Smoke Balls and Caffeine!

Things I wish I'd known
as a first year law student

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with illustrations by
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for Louise

(because everything is)
Smoke Balls and Caffeine! ~ Things I Wish I’d Known as a First Year Law Student

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This book was written with two purposes in mind. The first, obviously, was to try to provide some useful assistance to undergraduate law students (although high school and postgrad law students are welcome aboard too!).

The second, and perhaps even more important objective of this book, is to contribute to the work of the Australian Legal Information Institute (AUSTLII). Put simply, AUSTLII has changed the world. It has brought the law to the Australian people - for free. And it has pollinated similar websites all around the world.

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AUSTLII relies on donations for its funding. So here is my appeal.

You are reading this book for free. I won't make a single cent for the time I've put in to writing and producing it. And that's fine. However if you find this book to be helpful - if you think it was any use at all - please consider logging on to AUSTLII and making a donation, no matter how modest. Five bucks will do. Twenty would be awesome. If a thousand people gave five bucks each to AUSTLII, that would be the greatest reward I could ever want, from writing this book.

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Introduction

One of the happiest times a law student will ever have is the tiny, tiny interval between having their university application accepted, and actually commencing their studies.

During that time, anything is possible, and dreams are unbounded. A pre-first-year law student may validly dream of being a High Court judge, or a great reformer, or a ridiculously wealthy silk.

But then the study begins, and law students suddenly find that law study is hard. It's hard work, it's complex, and not everybody can do it. Unfortunately, of the students who commence the study of law, a very great number will not complete their degrees. Other dreams will have to replace the dream of law.

Recently, I finished my own LLB, at the University of New England. The graduating class was so much smaller than the average first-year group. Yet we had done it. Struggled through. A few days after that ceremony, I had a conversation with a young acquaintance in year 12, who was applying to study law. I suddenly realised that I had learned a terrific amount about being a student, and he was about to learn all of those lessons, all over again. That’s when I decided to have a go at writing this book.

This book contains hints and tips distilled from my own process of studying law, and that of my colleagues. It was heavily influenced by the Legalised.com group, back when that website still existed. I hope that it helps new, keen law students to maintain their enthusiasm, and convert enthusiasm into success.
The Author

Anthony Marinac has spent an insane amount of time studying. He commenced his first degree, a BA in political science, in 1991 (when the Central Library at UQ still had a card catalogue, and you could still submit handwritten assignments). He completed a Master's degree in Management at ANU in 2000, and a PhD in political science at the University of Queensland in 2002.

You’d think that would be more than enough for any sensible person, but no. Anthony graduated Bachelor of Laws with first class honours from the University of New England in 2011, and was awarded the University Medal. He followed that up with a Master of Laws (Research) with Honours in 2012.

He commenced his career as a public servant, eventually serving as a Senate Committee Secretary and Director of Research in the Australian Senate. These days he is a Legal Officer in the Royal Australian Air Force. Anthony has promised his family he will stop studying now. He didn’t make any promises about not writing books though …

The Illustrator

Insert here Howie’s bio
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1. Some general issues

Most of the chapters of this guide assume that you’re at university, studying law, and you’ve enrolled in subjects for this semester. However there are a few tips that may be useful outside that framework, from the first moment you consider studying.

Tip #1: Consider whether law study is really for you

What an awful way for this guide to begin! Realistically, the last thing I want to do is scare anyone off before we even get underway. However the truth is that lots of people turn up to study law because they like the idea of being a lawyer. They’ve seen NCIS, or JAG, or Boston Legal, or Rake, or maybe even old repeats of Rafferty’s Rules, and they want to be a lawyer. That motivation is pretty normal. If we’re being honest with ourselves, most of us got some level of motivation from watching legal TV (I wouldn’t want to be Cleaver Green from Rake, but I’d love to go drinking with him).

However before you get to be a lawyer, you have to be a law student. Most of being a law student (and, for that matter, most of being an actual lawyer) is not at all like it seems on the television. Here are some things you will need to consider:

(a) Law study involves reading. And then more reading. After that some reading. For the next few years, you will not want to read novels, because your eyes will have had enough. TV? I remember TV. TV was that thing everyone else was watching while I was reading. Get the picture? If you’re one of those people who learns best by listening, or by doing practical things,
or by looking at graphical information, law study is going to be hard, hard work for you.

(b) Law study involves very little originality or creativity. There are some universities who are providing more elective options which look at the law in social context, and which may provide a forum for creative thinking. However most legal study is not like that. Most legal study is about learning the law as it is, and learning how the bits fit together. A good analogy is a kids’ plastic block set. Sure, there is great potential for creativity. But first, you have to learn all about the pieces, and all about how they fit together, and what each of them can do. In the law degree, that’s all your doing – learning the pieces. Later, as a practitioner or a postgraduate you will have more opportunities for creativity. But as a student? Not so much.

(c) Most law is not actually all that complex, but there is a lot of it. Even if you follow all of the tips in this book, you are still going to have to learn and awful lot of stuff. Don’t underestimate this.

Still with me? Still keen? Good. I don’t want to dampen anyone’s enthusiasm, but I don’t want you to be uninformed either.

Tip #2: Don’t forget the notion of justice, but don’t expect to see it everywhere either

For some reason this can be one of the hardest things for mature age students to get. We all have this fundamental idea that the law is meant to be about justice. The idea of the law is to produce justice, both across society as a whole, and in individual cases. That notion is almost sacred.
It's also a notion that will be challenged time and time again in your law studies. Remember, every time two parties go to court, each of the parties believes that the just outcome would be for them to win. Justice looks very different from different perspectives. So, while I would never want you to give up your sense of justice, don't mistake your personal notions of justice, for actual legal analysis. It will just lead to heartbreak, and low marks.

Let me give you an example. Early in my degree, I did Contracts. We had an assignment where we had to provide advice to a client, a relatively unsophisticated litigant (I think it may have been a single working mum). She had made a contract with a company to do some work on her house. It was a bad bargain, and the company did some shoddy work which was within the terms of the contract, but still didn't stand up to the first decent storm. She tried to sue them for breach. I had started constructing this brilliant argument as to how she should be able to imply all sorts of warranties into the contract, because it seemed so damned unfair that she might have to bear the cost of the shoddy work. Eventually, though, I realised that even though I hated it, the truth was that she had gotten what she’d contracted for. There was no breach. And that’s what I wrote in the assignment. I got a good mark, and most of the people who backed the single mum, got bare passes or fail marks. Sometimes the bad guys win.

**Tip #3: Choose your subjects carefully!**

Towards the start of your degree, this is not likely to be a massive issue. Most universities carefully structure the initial parts of each degree so that you get a basic background in the key areas of law before moving on. You can’t really
understand Corporations Law, for instance, unless you already understand Contracts, Equity, and maybe Property.

However there can be real challenges for part-timers, who are doing less than the usual student load, and there can be real challenges for people who end up out-of-sync with the usual program (perhaps because you fail an early subject). Be very careful. Don't be afraid to contact lecturers and say “which subjects should I have already done before I try your subject?” Don't rely on the formal pre-requisite subjects. They are an absolute minimum.

Next, think carefully about your elective subjects. Many electives are not offered every semester. Some are only offered every second year. So it may be necessary to think some time ahead, about the subjects you intend to complete.

The best plan is to sit down at the start of your first year and plan out your entire degree – right to the very end, electives and all. Then, at the end of each semester, revise the plan. Some electives will initially seem cool, until you learn more about what they involve. Scheduling will change. But if you start with a plan and then amend it as you go, your degree will be far less random.

Tip #4: Plan your semester

This one ought to be so obvious that you're slapping your forehead. But lots of students don’t bother to plan their semester. They generally let the lecture plan carry them along, until about ten days before the assignment is due, then there is a mad flurry of panic as they complete their assignment, before they go on the mid-semester break, and settle back into the passive routine of letting the lectures carry them along, until the last lecture when they madly begin to prepare for exams.
If this is you, thank goodness you've got this book. If I could reach out from the pages and slap you, I would. You must, must, must plan your semester.

Obviously the assignment due dates, and the exam period are important key dates. However there are others. Here's how my typical semester looked, for a single subject.

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>After Xmas – mid-February</td>
<td>General reading; nutshell guides</td>
</tr>
<tr>
<td>Mid-Feb:</td>
<td>Classes start. Get general base of knowledge.</td>
</tr>
<tr>
<td>Start of March:</td>
<td>Focus on assignment. What topics relate to it? Read these first!</td>
</tr>
<tr>
<td>First of April:</td>
<td>Need first draft of Assignment done</td>
</tr>
<tr>
<td>22 April:</td>
<td>Assignment due.</td>
</tr>
<tr>
<td>Mid-semester break:</td>
<td>Catch up on any reading/lectures missed due to Assignment season</td>
</tr>
<tr>
<td>After break:</td>
<td>Immediately start preparing examination materials and exam notes.</td>
</tr>
<tr>
<td>Two weeks before exam:</td>
<td>Start doing practice exams</td>
</tr>
<tr>
<td>Exam date:</td>
<td>12 June</td>
</tr>
</tbody>
</table>

Now, I'm not saying you need to follow my plan exactly. It worked for me, it mightn't work for you. But you must have a plan of some sort. Otherwise, by the time your assignment starts to fall due, you will already be way behind. For many

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1 See Tip #15 for more on nutshell guides
students, their entire university experience is one of feeling way behind and trying to stay afloat. These students seldom end up with degrees. If they do end up with degrees, they also end up with stress migraines. It’s just too hard. Don’t be one of them.

Tip #5: Externals face extra challenges

I have spent more time as an external student than as an internal student. I know it can be done, but I know it is really hard. Here are some things to think about:

(a) What is your study environment going to be like? Do you have a room at home set aside for study? Seriously, you will need one. If you do, are you going to be constantly disturbed by the noise from everyone else at home? Will the kids have the television blaring next door? Is the chair comfortable? You’re going to be spending a lot of time in this room. I’ve heard stories of people successfully studying on their living-room coffee table, but surely there is a better way.

