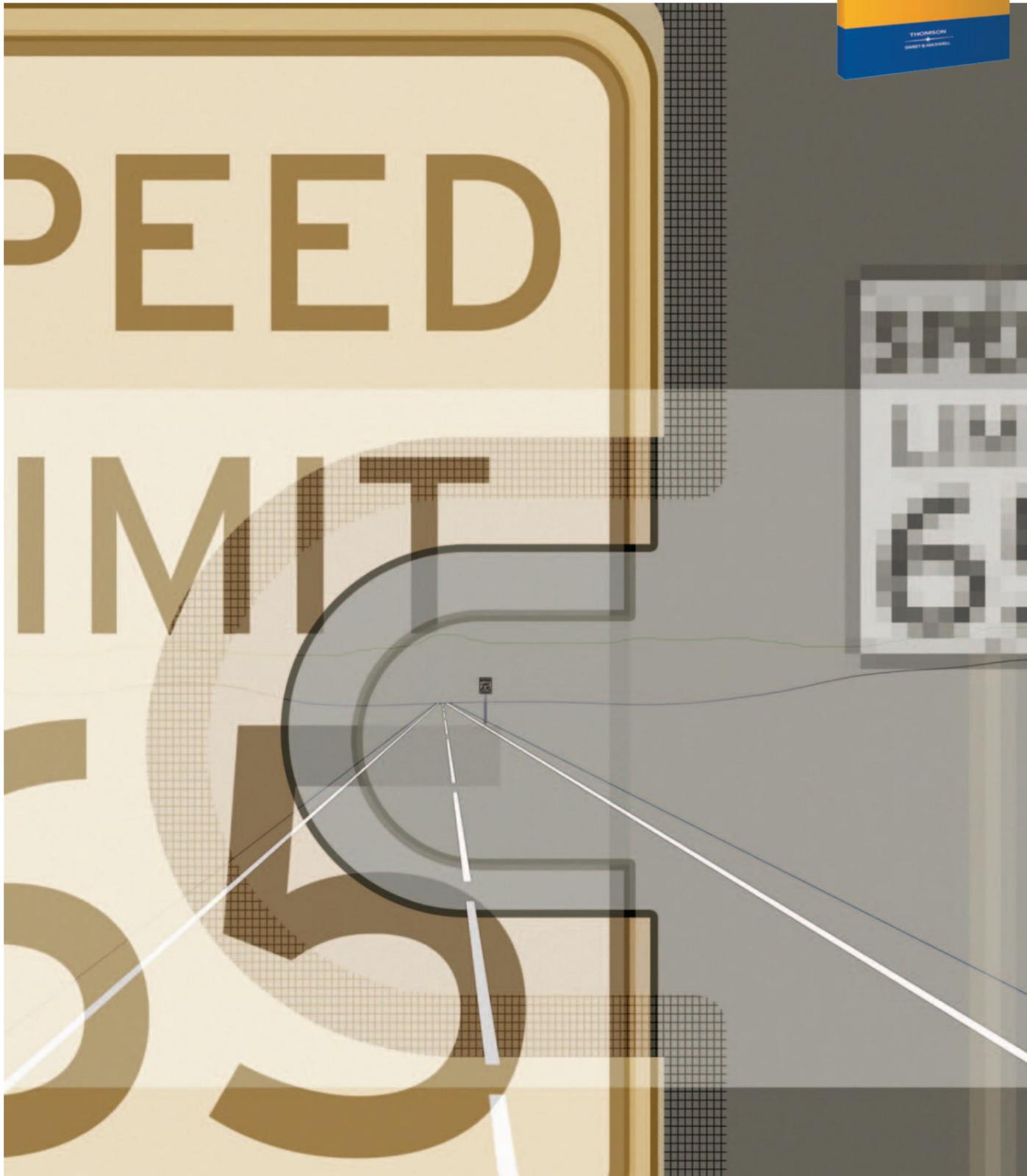
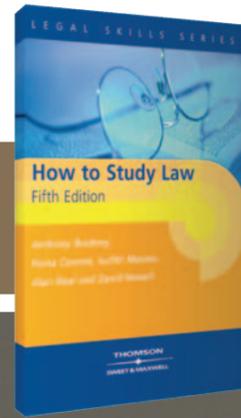
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Time Management

Are you a Saturday morning or Saturday afternoon person?