(b) Make agreements with your family about timings. If you normally get home from work, say, at 5.30, perhaps you can agree that you won’t open a textbook until 8.30. You’ll give all your attention to your family until then, but at that time, they need to let you go and study until 10.30. If everyone understands, and agrees to the rules, then you will find you are pulled away from your study much less, and you feel much less guilt. Mums, I’m talking to you. Some of the most extraordinary students I met were mums juggling kids and study. They were usually juggling guilt too, at the amount of time
spent away from family. If you have a deal, the guilt will be less.

(c) Remember that your family is making sacrifices, especially at intensive times like exams. Make it up to them. I know one woman who used to make a deal with her family that the week after exams, she would take the week off work and they - her husband and kids - could decide what was going to happen for the whole week. They would decide the activities, they would decide what the family would eat, where they would go, the works. In the end, the family looked forward to exam time, because of the fun that came afterwards. I know another Mum who used to give her kids a teddy bear every time she passed a subject, to thank them for their help. Her kids knew that when they had 24 teddy bears, Mum would be a lawyer. Yes, it's kind of dumb. But it worked.

(d) Finally, everything takes longer when you're an external. You can't just go to the library, and if you request books they might take time to arrive. You can't just doorknock the lecturer's office. Don't underestimate these challenges. Build them into your semester plan. Planning is everything, especially for externals.

(e) Start slow. If you're new to study, you are heaps better off to start with one subject for the first couple of semesters while you and your family get used to living with the beast that is university. Better to do one subject and get a Distinction, than to do two subjects and scrape passes.
2. Classes

Law students generally have four formalised opportunities to learn from the teaching staff face-to-face: at lectures, tutorials, seminars, and semester schools. They are all different, and they are all important.

**Lectures** are generally of between two and four hours' duration. They may (particularly early in your degree) involve several hundred students in a large lecture theatre, learning from a single lecturer. As you progress through the degree the lecture groups will get smaller. In some final year elective subjects, the group may be as few as a dozen, or less. Lectures are commonly recorded, with recordings made available to students online. Lectures are traditionally regarded as the centrepiece of the learning week for each subject.

**Tutorials** are much smaller sessions, usually of 8 – 15 students and one tutor. They usually last an hour to two hours. The tutor may be the lecturer, or might be a postgraduate student or a legal practitioner with an interest in the subject being taught. Tutorials are much more interactive and discussion-based, and give you a far greater opportunity to discuss points of confusion, and argue about points of contention. A good tutorial group, full of active participants, is an excellent learning environment. A bad tutorial group, full of lazy gits who don't do any reading, is like a funeral.

**Seminars** are mid-way between Lectures and tutorials. They are only really used for smaller subjects, with no more than 40 or 50 participants. The lecturer usually moderates the discussion, and encourages input from the students who are present. In some subjects, participation will be graded. A seminar held by a skilled lecturer can be a great way to learn,
but it usually makes for a very poor podcast, which can be frustrating for external students.

**Semester schools** or “intensive schools” are usually held in the mid-semester break, over three or four days. They are usually reserved for external students, and are generally voluntary, as not all external students will be able to travel to attend the semester schools. For external students, semester schools can be a fantastic way to deal with study at a time when the student doesn’t have to deal with life/work/family at the same time. They have become less popular with students, but this seems crazy to me.

**Tip #6: Get to as many classes as you can.**

Seriously, if you are an internal student, promise yourself that you will attend every lecture. Let no beer keep you from this purpose! Being able to attend classes, to spend time face to face with the people who will be marking your papers, the chance to ask questions, the chance to interact with other students – all of these things give you tiny little advantages that add up over time. Getting to classes is one of the biggest advantages an internal student has. Take it!

For external students, get to as many semester schools as you possibly can. They may be expensive, and may eat up your work leave, but you will find that in the end they save you time, because you come away from a four day intensive school with massive gains in your knowledge – gains you don’t need to make at midnight by ploughing through a textbook.

**Tip #7: Listen actively, not passively**

Most students, in most lectures, are frankly wasting their time. You can see them on any day, in any lecture theatre. They’re
sitting back, looking around, doodling on their pad, checking out the guys and girls who take their fancy, and learning nothing. Simply sitting in the lecture theatre is not going to cram the info into your head. You need to actually engage with what’s being taught.

I have found that the best way to do this is by taking notes. Duh, you might say. However there is more to it than that. What you need to do is (a) pretend to yourself that the lecture is not being recorded, so this is your one and only chance to get the information, and (b) pretend you were going to have to deliver the same lecture the next day. If you can get yourself in that frame of mind, your brain will kick up a gear and be at its most receptive for the period of the lecture.

**Tip #8: Ask high-value questions**

You know the old saying “there’s no such thing as a stupid question”? That saying is bollocks, and everyone knows it. There are lots of stupid questions. What people really mean is that they don’t want you withhold the good questions for fear they might be stupid questions.

In a lecture environment or a semester school environment, when time is at a premium, consider whether your questions are high-value questions. High-value questions typically fall into two categories:

(a) Questions which ask a lecturer to provide more information, on a point where they haven’t made themselves sufficiently clear; or

(b) Questions likely to be relevant and interesting to at least 75% of the students in the room, or listening online.
Low-value questions, on the other hand, are a waste of the precious resource that is a lecture. Low-value questions are generally of four categories:

(a) Questions that go off on wild tangents which may be interesting to the student, and maybe even to the lecturer, but which are not interesting to the vast majority of the group. For instance, if the lecturer is discussing a Contract case involving the sale of a boat, a wild tangent might be asking whether the boat was a yacht or a tinny; or trying to argue the sale would have been invalid because the purchaser didn't have the right boating licence.

(b) Questions which are really an attempt by the student to “show up” the lecturer by showing the lecturer is misinformed. Unfortunately you see this one all the time, and it usually involves a student saying “but what about the outcome of Smith v Bloggs?” where Smith v Bloggs is an obscure case, not even on the reading list, which the lecturer actually knows all about but has left off the list for good reasons. Questions like this usually lower, rather than raising, everyone’s opinion of the student.

(c) Questions which paraphrase in a reflective style. Everyone who has ever done a communication course has been taught that a great active listening method is to paraphrase the speaker's statements back to them. And that works well in a one-on-one situation. It’s completely inappropriate in a lecturing situation. 100 other people don’t want to sit around listening to a single student demonstrate how well they’ve understood the last 5 minutes of the lecture.

(d) Endless supplementary questions. Usually, the best idea is to ask your question, take the answer
(whatever it may be) and move on. On rare occasions, a single follow-up question might be OK. But beyond that, for heaven’s sake stop before other students start chucking pens at you.

Having said all of this, the rules are much broader in tutorial or seminar situations, where the conversation is supposed to be two-way traffic. In addition, sometimes the tangential or supplementary (or even reflective) questions can be useful to you personally. So you can still ask them – but do it by emailing the lecturer, after the lecture. That way you still get your answer, but nobody else gets bothered.

When you get to the subject *Equity and Trusts* you will come across a case called *Latec v Terrigal*. It was my nemesis. Damned if I could understand it. When I eventually got my head around it, I wrote out an explanation in my own words and emailed the lecturer, to ask if I was finally understanding it. The response was simply “By George, he’s got it!” This was a reflective question, completely inappropriate for the lecture, but perfectly OK by email.

**Tip #9: Get rid of your phone**

I'm like you. If I don't check my phone regularly, I get the twitches. If I get bored, my app collection beckons. So I’m not going to try to run the old “turn your phone to silent, it's so rude to have your phone” line on you.

However there are some really good reasons to have your phone out of immediate reach in lectures. First and foremost, it's a distraction you don't need. Even if it's on silent, I want to know if I've got new SMS messages, emails, or social media messages. If I feel it vibrate, I literally cannot concentrate until I know what the message was. Stop laughing at me, you’re the same and you know it.
Trying to study something as complex as law with such a distraction? Impossible.

Second, much as I hate to admit it, not every lecture you attend is going to be universally fascinating. Some aspects of law are boring. I yawned my way right through the explanations of Old System and Torrens Title in real property law. If I’d had my phone with me, I’d have been fighting zombies and listening to the 80s through my earphones. And I’d probably have failed the exam. It was boring, but it was necessary.

**Tip #10: Think carefully about your note-taking device**

Generally speaking, students seem to use one of three devices for note-taking: a notebook computer, a tablet computer, or pen and paper. Each of them has advantages and disadvantages.

Notebooks and tablets both have the advantage that the information is stored immediately in a form that makes it relatively easy to use for later revision. There’s no need to retype, and you can cut and paste to your heart’s content, or merge your lecture notes with notes from your readings. It’s very useful – if you actually do any of these things.

There are basically three disadvantages to the high-tech solutions. First, there is an ever-present temptation to do other stuff during the lecture. Tip #9 says all I need to say about that. Second, for notebooks in particular, the sounds of you constantly keying will be an unwelcome distraction for the folks around you. Yes, it’s a tiny noise, but the repetition of thousands of keystrokes in a two hour period may make those around you secretly want to kick you as you walk out of the lecture theatre. Third, for longer sessions, you may need a
power source. I have always been secretly amused to see the desperate notebook users fighting one another for possession of the seats close to the nearest available power point.

Handwritten notes have a number of advantages. They are usually more amenable to random scribbling – notes, boxes, arrows between ideas, and so on. These can usually be done on a screen, but nowhere near as efficiently. Second, I personally believe that whatever mental process is required for handwriting, somehow helps to lock the information into my mind better than the typing process. But that’s just me. Third (and this might sounds silly until you read the “Examinations” chapter of this book) notetaking helps to build your writing endurance and legibility, so that you will stand up to examinations better.

On the other hand, handwritten notes have disadvantages too. The biggest is that unless you type them out again, you’ll probably never read them. Typing them out can consume considerable time, and while that might seem OK at the start of the semester, when you get towards the middle and have three assignments due on the same day, it won’t seem nearly so achievable.

So, in the end, the best tip is simply to see what works best for you – but don’t just use a notebook computer because you have one. You may find you’re better off to leave it at home and grab an old-school paper notepad.

Tip #11: Think carefully about where you are going to sit

Believe it or not, this matters. Depending on your own personal circumstances, there are a number of factors to consider when selecting where to sit. These include:
(a) The location of the screen. Most lecturers will accompany their presentation with computer slides. Some will use video or similar material as a supplement to their lectures. Obviously, the more easily you can see these, the better. Some rooms have particular issues with glare, making the stuff on the screen virtually invisible to parts of the classroom. In other parts of the room, the lecturer themselves is likely to be blocking the screen. If you wear glasses (or if, like me, you are in the habit of forgetting them), then this will also have an impact.

(b) The location of any distractions. I once wasted half of a lecture watching a game of cricket I could see on a nearby oval. I was also once distracted beyond reason for ten solid minutes by a pretty girl outside the window who I'd never have dared to actually speak to, let alone ask on a date. She sure was pretty though. And I have no idea what was being lectured. Yeah, we're all supposed to be mature adults with our mind on the job, but distractions don't help any.

(c) Ingress and egress. You don’t want to get everything set up, and then have to jump up and down constantly as people make their way past you. Also, if you have to leave the lecture ten minutes early, please – on behalf of all students, please – sit by the doors so you're not in everyone's way as you try to leave.

(d) Power points. If you're using a notebook computer and it needs juice, you'll want to know where the power points are. Most universities won’t mind you robbing a bit of their electricity. However there are protocols to be observed. First, try not to have your cords and cables over any walkways where people will trip on them. If this is unavoidable, at least wait
until the actual start of the lecture to plug in, and pull the plug for any breaks. Second, you may need to negotiate with other users who are also running low on battery. Perhaps one of you can use the power for the first hour, and the other for the second hour.

(e) Your friends. One of the best things about university is the friends you make. Friends and study-buddies are an important part of your studying success. In class, however, they may be a distraction you can't afford. If your best mate is a compulsive chatterbox, you may have to either make a deal about how much (or little) to communicate during classes, or in the worst instance you may actually have to sit somewhere else.
3. Readings

If you are reading this book at the start of your degree, I can promise you that readings will take up about 75% of your study time over the next few years. If they don't you're probably not reading enough. The law, by and large, consists of written words, in legislation and in case reports. The only way to learn the law is to read.

Having said this, there are a range of things you can do to get the most out of your reading, and to waste as little time as possible.

Tip #12: Read efficiently

As a student, time is your most valuable resource. If you're an external student, this is even more the case. There are only so many hours in a day, so every hour you spend studying has to be worthwhile. Many students I have spoken to are wasting far too much of this valuable resource by reading inefficiently. They spend hours upon hours reading every word of every paragraph of every prescribed reading, and becoming more and more frustrated by the day. “How,” they ask, “am I meant to read 250 pages of readings this week, as well as posting on the bulletin board and starting my assignment?”

They're right, it's impossible.

At least, it's impossible to read every word in quite that way. The trick is to learn to read efficiently. There are various ways to do this. Some people do it by speed-reading. That's never worked for me, I find that my comprehension levels drop away quickly when I start reading quickly. Here's how I do it. This section refers mainly to readings from textbooks and journal articles, but you can use the same principles for reading cases.
Step one: Look at the headings and work out the structure. You will find that virtually all textbooks and journal articles break their material down using headings and subheadings. If you type those out or jot them down in a list, ignoring the information between them, you will be looking, essentially, at the “plan” or “structure” that the author started out with, when they were writing the article. It’s very difficult to do just by flicking between the pages, so it’s worth rewriting. Once you see the plan laid out, quite often the whole reading immediately starts to make much more sense.

Step two: Read the first paragraphs. You will find that most sections commence with a single paragraph that outlines the core ‘thesis’ or main point for the whole section. So, you can gain a very rapid appreciation of the content of the whole material, just by reading the first paragraph after each subheading.

Step three: What are they trying to tell me? At this point, you can ask the all important question “Why?” Why has the lecturer asked you to read this chapter or article? what are you supposed to be taking away from it? You should have enough clues from the structure and the first paragraphs, to pick out what you are meant to be taking away from the reading.

Step four: Read the important bits. Now that you know the structure of the reading, and you know what you’re meant to be taking away, it will be an easy matter to identify which are the important bits of the chapter or article, and which are the bits you can either skim-read or safely ignore. It will be very rare indeed to come across an article which is completely important from start to finish (but if that’s the case, you will have time to read the whole thing because you’ve saved time on other articles, by using this process).
Step five: Three key dot points. Finally, close the textbook or journal article. Put them away. Now sit down in front of your computer and type out the three key dot-points from the reading. You’ll find that almost all of these readings can be boiled down into three key dot points. If you can do this comfortably, you can be confident you have understood the material appropriately.

If you follow this plan, you will get all of the relevant information, usually in about a quarter of the time, with about a tenth of the frustration levels. Give it a shot.

Tip #13: The highlighter is not your friend

I guess I need to start this tip by making a hypocrisy declaration: I have been guilty in the past of being one of those silly idiots who sits there with a textbook madly highlighting anything that seems important. But you can profit from my mistake.

If you are reading (as opposed to researching, where you are looking for specific little nuggets of information), the highlighter is actually very dangerous. Here’s how it works. You are reading a long, complicated section of the textbook, trying to get your head around (say) public nuisance, and whenever you read something important, you hit it with the highlighter, think “Right, I’ve just indicated that this bit is important!”

In fact, you've probably done the exact opposite. Once the material is highlighted, instead of locking the material in, you'll find that your brain says “Righto, I’ve dealt with that little factoid, so now I can move on.” And the learning is immediately erased.
If you’re a highlighter-person, I can just about hear your objection: “But wait, I go back and type out all of those highlighted notes later!” Well, if you do, there’s probably not too much harm done. But if you’re going to type or write it all out later, why not just do it at the time you are reading? Otherwise you are just doubling your workload, for no real benefit. Besides which, if we’re being honest with one another, most students are being rather optimistic when they claim to have typed out all of their highlighted material. It doesn’t happen.

**Tip #14: Think about when to read**

By “think about when to read” I don’t mean “think about what time of day to read”. If your eyes are open, that’s a good time to be reading. What I mean is, think about what point during the week you want to do your formal readings. Basically you have three options.

**Before the classes.** Many lecturers prefer for their students to do the readings prior to the lecture. If you have tutorials, you will certainly perform better in them if you have done some reading. Some students find that if they have done the reading prior to the lecture, they get a great deal more out of the lecture. They already have some familiarity with the material, so they can concentrate on using the lecture as a way of sorting through the information in their heads, and putting it all together in context. In a world with unlimited time, this would be my suggested ideal method.

**After the classes.** The benefit of reading after the lecture is that you can read far more efficiently. During the lecture, the lecturer has condensed all of the material down into a two-hour bite sized chunk. By condensing the material, they have effectively shown you which aspects of the material they
consider most important, and they have also shown you a logical structure which lets all of the material fit together nicely. With all of that knowledge already in your possession, you can follow tip #13 far more effectively and thus use your precious time more efficiently.

Reading after the classes does, however, also have two significant disadvantages. First, you don’t get as much out of the lecture because the lecture material is all new to you. Second, if you only read the material identified by the lecturer as important, you may well miss out on other important stuff which you are expected to know, but which was not highlighted (and may not have been discussed at all) in the lecture.

A bit of both. A good compromise is to do one or two of the most important readings prior to the lecture, and then do the reset (somewhat more selectively) after the lecture. That way you’re not going into the lecture completely cold, but you’re not wasting too much time reading material that ends up being fairly marginal, either. In the end, this is usually what I ended up doing most of the time.

The most important thing, though, is that you must read. have I said that enough yet? The lectures on their own, are not designed to convey the whole course. some students assume that if something isn’t in the lectures, it won’t be on the exam. Beep. Wrong. The lectures are one component of the material. They may even be enough to get you to pass. But they are not enough.

Tip #15: Nutshell guides are great, but are not a substitute for real learning

For most subjects these days, you will be able to purchase what are known generically as “nutshell guides” or “concise
guides”. They are like mini textbooks, which reduce the topic down to 150 or 200 pages, explain them in simple terms, and introduce you to the key cases and legislation.

Most lecturers hate the bloody things (even the lecturers who have to mumble an admission that they’ve written one).

The reason they hate them is that there is an inevitable temptation for students to read the nutshell guide and think they’ve done all the reading that is necessary. Unfortunately, lecturers tend to over-correct by treating nutshell guides as though they are the words of the devil. Nutshell guides really can be useful, provided you use them properly.

In my view, nutshell guides are useful under two key circumstances. First, they are a great way to get a very quick introduction to a subject area. If you’ve got a lazy day just before the start of semester, you can probably plough through a nutshell guide in an afternoon, and it will give you a general idea of what the subject is all about, and what its basic concepts are. This means that when you come to the subject itself, you don’t spend the first few weeks struggling to understand the basic “shape” of the subject; instead, you can hook straight in to getting your head around the detailed concepts.

Second, you might find there is an area of the topic that you’re just simply not getting. If you come across something that seems completely incomprehensible no matter how many times you listen to the podcast or read the textbook, it may be useful to return to the nutshell guide to read the simplified version. This might give you enough of an understanding that you can then make sense of the lecture or the key readings.

Having said this, nutshell guides are not a substitute for putting your head down and reading the text and the key cases. The whole point of a nutshell guide is that they remove
heaps of detail. They give the basic concepts, but not the exceptions. They don't provide much in the way of context. There is very little discussion of the cases. If you go into an exam with only a nutshell guide under your belt, you are only going to be able to give very, very shallow answers to the exam questions. In most cases, that won't even be enough for a bare pass. Worst of all, you might not even know what material you've missed out on.

I once heard nutshell guides described beautifully, as “junk food” law books. They are good for a treat or a snack, but they are not going to provide you with the nutrition you need to grow as a lawyer.

I am going to stop now, because I am suddenly starting to sound like my mother. Nutshell books: good, but in small doses. Now go have an apple or something.