Time management is one of the most useful skills you can learn. It will not just be useful whilst you are a student, but it is a transferable skill because it can be used throughout the rest of your life. Here, from *How to Study Law*, is advice on effective time management.



your bike. The next list can be for the things you would like to do fairly soon, such as going round to see friends.

Finally, there are a number of things that you would like to do at some point when you have the time, such as writing to your brother; these can go last on your list.

Use the lists you make to keep track of your progress, crossing out the things that you have completed, and highlighting things that still need to be done.

Hidden time constraints

Your time management can be upset by the arrangements made by your institution. It is all very well planning to do lots of research for an essay during the vacation, but not if the library is going to be closed for three weeks.

Equally, you may come across the problem of 'bunched deadlines', where several of the courses you are doing require assessed work to be handed in on the same day. You can alleviate these problems by finding out about the library, computers and other support services well in advance and by asking tutors to give you assignments in good time, but you may not be able to overcome such difficulties completely.

If you are used to planning your time, however, you will be able to deal with the resulting pressure on your time much better than someone who has given no thought to such problems.

Create a physical space where you can be undisturbed, where you can have all the things you need conveniently to hand and where you can read and take notes comfortably.

Organise your notes and your course materials for each course that you study – use different coloured folders or ring-binders for each one. Think about the best times for you to work – in the mornings? In the evenings?

"It is counterproductive to set yourself a deadline that you cannot possibly hope to meet. Many activities will take longer than you think."

Be realistic

Although you will often be working to deadlines imposed by your tutors, it will be up to you to organise your time around those deadlines. Be realistic about how much time you need to set aside in order to complete your essays or tutorial preparation. It is counterproductive to set yourself a deadline that you cannot possibly hope to meet. Many activities will take longer than you think; for instance, some law students are surprised how long it takes them to do the research for an essay!

When you are planning your time, you need to be realistic about your own strengths and weaknesses too. If you are the sort of person who can stay in and write your essay on a Saturday afternoon when all your friends are going out together, that's fine. On the other hand, if you are the sort of person who cannot wake up before midday, it is unrealistic to plan to write your essay at 8.30 in the morning.

If you do not allow yourself sufficient time to do something, you may start to feel depressed and frustrated. If your schedule is realistic, you will gain satisfaction from knowing that you have achieved what you set out to do.

As a law student, you will be expected to do a number of different things: attend classes or lectures, prepare for work for discussion in tutorials, seminars or classes, and write essays. Often you will be given several of these tasks at once.

Clearly you cannot do them all at the same time. You will have to plan carefully, working out how much time is available in total, identifying what you need to do, how long it takes and when you are going to do it, so that you can complete all the tasks before the deadline.

To help plan your time, buy a diary. To be effective, your diary needs to contain a complete record of what you have to do. You need to

carry it with you and add new appointments as you make them.

You could start by putting in all your academic commitments – lectures, tutorials/seminars, deadlines for coursework and so on. Then you can add other commitments as they come up.

"Be realistic about how much time you need to set aside in order to complete your essays or tutorial preparation."

Make lists

Make a list of all the things you have to do. There will probably be more things on your list than you have time to do, so you will have to prioritise the list, deciding what you need to do very soon, and what you can do later.

Think about the best order in which to do things. Make a list of those things that you must do, like attending compulsory classes, and other tasks which have to be completed by a particular deadline, such as preparation for essays or tutorials.

Next, make a list of other tasks that are important, such as getting a repair kit for

Of course, everyone underestimates the time they need sometimes, but you should try to avoid this happening to you too often.

Don't leave things to the last minute. This especially applies to preparation for tutorials and seminars, and the research you will need to do for assignments. If you leave things to the last minute, you may well find that most of the books and articles you need to use have already been borrowed by other students.

You can sometimes rescue the situation by finding the information you need elsewhere, but it takes a lot of thought, time and energy to discover alternative sources of information.

10 tips for time management

1. Keep a diary of what you have to do
2. Make a list of all the things you have to do
3. Keep track of your progress, crossing out the things that you have completed
4. Think about the best times for you to work – mornings or afternoons?
5. Create a physical space where you can work without being disturbed
6. Be realistic about how much time you need to set aside in order to complete tasks
7. It is counterproductive to set a deadline that you cannot possibly hope to meet
8. Don't leave things to the last minute
9. Don't try to study for long periods of time without a break
10. Plan to ensure that you have some time off each week

Keep a sense of proportion

Don't try to study for long periods of time without a break. You will find that making a coffee, going for a brief stroll or reading a newspaper for ten minutes in between periods of study helps you relax and enables you to extend your total period of study. Similarly, plan to have some time off each week. The aim of organising your time is to allow you to plan your academic work to the best of your ability, but also to have some time left over and do all the other things you want to do, including to enjoy yourself and to relax.

The fifth edition of *How to Study Law*, by Anthony Bradney, Fiona Cownie, Judith Masson, Alan Neal and David Newell, is available from good booksellers at £14.95 (ISBN 0421 89380X).

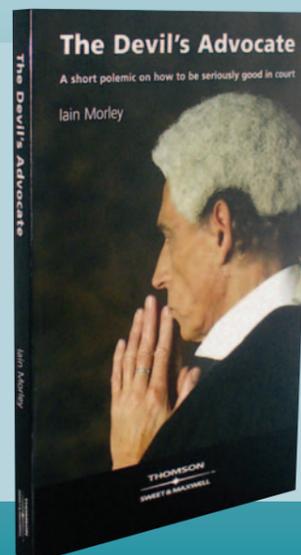
Did You Know?

Witenagemot is the mote or meeting of the wise men. In Anglo-Saxon times it was the great council, consisting of bishops, abbots, ealdormen and other notables, which was associated with the King in the government of the country.

- Taken from the new, 10th edition of Osborn's Concise Law Dictionary (0421 900504) available from good booksellers price £9.95

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A Vexed Question

From 2001 to 2004, as Gresham Professor of Law, Richard Susskind OBE, held a unique series of public interviews with 18 distinguished legal experts. Collected together for the first time, his book, *The Susskind Interviews: Legal Experts in Changing Times*, presents the revised transcripts of these discussions.

Extracted here is part of Richard's interview with John Gardner, Professor of Jurisprudence at the University of Oxford.



Richard Susskind: *Can we start off with what I know, because I used to teach jurisprudence myself, is a vexed question—what is jurisprudence?*

Professor Gardner: In Oxford, we advertise our undergraduate law course under the grand title of “the Honour School of Jurisprudence”, and we mean that to be taken seriously. Literally translated, “jurisprudence” means wisdom about law. When we teach law, we don't mainly have in mind that we'll teach people to be lawyers, although many of them do become lawyers. We have in mind that we'll teach them some legal wisdom.

To acquire this legal wisdom, the students take the law of contract, and criminal law, and all those predictable things. But they also do a course called “jurisprudence” and this is jurisprudence in a more specific sense. It means the theory or philosophy of law. What an undergraduate student would study under this heading would be big timeless problems about law.

What is law? Why do we have it? When is it legitimate? What are judges for? How should we understand what judges do? Those questions arise not just in the English legal system, not just in the common law world, but everywhere where there's a legal system, and one of the things we investigate with the students is to what extent the answers are the same everywhere, and to what extent they vary from one legal system to another.

When I was involved in jurisprudence, largely in the late 1970s until the mid 1980s, it was marvellously alive: very exciting; innumerable conflicting schools of thought; everything that one would want in philosophical debate. To some extent, I have left that world now. Has much happened in the past decade or so? Is jurisprudence still thriving? Has it peaked? Where are we?

Maybe I'm not the person to ask. Obviously I think it's at its very peak now! Seriously, the subject has moved in the last 50 years from the hands of lawyers, straight legal academics, into

the hands of philosophers. Most of the people who teach and study in my area now did their doctoral research in philosophy more than in law, and that's made the whole thing in a way more technical and less accessible. But there are more people doing it nevertheless; it's a much bigger operation. In Oxford at the moment, in a law faculty of about 70, there are 10 or 12 people who are philosophers by training rather than, or as well as, lawyers.

And you're certainly not the person to ask my next question. In my day, as it were, Oxford was the global home of jurisprudence. Is that still the case?