**Tip #16: Read the right cases**

For each proposition of law, there will usually be one or two really key cases, which set in place the current state of the law. They are usually going to be the most prominent cases on your reading list, and they will usually also be the ones most often extracted in the case extracts. Those are the cases you will be expected to read, and expected to know. Sometimes, however, there can be a temptation to avoid reading them if they are long or over-complicated, or just poorly written (just wait until you have to deal with the judgments of Isaacs J ... a brilliant legal mind, a wonderfully accomplished Australian, but I always found his judgments just about impenetrable!). Do not give in to this temptation!

It might be frustrating, but nothing can replace the key cases. Sometimes, as a marker, I will see a student who has used the correct point of law, but has then cited an unusual case as
authority. When this happens, I will usually have a look at the case myself, just out of interest. Often it turns out that the case cited by the student is much more recent, and much easier to read, but all it really does is cite and describe the previous, authoritative case - which, surprise surprise, is the one on the reading list.

In the end, all the student is really doing is demonstrating that they were rushed for time and being a bit lazy. Bottom line: you're almost always best sticking with the cases referred to in the reading list.

Tip #17: Read case extracts wisely

In most subjects - but particularly subjects like Criminal Law and Contract Law, which are based primarily on cases rather than legislation, you will find a range of “Cases and Materials” books which offer you a series of case extracts. The editors of these books have essentially gone through all of the key cases and extracted the most important bits for you to read. These books are therefore extremely important for students during your reading, because they substantially cut down the sheer quantity of reading you have to do. Hallelujah.

They do come with some hidden risks, however. For one thing, if you only ever read extracts, then you will never obtain any practice at ferreting through a long, complex case to work out the key passages for yourself. In other words, by relying on the skills of the casebook authors, you lose the opportunity to develop your own skills. This will come back to bite you when you're looking for a case which isn't extracted in the casebooks.

Second, in most cases at the start of an extract, the extract editors provide a short, one paragraph summary of the relevant facts. That summary might have been drawn from
several pages of facts in the actual judgment; so in other words, the extract editors have already picked out the key facts, and indicated how they should be applied to the law in the extract. Again, if you rely on the books to do this, you never get the opportunity to develop these skills for yourself – and these really are fundamental legal skills.

Finally, in many cases there will be a key “leading” judgment, but there will also be dissenting judgments, or simply alternative versions of the leading judgment. The extracts almost never provide material from dissenting judgments, and often fail to provide material from alternative versions of the majority judgment. This means that you miss out on the chance to read and consider some of the alternative ways of viewing the legal issues at hand.

So, the trick is to obtain the efficiency benefit from extract books without sacrificing the opportunity to learn and develop your own legal skills. I recommend that you make a personal commitment to read the two most important cases in every topic, in their original form, either online or in a law journal. Then you can use extract books for everything else. That way you still save oodles of time, but you get the practice of dealing with written judgments in their original form.

**Tip #18: Know the anatomy of a written judgment**

I feel like a bit of a fraud offering this as a tip, because just about every first year intro subject includes a session on the “anatomy” or layout of a written judgment. The problem is that in first year, you don’t really have a lot of context for what you’re learning, and so often this stuff slips past people who don’t realise, until too late, that it was actually really
important. So I’m going to pretend this stuff isn’t included in the lectures and I’ll tell you about it anyway.

Written judgments, whether online or in hard-copy law reports, tend to follow a pattern which has developed over the years, and which enables us as readers to quickly learn information about the case. If you understand these patterns, your reading time can be reduced dramatically and, more importantly, you will obtain much more information from the cases you read.

The pattern is not identical from court to court or format to format, but the variations are fairly subtle. Set out below are most of the elements you are likely to encounter in your reading.

**Court Title:** At the head of most judgments, particularly online judgments, will be the name of the court giving judgment, for instance “HIGH COURT OF AUSTRALIA”. In some written law reports this is excluded, because you are already reading the reports of a particular court, so it is understood that all cases come from that court. Identifying the court giving judgment is obviously important in terms of measuring the authority of the judgment.

**Judges:** The judgment will then give the names of the judges who sat in the case. Usually the list will indicate whether any of the judges wrote a joint judgement, sometimes by grouping them according to judgments, and sometimes by giving a number corresponding to the judgment for each judge (so, if the third judgment was written by Justices Smith and Bloggs their names might appear as “Bloggs J (3), Smith J (3)). This can be useful information in two ways. First, it will give you a hint as to how many separate versions of the judgment you’ll have to read; second, if you have a favourite judge (some of them write wonderfully, other terribly) you’ll be able to go to their judgment first.
**Parties:** Next, the judgment indicates who the parties were, and what their roles were. This will differ depending on whether the matter is a criminal or a civil matter, and depending on whether the judgment is a first instance (lower court) judgment, or an appeal judgment. This is important, because in the body of the judgment, the judges will rarely refer to the parties by their names. They will usually be referred to as “the plaintiff” or “the defendant” or “the appellant” and so on.

Where there is more than one party in the same role, they will be identified by number (so, “the first appellant” or “the third defendant”). Sometimes it can be useful to jot these down on a reference sheet so you know for sure who the judges are talking about at any point in time, otherwise some judgments will become absurdly confusing.

**Order or outcome:** Most judgments will helpfully put the final outcome of the case right up at the top. However this will be in very brief form, usually only “appeal upheld” or “order allowed” or “conviction quashed.” It doesn’t really tell you very much unless you already know what the content relates to. However it can be a good heads-up as to which party is (in the end) going to be successful.

**Representation:** Usually not important for our purposes, unless you are some sort of legal groupie. However the case will tell you which barristers and solicitors appeared.

**Catchwords:** At the head of each judgment, the court (usually some hard-working Associate) provides a list of “catchwords” usually starting from the general and working to the specific. These are really useful, because they clue you in on what the key legal issues in the case were. So they might look like this:

Criminal law - sexual assault - defence of reasonably mistaken belief of consent - complainant willingly removed clothing but
did not indicate verbal consent - whether inference of consent by defendant reasonable.

How cool is that? The court has provided a brilliant thumbnail summary of the case so you know exactly what is in there.

**Table of Contents:** In longer judgments, Courts often provide a table of contents to allow readers to quickly access specific aspects of the judgment. You won't find this in all cases, but in longer modern cases a table of contents can be a godsend.

**The Judgment:** The judgments themselves will be printed next, usually in order of the seniority of the judge writing the judgment. There's no real way to describe how these look, because some judges have their own idiosyncratic ways of doing things. However in each case, the judge will be attempting to set out the relevant law, and to apply the facts to those laws - very much in the way that a good law student ought to do while writing a good assignment.

**Order or Outcome:** The order or outcome will often be repeated at the foot of the judgment.

**Footnotes:** Often the footnotes for the judgment will now be presented as endnotes, particularly online. Personally I prefer being able to see the references on the same page as the judgment itself, but it would be difficult to do this on the internet. The benefit, however, is that you can often click through right from the judgment to call up the previous cases which are relied upon. This saves you more time than you could possibly believe.

**Tip #19: Know what you’re looking for**

This tip overlaps a little with some of the others in this section, but it's still worth considering separately. None of the readings on your list are there randomly, no matter how it
might sometimes seem late at night when you're trying to ignore the call of the Tim Tams lurking in the fridge. Each case is there for a reason. Work out what that reason is, and that will help you read efficiently.

Most of the time, litigants don't go to court with just one argument. Generally they will raise a series of different arguments in support of their key objective. This means that in the judgment, the judges will have to deal with each of those separate arguments. It is quite likely that only one of those arguments will be relevant to your course of study. This, of course, is great news: if you know what you're looking for, you can ignore all of the other, irrelevant arguments.

Let me give you an example. In 2012, in the case Williams v Commonwealth the plaintiff sought to oppose the Commonwealth's school chaplaincy program, under which religious groups offered counselling and guidance in schools. His main objective was to show that the chaplaincy program contravened section 116 of the Constitution, which prevents government-sponsored religion. However he also raised a second argument, claiming that the school chaplaincy program was an improper use of what are known as Commonwealth executive powers. He was unsuccessful in his first argument, but successful in the second argument.

Consider this case carefully. If you're doing an elective subject looking at the relationship between Church and State in Australia, you'll want to read the court's views in relation to section 116, and you won't much care about executive power. If you're doing constitutional law and this week's topic is executive power, you won't much care about the church based arguments. Either way, you save yourself from a heap of reading.

Some kindhearted lecturers will indicate, in your reading list, which are the pages or passages they want you to focus on.
That's obviously awesome - but don't come to rely on it. These are skills you want to build for yourself as well.

**Tip #20: Don’t ignore the facts, or the dramatis personae**

That's the “cast of characters”. I was just trying to sound sophisticated.

One of the great things about cases is that each case comes with a story. Even the most dry and boring tax and corporation cases come with a story, and quite often the story is the thing that will stay with you. If you can remember the story, the relevant point of law will easily come to mind.

For instance, when you study contracts you’ll come across the concept of a unilateral offer. The case which established the doctrine is *Carlill v the Carbolic Smoke Ball Company*. It's a cool story. Essentially, the Carbolic Smoke Ball company, in England in the early 1890s, placed newspaper advertisements claiming that their product was so effective at preventing influenza that anyone who used it and still contracted the flu would receive £100. Bear in mind that England had just survived a massive flu epidemic, and also that £100 was a year's income for many people in England at the time.

Mrs Carlill purchased the product and got influenza. She sought her £100 and had to sue to get it, by demonstrating that there was a contract between her and the Smoke Ball Company. this led to the point of law: that a unilateral offer of contract can be made, where acceptance is shown by undertaking certain acts (in this case, using the carbolic smoke ball).

If you go to any lawyer and mention the Carbolic Smoke Ball, you will get a grin and a smile. Similarly, tell other lawyers
that you went to the movies in Wednesbury, or that you got imprisoned at Circular Quay, or that you check your ginger beer bottle for snails, and you will always get a smile. These are great cases, with great stories - but more importantly, the stories will help you to remember the law.¹

Tip #21: Find the one-line point of law

Virtually every judgment - even if it is 100 pages long - can be reduced to a single sentence which states the point of law established by the case. Consider, for instance, the *Mabo* judgment: one of the most famous and celebrated cases in Australian law. It is a long, well-considered, carefully presented judgment. It would take some hours to read carefully and properly. And yet in the end, if you strip it all right back, it comes down to this: Aboriginal people had native title to their land at the time of European settlement, and native title has not been extinguished in all circumstances.