In the late 1980s, when I was a graduate student in Oxford, the intellectual scene was buzzing. Then in the early 90s, when I had my first teaching job there, Oxford went rather quiet as a place to study the philosophy of law. At that point, things seemed to be most alive in New York. But now we're at another point in the cycle, and Oxford is arguably the liveliest place to be again. We're certainly attracting an extraordinary number of excellent postgraduate students. These fluctuations are not mainly because of changes in personnel. In fact, some of the most important personnel have been constant for many years. Mostly the changes have been in other places, in the external environment.

At the moment, we're the beneficiaries of a new enthusiasm for anglophone philosophy of law among Continental Europeans, as well as what seems to be a new intellectualism among Commonwealth law students.

Let's try now to create the flavour of jurisprudence. One way to start is with your two immediate predecessors, both extremely eminent figures: Ronald Dworkin, and before him, Herbert Hart. There was in the world of jurisprudence, indeed there still is, something known as the Hart-Dworkin debate. Here we have two intellectual titans at cerebral war with one another for many years, and the conflict actually became quite lively. I wondered if we could chat about this.

Yes, the conflict strikes me as lively too, but then again, I'm a philosopher, and I find strange things lively. One interesting feature is that it wasn't ever clear what Hart and Dworkin were fighting about. Or at least it wasn't clear over time, because the debate moved on,

and a reply would be met by a rejoinder that somewhat changed the topic.

So part of the excitement was not knowing what was going to happen. It wasn't just always more of the same. It all started with what seemed like a very simple and unostentatious claim that H.L.A. Hart made in a famous book called *The Concept of Law*, which was the claim that in any legal system – this is true, he said, everywhere where you find law – you'll find there's a rule which tells you what are the ultimate sources of law in that system. In English law, for instance, there is the rule that what the Queen in Parliament enacts is law.

Hart admitted that this was a simplified version of the rule that applies in England, but he gave it as an example of the kind of rule he had in mind. He called it a “rule of recognition”. He said anywhere you find law, you'll find such a rule; every legal system has to have one. The way that it would identify law would be by identifying people, officials, who had the right to make law, and in the case of English law, it was Parliament, or “the Queen in Parliament”, which is the technical term.

During his time at Gresham College, Richard Susskind interviewed 18 legal figures and all of the revised transcripts can be found in his book: *The Susskind Interviews: Legal Experts in Changing Times*. Richard Susskind OBE, is Honorary Professor at Gresham College, London, an IT Adviser to the Lord Chief Justice, and an independent consultant to professional firms and national governments. He is Chair of the Advisory Panel on Public Sector Information, is a law columnist at *The Times* and a law professor at Strathclyde University.

Dworkin—amazingly inspired, especially as a young scholar—made an attack on that idea in his very first article. He said that legal systems have another basis: it's not this rule of recognition, it's a domain of legal principle which nobody ever created, which isn't the work of any officials. If you want to know what the domain of principle contains, it contains an idealised version of what's going on in the courts.

If you look at the courts, you'll see officials doing their mundane, humdrum things, sometimes getting it right, sometimes getting it wrong, but if you abstract from the humdrum things they are doing, you'll discover a set of guiding principles, an ideal that they're all aspiring to live up to. This ideal can't be made directly by any officials, so it can't be included

in what Hart called a rule of recognition. And so Dworkin offered an alternative way of understanding the basis of a legal system. You can see straight away why it is a rival approach, not a complementary one. Hart had said that all law is made by officials. Dworkin answered: “Here's some law that isn't. Every legal system has principles that are related to what the officials say, but are not themselves made by officials”. Well, so far so good. But as time went on, Dworkin's work became more ambitious and it became harder and harder to understand whether there was a difference between him and Hart, and if so, what it was.

By the 1980s Dworkin was contemplating not just the nature of judging, not just the nature of law, but the nature of concepts and the nature of philosophy. The earlier criticisms of Hart became somewhat lost in the process. Personally, I found Dworkin's earlier criticisms more fruitful.

But there was, literally, a postscript on all of this, wasn't there, because Hart's book, The Concept of Law, was first published in 1961. However it was after his death, wasn't it, in 1994, that a postscript to the book emerged. Can you take over the story?

Well, it was biographically very interesting, because as time went on Hart became more and more pained by the intellectual distance between him and Dworkin. He felt it was his duty to respond to Dworkin's later work. It was never going to be the last word, because it was quite clear that Dworkin would continue the debate after Hart's death, as indeed he did. But Hart felt that he should nevertheless offer an authoritative restatement of his position that joined issue with Dworkin's more ambitious 1980s work. You can tell when you read the result that Hart was not enjoying the task. It doesn't hang together very nicely, and he gets some of his own earlier positions into a bit of a muddle. In fact, this was reflected in the way the writing was done. Hart died in 1992, but he wrote the postscript in the 1980s. He kept several drafts on the go, and he amended one and then forgot that he had done it and amended another one, so when the editors came to put it all together after Hart's death, they had a tricky job.

There were often rival suggestions in the rival drafts and it wasn't clear which, if any, was Hart's final view.

The editors did a fantastic job in the circumstances but they were editors, not authors, and they couldn't just write their own improved version to hide the obvious problems Hart had experienced in formulating his replies.

You've mentioned Hart's rule of recognition. More generally, a popular characterisation of Hart's position is that his is a rule-based theory of law. He talks about there being two forms of



rules in a society, those that confer powers and those that impose duties, and then he talks about the necessity for rules of change, which allow rules to be changed, and then he talks about rules of adjudication that allow judges to settle disagreements. So people often say that Hart's is very much a rule-based model of the law, and then along comes Dworkin, who says that to understand the law purely in terms of rules is to miss something far more fundamental.

You've already hit on a point at which Hart and Dworkin were at cross purposes. Dworkin thought his job was to be a kind of abstract legal practitioner, to give philosophical advice to judges and lawyers about how they ought to proceed. In fact he thought it was the job of all jurisprudence, including Hart's jurisprudence, to provide that kind of advice. Hart, by contrast, had no such ambition for himself. He didn't have any views, at least none that he disclosed in his work, about how judges should decide cases or lawyers should argue them. So far as we know, he wasn't in favour of judges doing what Dworkin said judges should do, but he also said nothing against it. He just didn't discuss it. He was discussing what had to be there before we got to the question of what judges should do.

When people claim that Hart's thinking was very rule-based, they often build into that claim the thought that, according to Hart, judges should spend their lives looking up rules. That's just not something that Hart ever said, or suggested, or even discussed. So far as we know from his work, he would have been as happy with a world in which there were very few rules, and judges therefore had to do a lot of creative thought, as with a world where there were many rules and therefore judges had to do very little creative thought. All he said was there have to be some rules, including a rule of recognition, and that's where it all begins.

But he makes it very clear, doesn't he, in his introduction to The Concept of Law that his is a work of description whereas, as you say, Dworkin's is actually a mix of prescription and description. That's why it's quite hard to understand often.

It can be hard to understand, because Dworkin said on the one hand here's an ideal for judging, and then he said on the other hand that this ideal has to be present and operating wherever there's judging, even when judges are doing badly relative to it. That's quite a complicated thought, isn't it? It is a thought about the real, non-ideal world that depends on a thought about the ideal world.

Why don't we clarify the matter by focussing on one of the concrete cases that Dworkin discusses, relating to the chap who murders his grandfather to inherit under the latter's will.

Yes, good idea. So what does Dworkin have to say about that? At the time of the case, one could imagine – indeed there were – two conflicting views about what should happen. On the one hand, you had a law of inheritance which said that the will is to be honoured – I'm simplifying, but something like that. On the other hand, you had the thought, which hadn't yet been applied to such a case but which had emerged in some other legal contexts, that nobody should profit from their own wrong. The question which arose for the court was how to go forward with a case like this.

Dworkin argues that the way to do this is to take the cases that you have and see if you can come up with principles that, so far as possible, unify them, and that are also morally acceptable, and then you know the answer to the new case that comes before you. I suspect that Hart, on the other hand, would just have said this: "There's a legal conflict between the rule about honouring wills and the rule about

not profiting from wrongs and somebody has to decide what to do – I, Hart, have no idea how. Somebody else has to write that book – maybe Dworkin!". So you can see how the cross-purposes infect even this example. Hart never actually discussed the case, so I don't know – I'm obviously putting words into his mouth.

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Did You Know?

Wergild is compensation for personal injury

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Becoming a Barrister – Your Training and Recruitment Strategy

Around 575 people each year take pupillage on their way to becoming a barrister. Here, with advice from the Bar Council Education and Training Department, is information on the training you will need and recruitment timetable to follow, including when to apply for courses and when to seek out specific information.