In your assignments and examinations, and for that matter in your professional legal arguments, you will almost always be citing cases on the basis of the one-line point of law. Knowing the one line point of law is never enough, but the one line point of law tells you when to pull the case out and use it. At that point you can discuss it in more detail.

The headnotes of the judgment will give you a clue as to the one-line point, but don’t rely on them. Read the judgment itself, and practice identifying the one-line point for yourself.

Whereabouts in the judgment is the crucial passage of reasoning from which the one liner emerges? What was the crucial evidence underpinning that conclusion? What previous authorities were relied on? Is this a new one-liner which overturns previously-established law? If you read the case in this way, you will not only know the one line point, you will also understand it. At that point, you will be far more capable of using the case to support your own arguments in exams and assignments.

**Tip #22: Distinguish obiter from ratio, and majority from dissent**

This can be difficult, but it really matters, and is a fundamental legal skill.

In any case, when the Judge is expressing their opinion about the meaning of the law, they will express it in one of two ways: either as *ratio decidendi*, or as *obiter dictum*.

*Ratio decidendi*, usually just shortened to *ratio*, literally means “the reasons for the decision.” So for a sentence to be ratio, it has to provide a direct and specific contribution to the actual outcome.

*Obiter dictum*, usually shortened to either *obiter* or *dicta*, literally means “things said in passing.” These are observations made by the judge which are relevant to the current case, but which are not actually central to the specific question of law to be decided.

An example might be useful. Let’s assume the court is considering a negligence case. In this case, Massimo and Katrina were involved in a violent robbery at a jewellery store. They left the store and immediately stole a getaway vehicle. The police pursued them. Massimo drove aggressively to get
away, but did not actually exceed the speed limit or break any road rules. Unknown to him, however, there was a mechanical fault with the car and a tyre burst, slewing the car into a nearby tree. Katrina was seriously injured, and has now sued Massimo, as the driver, for negligence.

The case comes up before the extraordinarily talented (and particularly good-looking) Judge Marinac, whose judgment reads, in part:

In my view, the theft of the vehicle, and then the use of the vehicle in an attempt to evade pursuit by the police, suggests that the voyage undertaken by Katrina and Massimo was very much a continuing element of their joint criminal enterprise. It is not in the public interest to attempt to establish duties of care between criminal offenders in the course of a joint criminal enterprise. Consequently, I find that Massimo had no duty of care towards Katrina. Put simply, if she had not been engaged in the business of robbery, she would not have been injured during the getaway. The plaintiff's case fails at this point.

Even if I had found that Massimo owed Katrina the usual duty of care owed by a competent driver to his passengers, on my view there is no breach of the duty. While Massimo was driving aggressively, he was driving within the road rules, and the incident which resulted in Katrina's injuries was not due to any want of skill or attention on his part. Thus, even if I had construed a duty of care, I would have found no breach of that duty.

Now, this case contains a ratio passage, and an obiter passage. Following tip #21, we can identify the one-line point of law for each.
At the start of the first para, the case is still undecided. By the end of that para, we know the outcome - Katrina’s case is going to fail. Somewhere between those two points, the ratio must lie. In this case it’s pretty clear: It is not in the public interest to attempt to establish duties of care between criminal offenders in the course of a joint criminal enterprise. This is the ratio. It is the actual reason why the judge decided the way he did.

However the judge didn’t stop there. He also wanted to make a point about whether or not there was a breach of any duty of care. The judge stated: the incident which resulted in Katrina’s injuries was not due to any want of skill or attention on his part. So here is a one-line point of law (that a driver is not liable for breaching a duty of care if the accident was not due to a want of skill or care), which was not required to actually decide Katrina’s case, but which might be very useful to lawyers arguing subsequent cases. Because it was not part of the reason for the case’s outcome, it is obiter.

Why is all this important?

First, obiter is an incredibly useful tool for judges because it allows them to set our their interpretations of the law immediately, rather than waiting for a more suitable case to come along.

More importantly, however, you should note that ratio outranks obiter. Let us assume that another judge considered a similar case to that of Katrina and Massimo, except in this case there was no criminal activity, and they had merely borrowed the car with the consent of the owner. Bill, the driver, still drove aggressively but legally, and a mechanical fault still caused the accident. The judge in that case finds that “While Bill was driving lawfully, his actions in driving an unfamiliar vehicle aggressively lacked prudence, and led to
him being unable to recover the vehicle when the tyre burst. He has therefore breached his duty of care and is liable.”

So this judge has made the opposite decision. Which case provides the better law? You can see that in the second case, the decision regarding breach is *ratio*. It is actually helping to decide the case; it is not just an interesting observation. The bottom line, then, is that Bill’s case will be regarded as a greater authority than Massimo’s.

All this means that if you are citing a point of law from a case, it is really, really important to figure out if it is *ratio* or *obiter*, so that you have some idea how strong the point of law actually is.
4. Bulletin Boards

When I was a first year student in my first degree, way back in the olden days, a bulletin board was something usually located in hallways or outside the refectory, and covered in posters put up by student socialist groups, student Christian groups, or people trying to sell textbooks. These days, every university has its own online learning environment, and every online learning environment includes some form of bulletin board, for students and academics to talk to one another about the subject at hand.

The bulletin boards are a trap for the unwary. They can be incredibly useful learning tools. They can also be an outrageous waste of time. Hopefully these tips might help to keep your bulletin board use in the “incredibly useful” zone.

Tip #23: Bulletin boards are not a substitute for real learning

Bulletin Boards can be an amazing timewaster. You could chew up an hour on a Bulletin Board and not even realise it has passed. They’re usually more fun than actual learning, and because they relate to study topics it kind of almost feels like you’re studying. Don’t be fooled! If you only have a couple of hours in which to study, don’t waste them on the bulletin boards. Sure, check them at the start of your study session to make sure you don’t miss out on anything vital. But that should only take a minute.

Once you’ve done that, go do some real study! Listen to a lecture podcast, read a case, take some notes. And then come back to the Bulletin Board at the end.
Tip #24: Remember you are talking in public

This would have been a much hotter tip back before the days when Facebook was universal (remember folks, compared to most of you I’m an old man. When I started my first degree there was no internet, let alone Facebook, and we thought computers with hard drives were pretty cool). Nowadays I think most people understand that the social networking environment is not private, and that even if you limit visibility of what you say to just your friends, there is still a chance of things going viral.

Compared to the social networking behemoths, most university Bulletin Boards have pretty poor privacy options. You’ve basically got two choices: A specific, private email to individual recipients; or alternatively a post to the bulletin board which can be seen by every student and every staff member on your course.

That sounds simple enough, but it’s still very easy sometimes to forget that you’re in public. If the Bulletin Board contains a thread that only two or three people have contributed to, it’s easy to sometimes feel like it’s become a private space for the two or three of you who are participating. Remember, though, you have no idea who might be watching. Avoid, at all costs, insulting lecturers or other students. Don’t say anything on the Bulletin Boards that you wouldn’t say out loud, into the microphone, in a lecture theatre.

Tip #25: Give fair warning if you’re off on a tangent

Sometimes you will read something, either on the bulletin board, or just in your reading, and it will grab your interest or start you thinking. Your subsequent thoughts might not have terribly much to do with the actual material for the subject,
but still might be very interesting. You might want to know what others think, or whether others are interested. The bulletin boards are a perfect place for this. There is no earthly reason why bulletin boards should be strictly confined to the topics, and one of the true joys of university study is that moment when you are suddenly possessed by a great idea or an insatiable curiosity.

However, if you are going to go off on a tangent, let everyone else know. That way, students who are pressed for time are not going to waste that precious time on bulletin board topics that (while interesting) are not going to help them pass their exams.

You can be quite blunt about it too:

“Everyone, I was looking at the Jenkins reading last night and it started me thinking about how all this stuff might link up with women’s issues. Fair warning, this is a bit of a tangent, but I’d still like to know what others think.”

A simple statement like that means that nobody has the right to get cranky at you for going off topic - those who are interested will read on, and those who are not interested will move on.

**Tip #26: If BB contributions are being assessed, remember the five unwritten rules**

In recent years, some lecturers have begun using bulletin boards as a supplementary means of assessment. They are usually not weighted heavily, and might make up 5 or 10 percent of your final mark. For most students, they are not going to mean the difference between passing and failing – but they could certainly mean the difference between a Pass and a Credit, or a Credit and a Distinction.
Unfortunately, assessment of bulletin board contributions completely changes the dynamic of the conversation on the board, because everyone is acutely aware of that sense of being watched and assessed.

In my observation, there are five unwritten rules for assessed bulletin boards. If everyone obeys the five rules, the process is usually pretty painless, and pretty much everyone will get between six and eight out of ten.

**Rule 1: Thou shalt stick to the word limit.** In assessed bulletin boards, the lecturer will usually prescribe a word limit for postings. It's usually 250-500 words. If there are 100 students in a course, and everyone goes over by 100 words a posting, that's an extra 10,000 words a week. If there are ten weeks in a semester, that's 100,000 words – or an entire PhD thesis. And that's just the extras! If you go over the word limit, you are basically asking the entire rest of the course to indulge you. Perhaps – perhaps! – you might get away with it once or twice, but after that you are going to be giving your fellow students a serious case of irritation. Stick to the word limit.

**Rule 2: Thou shalt write self-contained posts.** I once participated in an assessed bulletin board where a student wrote a very brief posting that basically said they thought everyone should read the attached report, which encapsulated her position perfectly. The attached report was 260 pages. I can pretty much guarantee that nobody read the report. If you want to quote from something amazing you’ve found in your research, then by all means do so. But put the quote into your bulletin board posting, with due attribution, without going over the word limit. Don’t go making people follow links.