At University

The suggested strategy for those commencing a degree course who are interested in the Bar is as follows.

Year 1

- Find out as much as you can about barristers and the legal profession
- Join an Inn (if a law undergraduate) for information, advice and networking opportunities
- Apply for work experience in a solicitors' firm and for mini-pupillage in barristers' chambers
- Participate in activities such as mooting, debating etc

Second-year law undergraduates and third-year non-law undergraduates:

Autumn Term

- Attend legal careers events
- Investigate funding possibilities for next stage, for example Inns scholarships
- Check closing dates for applications to courses and funding

Christmas Vacation and Spring Term

- Apply for mini-pupillages and other useful work experience
- If applying for conversion course, do so before February closing date
- Attend legal careers fairs and Pupillage Fairs (March/April)

Summer Term

- Enquire about pupillage applications

- Obtain application details for Bar Vocational Course
- Study prospectuses of BVC Providers

Summer Vacation

- Gain work experience

Final-year law undergraduates or non-law graduates on conversion course:

Autumn Term

- Join an Inn (compulsory requirement for starting Bar Vocational Course)
- Apply for Bar Vocational Course (check closing date)
- Check out funding possibilities, for example Inns Scholarships, and closing dates (usually November)

- Make further enquiries about pupillage (you should ideally have started this process already and completed one or more mini-pupillages)

Spring Term

- Apply for pupillage through OLPAS (Summer Season applications). March/April.
- Attend Pupillage Fairs

Summer Term

- Obtain academic stage qualification
- Check progress of Summer Season OLPAS applications - May/June/July.

1st Year BVC – Autumn Term:

- Apply for pupillage through OLPAS (Autumn Season applications) if you were unsuccessful in Summer Season. September/October

For more information visit legaleducation.org.uk

To qualify as a barrister there are four main stages of training you must complete:

1 Academic Stage – You will need an undergraduate degree in law, or undergraduate degree in any other subject at the minimum of a 2ii. If you choose the route of an undergraduate degree in a subject other than Law you must take a one year full-time or two year part-time conversion course (CPE).

2 Vocational Stage – You must join one of the four Inns before you commence this stage of training. The Bar Vocational Course, one year full time or two years part time. Once you have successfully completed the BVC you will be Called to the Bar by your Inn. However, from 2008, Call will not take place until you have completed pupillage. You will also have to undertake 12 qualifying sessions (previously known as "dining") before being Called to the Bar.

3 Pupillage – twelve months spent in an authorised pupillage training organisation (either barristers' chambers or another approved legal environment).

4 CPD – continuing professional development. Barristers are now subject to certain requirements in order to keep their practising certificates. CPD is usually in the form of courses or lectures.

Recruitment timetable

Here's a suggested timetable for recruitment to the Bar, including when to apply for courses and when to find out specific information. Please note that this is only a guide, and you may wish to follow your own timetable. However, always make sure you have found out when the closing dates are for BVC and pupillage applications. In general, you must apply one year before you wish to start the BVC (apply from October the year before), and one to one and a half years before you start pupillage through the OLPAS system (in March for starting pupillage in September the following year).

Before University

There are no specific subjects that you need to study at GCSE or A level in order to practise as a barrister. However, some chambers and employers include performance at GCSE and A-level in their selection criteria as evidence of consistent academic achievement. The key decision at this stage will be whether to study law at undergraduate level or whether to study a non-law subject and then undertake the CPE/PGDL conversion course.

Did You Know?

Procedendo is a writ which was formerly issued to move a case back to a lower court from the High Court or to restore an order of the lower court

- Taken from the new, 10th edition of Osborn's Concise Law Dictionary (0421 900504) available from good booksellers price £9.95

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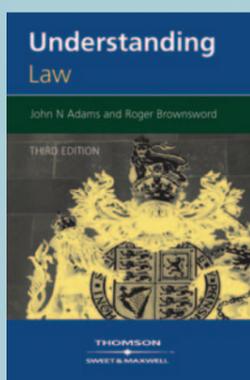
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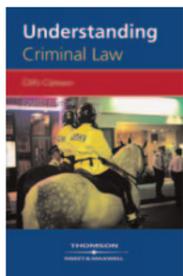
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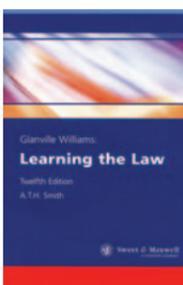


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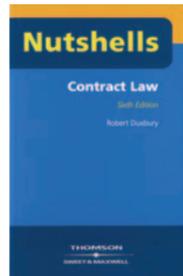
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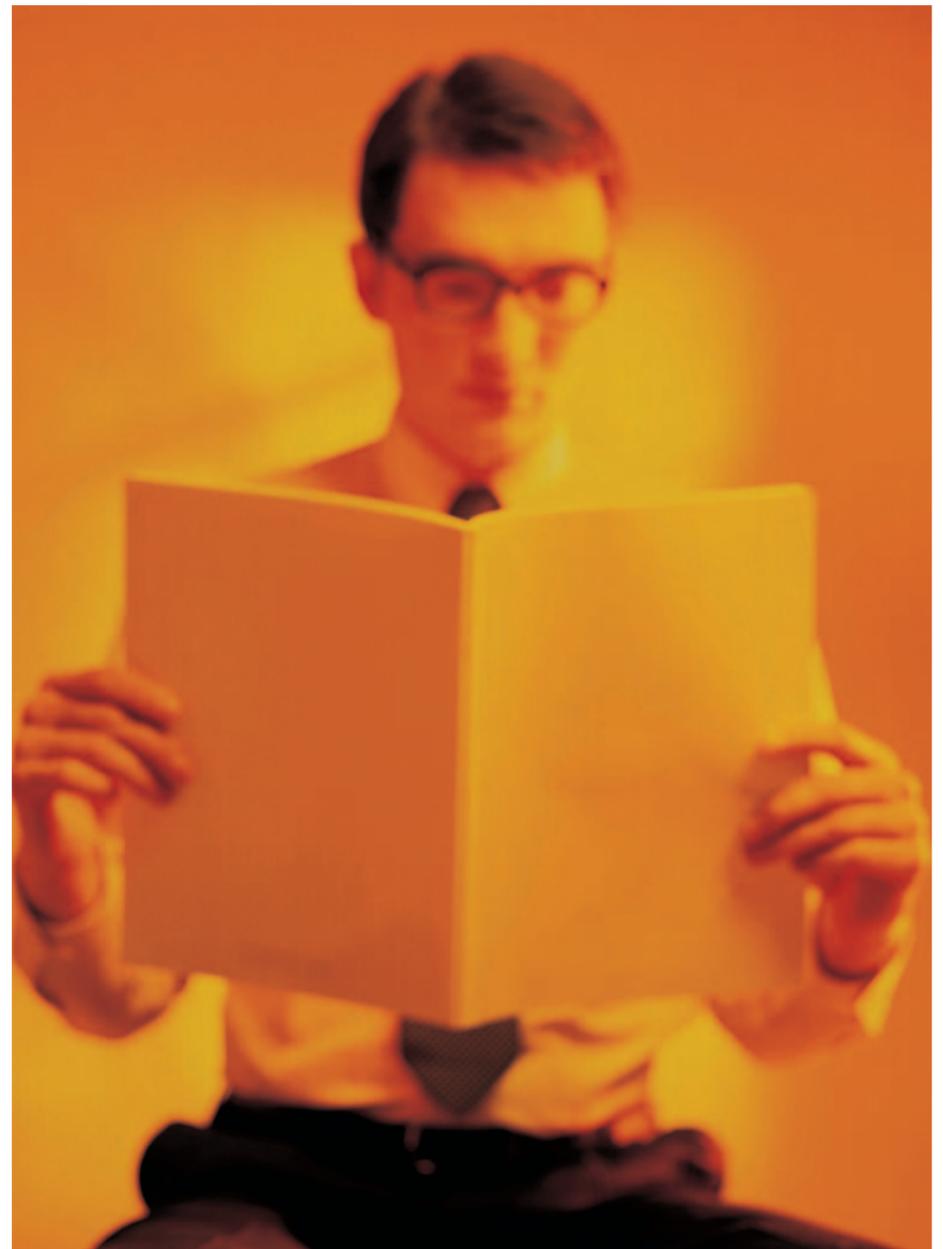
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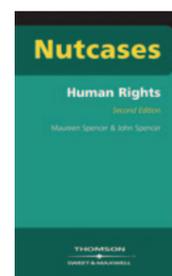
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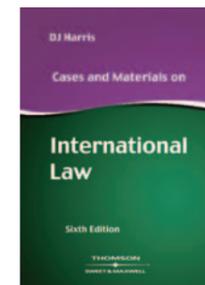