**Rule 3: Thou mayest disagree, but never shalt thou criticise.** One of the hardest things about an assessed bulletin board is how to react when somebody posts something which makes it
pretty clear that they either haven't done any reading, or they just simply don't understand the topic. What do you do? You don't want to agree with them. But you don't want to attack them and become the reason they fail the assessment either. Most people will simply politely ignore their posting (trust me, the lecturer has seen and noticed their lack of understanding). If you really do feel the need to respond, by all means point out the flaws in their argument, but you must utterly resist the temptation to sting the person themselves. Not even obliquely. If you write something like “If you had read page 637 of the text you'd have seen that the Court dealt with this issue in Smith v Bloggs” then you will seem like a smart-alec and people will start avoiding you on the bulletin board.

Rule 4: Thou shalt avoid empty praise. OK, this one is not exactly the worst of sins, but it irritates me like anything. Lots of people waste a couple of lines at the start of their posting by saying something like “Wow, most of these postings are amazing and I'm really impressed with how much work everyone's done.” Honestly, that's just static. In all likelihood some of the postings are great, and some of them will be rubbish. More to the point, everyone's constrained for time, and nobody really has the time to just read empty praise. If you really love someone's work, send them an email.

Rule 5: Thou shalt judge thy timing carefully. Assessed bulletin boards are usually open for a limited period of time, after which they are locked for assessment. 5 to 7 days seems typical. So, the question arises: when, during that period of time, should you make your posting?

If you post early, you get several advantages. For one thing, you get to help set the scene and shape the argument. Later on in the week, that chance is lost. Second, you can minimise the amount of time you need to spend reading other people's postings, because you don't really have to care what is said in the argument once you have made your contribution. On the
other hand, if everyone posted at 9 AM on day 1, it wouldn’t be much of a discussion – just a series of set pieces.

If you post in the middle of the period, then you have probably set a nice balance. You will have to read some of the postings, but not dozens and dozens. You can still help to shape the argument. However by this time, you are probably not going to be able to start a new discussion topic – you will need to join in one that is already established. If you want to go for good marks, it will be necessary for you to refer to the postings of some of the students who have preceded you, and reflect on their thoughts in your own postings.

If you post towards the end of the period, you are probably in a fair bit of trouble. You will certainly need to read all of the other postings, because if you start making an argument that has already been dealt with, you may as well just post “I ran out of time and haven’t read anyone else's postings.” You also run the risk that all of the good arguments may have already been made, and you might not have much left to contribute.

So when should you post? My suggestion is that if it is a 5 day cycle, aim to post no later than the end of day 3; and if it is a 7 day cycle, aim to post no later than the end of day 4. If you’re really interested in a topic, then post on day one, but don’t do this every week. Let others take a turn at leading the discussion too.

**Tip #27: Watch for the Bulletin Board stereotypes**

Most of the people you will “meet” on the bulletin boards will be just like you: hard-working, sometimes-struggling students who are interested in some of the material, bored by some of the material, intimidated by most of the material ... but then
you will probably also spot the following Bulletin Board characters:

**The Bombast** reckons they know it all already. They are usually keen to try to make everyone believe this stuff is all easy for them, and if it's not easy for you too then you're probably an idiot. They will often stoop to making niggling little petty judgments and attacks. In reality, the Bombast is rarely a high performer, and is usually struggling just as much as anyone else, but is trying to hide it by telling everyone else how great they are. Fortunately, you can safely just ignore the Bombast and lose nothing.

**The Socialite** sees the Bulletin Board as an extension of Facebook. In fact, they've probably also established a Facebook group for the subject, and sent a friend request to everyone else on the course. Most of their postings will have very little to do with actual law study, but they are just so darned nice to everybody that nobody tells them to shut up. They will remember everyone's birthday, and will organise drinks during the residential school. They are lovely, but don't let them distract you.

**The Showoff** is the Bombast's far-more-useful sibling. The difference between the Bombast and the Showoff is that the Showoff actually does find all this stuff easy, and they don't worry about poking insults at people. The Showoff will usually have posted long, fully-worked-through answers to all the tutorial questions by 9 AM each Monday. I would probably have to admit that a few times on the way through uni, I was the Showoff.

With that disclosure on the table, let me say: thank God for the Showoff. The Showoff can save you heaps of time and effort, and they are probably happy to get your emails asking them questions you don't want to bother the lecturer with. However, the Showoff has two dangers: First, they may not
actually be right. I have come across a few earnest Showoffs who were actually only really Pass level students. So choose your Showoff with care. Second, if you rely on them to do your work for you, they will walk into the exam superbly prepared, and you will walk into the exam like the person who has just watched the Showoff all semester. Beware.

The Crocodile usually just lurks away in a still, quite corner of the Bulletin Board, and you’d hardly even know they were there, until – SNAP. Some crocodiles are awesome. They keep to themselves, and don’t say much, but then they suddenly cut in on an argument which has been going for days, and offer a solution so amazing that everyone looks around in shock. Some crocodiles, however, are not awesome, and rise only to mock or criticise. Think of them as a lazy Bombast.

The Eternally Bewildered is a hard-working, earnest student who just constantly struggles to understand. The EB is not lazy, does all the readings, listens to all the lectures, but it just doesn’t sink in. They will ask questions on the Bulletin Board which make you wonder whether they really ought to be at university at all. And yet the EB has a certain charm. They are usually very grateful for any help, and they are so persistent that, to everyone’s surprise, they usually end up with their degree. They are often very meticulous, and may surprise you by asking questions you’d never thought of. Be helpful to the EB when you can, because one day, in one subject, the EB might be you.

The Sloth is the lazier cousin of the EB. The sloth doesn’t understand the material either, but that’s because they don’t usually take the shrink-wrap off their textbook until the day before the exam. The Sloth sees the Bulletin Board as a way to get other people to do their work for them. The sloths are especially active around two weeks before the assignment is due. You’ll hear their mating call. It sounds like this: “Has
anybody found any really good sources yet for assignment question 3? I've been looking but am really struggling."

Clever, no? See how they’re trying to sound like the EB? What they really mean is “I couldn't be stuffed doing any work, and I'm really hoping someone will tell me all of their sources so I don't have to look them up myself.”

Their other favourite is “I'm looking at problem question 2 and I'm pretty sure I know where I'm going with it, does anyone want to discuss it?” This one's slightly more clever, because they're trying to make it look like they're not really bewildered, and they're hoping a Showoff will jump in and help them out. My advice? Ask the Sloth to explain their analysis first.

The Earnest Reformer. Honestly, It's kind of hard to dislike the earnest reformer. When they see an aspect of the law that they think is wrong, discriminatory, or just plain stupid they will leap straight onto the Bulletin Board to wax lyrical about what is wrong with the law, why it is unjust, and how it should be fixed. They usually use heaps of exclamation marks, and provide links to a heap of resources to support their views. I have always wondered whether Earnest Reformers put the same amount of research into their assignments.

Earnest Reformers can be very interesting, but the trick is not to get too distracted. Remember that ultimately, no matter how persuasive they are, in a problem question you’re going to be assessed on how well you can apply the law as it is, regardless of how unfair you might feel it to be.

One last thing: if you're just been reading this, and you've secretly realised you're the Bombast or the Sloth, just stop, OK? Please?
5. Research

For a law student, and indeed for a lawyer, research is where it’s at. Even if you have dreams of one day being a brilliant courtroom advocate, you will find that every guide to advocacy says the key is “preparation, preparation and preparation” – by which they mean, research. Research is what lawyers do. No lawyer can remember the whole law. No lawyer can remember every case and every piece of legislation. There is just too much, and it grows by the day. A lawyer’s core skill – the one they get paid for – is research.

Tip #28: The three most wonderful letters in the law are LII

I think the internet is probably the most amazing “invention” the world has ever seen. It has probably changed the fundamental nature of human society as much as the other great inventions, such as the wheel, or the printing press. It’s that important. Unfortunately, it is sometimes all-too-accurate a reflection of our society. It is crammed with scams, pornography, dubious information and outright lies. And that’s just the political blogs!

From time to time, however, the internet has really delivered. From time to time it produces something amazing, something we could never really have imagined before the internet. The series of LII, or Legal Information Institute websites, are one of these.

Australia’s local LII website is called Austlii, and can be found at www.austlii.edu.au. It began as a project of the law schools of the University of New South Wales and the University of
Technology, Sydney, but it is now an institution in its own right. On Austlii, you can find the following:

**Legislation:** Austlii has all statutes or all parliaments in Australia. Better yet, they are all updated (consolidated) constantly, so if the Acts are amended by parliament, you only need to read one piece of legislation, not a piece of legislation plus umpteen amending Acts. You can, however, also look at the Acts as they were made, including the amending Acts.

**Subordinate legislation:** Austlii also includes all of the regulations and other “hard law” legislative instruments, for all Australian jurisdictions.

**Explanatory memoranda:** Explanatory memoranda are like “plain English” versions of legislation (although they vary a lot in quality). For the Commonwealth, Austlii has (at the time of writing) explanatory memoranda going back to 1980.

**Case Law:** Austlii has the text of **ALL** High Court decisions since 1901, and they have case law from the State and Territory superior courts (i.e. Supreme Courts and Courts of Appeal) and the Commonwealth Family and Federal courts going back in most cases to at least the mid-1990s, with the collections expanding all the time.

**Tribunal Decisions:** Austlii includes more recent decisions from a truly staggering array of Commonwealth, state and territory administrative tribunals.

**Journals:** Finally, as if all of the above wasn’t enough, Austlii has an ever-growing collection of journal articles on an immense variety of legal topics.

Most amazingly of all … it’s all free! Because of Austlii, for probably the first time in Australian history, citizens can freely and easily obtain access to the laws that govern them. Naturally, though, a website like Austlii costs a packetload to
manage, and they always need donations. If it’s within your means, please consider donating – the link is on their website. Even if you can’t do so as a student, make yourself a promise that you will do so when you’re a rich lawyer.