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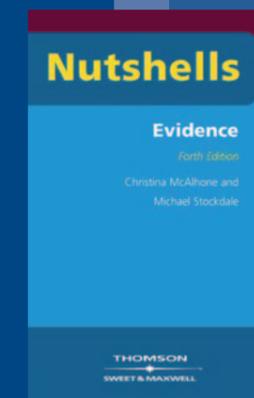
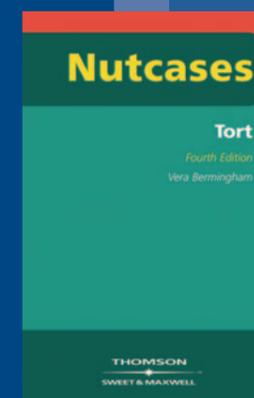
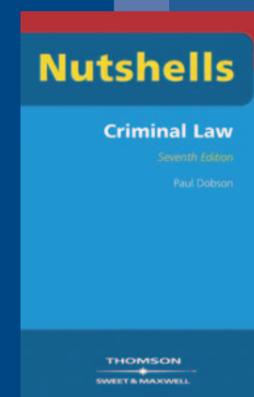
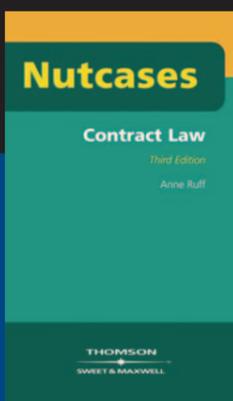
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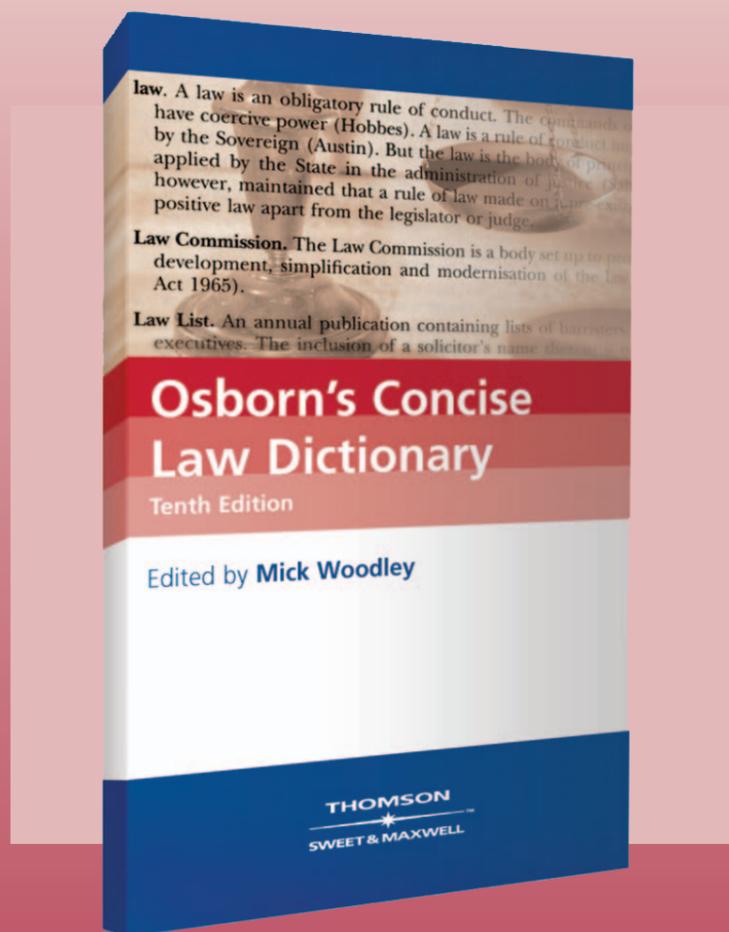
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