UNSW and UTS co-ordinate a wider organisation called WORLDLII, which is committed to free, independent public access to laws. There are 34 LIIs, opening up the laws of an ever-increasing range of nations right around the world. For our purposes as students in Australian Law Schools, make sure you’re familiar with the British and Irish LII (www.bailii.org), the New Zealand LII (www.nzlii.org), the Canadian LII (www.canlii.org), and the Commonwealth LII (www.commonlii.org) which includes access to all of the “English Reports”, which is an ancient series of reports covering English decisions from 1220 until 1873. Many of our fundamental laws are based on decisions in the English Reports.

Without being too dramatic, the WORLDLII movement, which began in Australia, has brought knowledge of the laws to millions of people who otherwise lacked that knowledge, I am not a graduate of UNSW or UTS, but I have to take my hat off to them. What a wonderful gift they have given to freedom and to humankind.

Tip #29: Halsbury’s is your bible

From time to time over the past few years, I have been approached – usually at work – by people who are starting law, and who want a few tips. Those conversations have helped lay the groundwork for this book. However the big tip that I always gave everyone, was to become familiar with Halsbury’s Laws of Australia. Halsbury’s is amazing. It’s beyond amazing. It’s incredible. If you haven’t discovered Halsbury’s
yet, the discovery will be worth ten times whatever you might have paid for a copy of this book. Although the book was free. Maybe I'm not much of a mathematician. Whatever. Back to Halsbury’s!

Halsbury’s is one of two main online legal encyclopaedias.\(^1\) The other is just called *Laws of Australia,* and it is every bit as good. I’m more familiar with Halsbury’s, which has been my saviour many times over. OK, OK, “legal encyclopaedia” sounds very boring. But bear with me.

The editors of Halsbury’s have taken the entire body of law in Australia – yes, I mean it, the whole lot, legislation and cases. They have then broken it down into (at the time of writing) 89 fields of law. From Contract, to Aborigines, to Prisons, to Family Law, to Liquor.

Then, within each area of law, they break the law down into its elements. Then they break those elements down into propositions of law. Then they give you a PLAIN ENGLISH explanation of that proposition of law. Then they give you the relevant statutory provisions AND the relevant cases, and they even tell you how the cases have been treated in later cases!

About half of you reading this now have gaping-wide mouths, and you are mumbling incoherently, “why did I not know about this?” Want to see how incredibly useful this is? Let’s take an example. Let’s say we’re doing a Contract problem question. We’ve read the question, and we’re pretty sure the issue is whether the contract was properly formed. The person agreeing to the contract sent their agreement by mail. We vaguely remember, from the lecture, that there is something called the “postal acceptance rule.” Now we turn to Halsbury’s.

\(^1\) I so want to write “encyclopaediae”. Does anyone still use that word?
Halsbury's has an entire section called “Contract”. We click it to expand. It's broken down into Formation, Terms and Parties, Vitiating Factors, Illegality, Performance and Breach, Discharge of Contract, and Remedies.

We know we’re dealing with a “formation” issue, because were trying to tell whether the contract was properly formed. We open up formation, and come to a heap of sub-topics. One of them is “Offer and acceptance”. That sounds like the one we're after, because we're trying to work out whether the acceptance, sent by mail, was valid. We open that, and there are four MORE sub-topics, one of which is “Communication of Acceptance”. We're getting close. I can feel it.

Aha! Under “Communication of Acceptance” there is a sub-topic called “Postal Acceptance Rule”. Even this sub-topic has sub-topics. The first one is “Operation of the Rule”. We click on that, and we are presented with six simple legal propositions which make up the operation of the postal acceptance rule.

The first one is headed “Acceptance effective on posting”. See how simple that is? Four words, that tell us all we need to know. As soon as our client posted the acceptance, the contract was formed. Then it gives us more details: Provided the acceptance was posted in a properly-addressed, pre-paid envelope, the contract was formed. You beauty. Now we know the point of law. But wait, there's more. Halsbury's hasn't finished being helpful yet.

Now it tells us, by way of a footnote, that the relevant case establishing the rule is Adams v Lindsell (1818) 106 ER 250. And because you've just read my section on the LII's, you know the English Reports are available to you online, free of charge. Three seconds later, you can be reading the case.
How easy was that? How incredibly, utterly easy was that? And Halsbury’s can do this for just about any aspect of law. Halsbury’s is amazing. Close this book, right now, and try it. Yes, right now!

**Tip #30: For journals, give Informit a shot**

Most university law schools maintain a subscription to a number of databases which are run using the Informit database. The two that are most likely the be useful to law students are AGIS, the Attorney Generals’ Information Service, and APA-FT, the Australian Public Affairs - Full Text database (for anyone else old-school, APA-FT grew out of the old paper-based APAIS database).

Both AGIS and APA-FT provide links through to full-text articles, and references to other articles not included in their full text collection. The focus is Australian material.

The best aspect of these databases is the search system, which is excellent. You can enter search terms in the usual way, but the search interface also records your search history, and you can use those searches to refine things later on. Let's say you are looking for material on Aboriginal customary law. You might start by entering "Customary Law" and get too many hits. You might then enter "Aborigines" and get too many hits. At this point, your search history will look something like this:

- #1: Customary Law. 2663 hits
- #2: Aborigines. 4115 hits

You can then enter, as a search, "#1 and #2" and it will search for items which came up on both searches. The history will then read:
Still too many? We can reduce it further. Let's say many of those 240 hits relate to criminal law, which doesn't interest us. We might search on "#3 not criminal" to exclude them.

The whole interface is very easy to use, very flexible, and very helpful. I like it. Informit does however have some disadvantages. For one thing, there's not really very much you can find on Informit that you can't find elsewhere. Austlii's coverage of law journals is super, and constantly expanding; Hein Online (see below) now carries the most influential Australian journals. Second, in my experience Informit can be quite unstable when used remotely - lots of frustrating error messages and crashes. However that might just be bad luck on my part. Give it a try for yourself.

**Tip #31: For international information, Hein Online is the best**

Most universities maintain a subscription to an online database called Hein Online, which provides articles from over 2600 law journals around the world, including some from Australia. You can download the articles in searchable PDF format, which is incredibly helpful.

The two best things about Hein are first, the fact that it is so utterly comprehensive. There are so many journals, and some of them go back to the 19th century. It is almost certain that you will be able to find material relating to your topic of interest.

Second, Hein has an outstanding search interface. Once you've opened up the main Hein page, click on "Field search" to do the usual range of keyword searches, but then you will find that the search results are delivered in a neat, logical, easy-to-
follow list. Even better, the list indicates how many times each article has been cited in other articles, which can be a great way to quickly identify the most authoritative material.

Hein does however have two traps for the unwary. First, it is heavily oriented towards American materials. For advanced law students, this is not a problem, because as you become more advanced you will develop more of a feel for when US legal analysis can be useful here in Australia. However in many cases, the US materials will lead you astray if you are not careful. Many areas of US law are completely different to Australian law.

Second, the sheer volume of hits on Hein can be daunting. To use Hein effectively, you will need to develop strategies to use multiple keywords to narrow down the searches to a useful level. My own rule of thumb was 200 hits. Anything more than 200 hits, and I tried to narrow down the search.

Having said that, the advantages of Hein outweigh the disadvantages, and you are mad not to learn how to use it.

Tip #32: Parliament House – more than just the back of the $5 note

Despite the fact that we are living in an increasingly statutory world, most lawyers and most law students remain very focused on the judicial arm of government - the Courts. Few have an appreciation of the complexities of the legislative process, by which written laws are made. This is a pity, because I think understanding how the law is made, assists lawyers to understand how to interpret and use the law.

For present purposes, however, the focus on courts means that many students completely miss out on the quite amazing
resources available to the public on the parliament house website, at www.aph.gov.au

The website has recently (2012) been redesigned, and in my view has become trickier to navigate (although the overall look and functionality is very slick and a real step forward). Here are some resources you should be able to find without too much trouble.

**Bills:** For those of you who are brand new to law study, a bill is a draft law which is currently either being debated in the parliament, or waiting for its turn to debate. It is not yet actual law. The "parliamentary business" website maintains a database of current *and past* bills. Along with each bill, you can find the explanatory memorandum (a plain English explanation of the terms of the bill) and all of the speeches given when each bill was debated. This is an extraordinary resource for anyone trying to understand a piece of legislation - you can go back and have a look at what was being said in the parliament when that law was being passed.

**Bills Digests:** The parliament has its own library. It's not just any library though - it is crammed full of expert researchers whose job is to help parliamentarians to be adequately informed about bills which come up for debate. These researchers produce a "Bills Digest" for most of the bills - and all of the significant bills - that go through the parliament. The Bills Digest includes an explanation of the bill, its purpose and its manner of operation, but the Bills Digests go further than that. They will often alert you to significant issues within the bills, or to surrounding relevant research. And best of all, the researchers are politically neutral, so you are getting straight information. These are a terrific resource, and they are available online - free of charge - going back as far at 1976. Yes, you read that right, there are nearly forty years worth of these things, and most law students have never had any idea they even existed.
**Research Publications:** The parliamentary library's research activities are not limited to legislation. They produce a wide range of research publications looking at other issues-of-the-day. They are currently known as "Research Publications" but were previously known as "Current Issues Briefs". They are of high academic quality, they are online and free, and they go back to 1985. Awesome.

**Committee materials:** Parliamentary committees (in particular Senate Committees) regularly inquire into matters of public importance, or bills before the parliament. They produce reports which are available online, going back in most cases to the mid 1990s. In addition, for inquiries after about the year 2000, you will find all of the public submissions and all of the transcripts from public hearings. These can be absolutely invaluable, partly because you get access to the policy views of different interests, but also because prominent academics quite often make submissions. Browsing through these materials can take patience but, for essay-style assignments in particular, it is well worth the effort.

**Tip #33: Westlaw is coming on strong**

Westlaw has been around for a while, but until recently I never really heard of people regularly using their database. However in the past couple of years, Westlaw seems to have established more of a following among students. Westlaw is particularly good for finding caselaw online. In my view it is probably better than BAILII for finding British caselaw, and it also has pretty good coverage of the Australia state Supreme Courts, depending on which subscriptions your uni forks out for.

For journals, Westlaw is not quite as effective. I'm yet to find a reference on Westlaw that I couldn't also find on either Hein or Informit. More to the point, the search system is quite
dodgy, and when it returns hits the layout is really unhelpful. Simple things like the journal titles seem well hidden. Obviously all of this could change with a single upgrade, but for the moment Westlaw is not in my toolkit of "front line" databases. It's more like something that I keep on standby, mainly for the caselaw that I've mentioned above.

Having said this, you should certainly give Westlaw a shot, because you may find it suits your style more than it suits mine, and some of the problems I've identified could well disappear with the next upgrade.

**Tip #34: Beware of Google and Wiki!**

In the 1970s, a genius by the name of Douglas Adams wrote a book named *The Hitch Hiker's Guide to the Galaxy*. The *Guide* was basically a tablet computer, connected to an intergalactic wireless network, offering information on pretty much anything in the universe – Wikipedia style. What a genius – to have had this idea 40 years before it became a reality. In his novel, Adams wrote:

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In many of the more relaxed civilizations on the Outer Eastern Rim of the Galaxy, the *Hitchhiker's Guide* has already supplanted the great *Encyclopaedia Galactica* as the standard repository of all knowledge and wisdom, for though it has many omissions and contains much that is apocryphal, or at least wildly inaccurate, it scores over the older, more pedestrian work in two important respects. First, it is slightly cheaper; and second, it has the words "DON'T PANIC" inscribed in large friendly letters on its cover.
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In much the same way as Adams prophesied, Google and Wikipedia have become the standard, “relaxed” repositories of the world's knowledge. Their accuracy is dubious, but they are so very easy to use, and “Google” is even usually written in large friendly letters.

Most lecturers will tell you not to use them. In particular they don't want you to use Wikipedia. Keep this a secret, but the truth is that EVERYBODY uses them. The trick is to use them well. If you start out with Wikipedia, you will get a broad appreciation for a topic, and you are likely to get pointers to where you might find some more academically-reliable sources. In other words, if Google and Wikipedia are your first stop, there is no problem. If they're your last stop, you're in awful trouble. So don't avoid them, just beware.

Tip #35: Go old school - real libraries are real useful

Maybe I am a dinosaur. Maybe there's no "maybe" about it. Yet I still just can't fathom the fact that many students may get through an entire law degree without ever actually setting foot inside a physical law library. You know what I mean, a library? It has books and journals and stuff - in hard copy. If you're a nerd like me, libraries are worth attending because there is just something in the smell of a 100 year old leather bound law report that says "knowledge." However setting aside my nerdy moment, old school libraries can be incredibly useful for a number of reasons. Here are the best four.

Coverage: I have no doubt that eventually - perhaps very soon indeed - it will be possible to obtain every single law report from every single court online. The LII movement will see to that. Every day the online coverage is expanding. However there is still a massive back-catalogue of cases and journals
that have not yet been scanned and edited into their online versions. This is particularly the case for state Supreme and District court judgments. The British version of AUSTLII, known as BAILII, has patchy coverage of British judgments in its key courts (Exchequer, King's/Queen's Bench, Common Pleas, Admiralty, Chancery and Appeals) from about 1870 until the 1990s. Ultimately, therefore, there is still stuff you cannot get online, but you can definitely get in the library.

The situation is even greater when it comes to books. Some wonderful enterprises out there such as Google Books and Project Gutenberg are gradually digitising books online, but there is often a cost to access them until their copyright period expires, and there are simply too many books waiting their turn. If you're looking for a book, particularly one on a specialist topic, you will have far more luck in a physical library than anywhere else.

**Law librarians:** Law librarians are angels sent by the university Gods to assist struggling students who can't find references. When I was a student, I realised how helpful they could be, and I also realised how few students ever sought them out. I thought that was wonderful because it meant they had more time for me! At my graduation, when I was fortunate enough to give a speech on behalf of all graduating students, I singled out the law librarians for gratitude.

Basically, law librarians know all the secrets of the law library. They know where to find everything, and they can save you hours of frustration and agony. Even better, they have a secret mystical society, so that if they can't find what you're after, they will contact the law librarians in another university, speak in an ancient code known only to themselves, and before you know it the book is on its way from another library.

Two words of warning about law librarians. First, they can spot laziness a mile away. If you're asking for their help
without even trying, don't expect them to be amused. Second, they hate highlighters and marginal note-writers. If you harm their precious books in any way at all, vengeance will be theirs! Don't say you weren't warned!

**Happenstance**: Even though I've listed this third, it's probably the single best reason to head to a law library. Some days, when your library karma is good, magic happens. You will look up the catalogue, find a book that might be helpful, maybe. You'll go to the shelves and the book won't be there, but fifteen other books have very similar call numbers, and three of those are just awesome. They jump off the shelves screaming "pick me!"

This sort of thing sometimes happens online, when your database searches give you some lucky hits. But honestly, on a day when your library karma is good, you will make ten hours' progress in thirty minutes.

**Environment**: Finally, libraries have an environment purpose-built for study. They are the only place in the world where you can still validly shush those tools who sit around chatting, and ask them to take it outside. Libraries are oases of calm in a hectic world. Sometimes I have spent an evening in the library studying, and never once gone near the bookshelves. I was just there for the environment.

By the way, if you are one of those people who answers your phone in the library, or sits around chatting in the quiet areas, ignoring the exasperated looks of those around you, please take a hint and go outside. Everyone thinks you're a goose.
6. Assignments

As a rule, most law subjects at university rely on two types of assessment: assignments, and examinations. Both of these require students to prepare long answers (from 500 to 5000 words depending on the circumstances) to legal questions.

Assignment topics are generally revealed at the start of semester, and they are typically due about half way through the semester. Consequently, they usually focus on the material in the first half of the course. Because the student has a good deal of time – six to eight weeks – to prepare assignments, they are expected to be of a far higher quality than examination papers.

If you are one of those people who find the exam environment very challenging – and that is probably 75% of all law students – then you need to really go for broke on your assignment, to get as many marks as possible. Remember, every mark you get on the assignment, is one less mark you will need on the exam.

Law assignments come in two basic types: Problem questions, and essay questions. These two types are addressed separately below.

Tip #36: Consider your timing – not too early, but never too late

One of the first things well-meaning lecturers will tell you about assignments is “start early!” They say this because they are sick to death of reading assignments that were clearly thrown together at the last minute, under the heavy influence of caffeinated energy drinks and stale pizza. Honestly, I've
marked plenty of these assignments, and sometimes you can almost smell the anchovies. They're that obvious.

There's a lot in this advice. It is simply never, ever, ever a good idea to start an assignment too late. My personal rule of thumb is that if you haven't started four weeks before the due date, you're in trouble, and you really ought to have the thing complete a week before it's necessary.

**Problem Style Questions**

Problem style questions are great fun, because you get to pretend to be a lawyer. The “question” will provide you with a series of facts which reveal a legal issue. Usually they are presented as though one of the “characters” in the fact situation has come to you for legal advice. The narrative of facts may be long – more than a page long in some cases – and not all of the facts will be important. Your task is to read the facts, identify the legal issues, and draft advice for your client.

**Tip #37: IRAC/ILAC is a good start, but only a start**

Every other introductory law textbook you will ever read, in your entire life, will introduce you to the IRAC or ILAC method of writing law essays. And there is a very good reason for this. The IRAC/ILAC method remains the simplest, most effective way to put together the answer to a problem question. Before any of the other tips in this section will make sense, you must know, and be able to successfully apply, the IRAC/ILAC method. Here’s how it works. We have been set a question in Torts. It’s a nice simple false imprisonment case, as follows:
Stephen was a check-out operator at a supermarket, and had been suspected of stealing from the till. After his shift ended on a particular afternoon, he was instructed to attend the Manager's officer, where he was questioned about money missing from his takings. Unbeknownst to him, the Manager positioned two security staff outside the room with instructions to prevent him from leaving.

Stephen confessed, and the Manager called the police. Prior to the police arriving, the Manager opened the door very briefly and told the security staff to leave. At no time did Stephen know that they were there; as far as he was concerned, he could have left at any time. Was the tort of false imprisonment committed against Stephen?

Now, students who have done a lot of reading will immediately jump on this case and say it is very similar to a 1919 British case called Meering v Graham-White Aviation. And good on them. But just identifying that similarity is not the same as writing a good essay. So how do we go about it?

I = Issue: The first step is to work out what the issue is. Now, the tort of false imprisonment involves the total restraint of a person against their will. That seems to have happened here. But, thinking it through carefully, the real issue here seems to be whether it matters that Stephen never knew that he was actually being restrained. Can we really say it was against his will if he didn’t even know it was going on?

L = Law, or R = Rule: The second step is to ask what the rule of law says about the issue you have identified. Sometimes you will find the law in a prior case; sometimes it will be in a piece of legislation; occasionally it will be in the constitution.
In this case, the rule comes from the case described above, *Meering v Graham-White Aviation*. And the rule is, that knowledge of restraint is not necessary for a person to be falsely imprisoned.

A = Application: The third step is so often missed out by students. You must APPLY the rule to the current facts. So, in this case, Stephen was totally restrained against his will, but did not know about it. His lack of knowledge, however, does not make the false imprisonment any less wrongful.

C = Conclude: Finally, you must actually give a conclusion which answers the question. “Yes, the tort of false imprisonment has been committed.”

Following the simple IRAC/ILAC method, a (very abbreviated) answer to this question might be as follows:

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The tort of false imprisonment occurs when a person is completely restrained against their will. However this case raises an additional question, as to whether the tort is committed even under circumstances where the victim is not aware of the restraint upon them.

In Meering v Graham-White Aviation, the court found that false imprisonment occurred even in circumstances where the victim is not aware, at the time of the false imprisonment, that they have been imprisoned.

In this case, Stephen was completely restrained against his will. The fact that he did not know of his restraint is, following Meering v Graham-White Aviation, irrelevant to the question of whether he was falsely imprisoned. Consequently, Stephen was falsely imprisoned by the supermarket manager.
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So there’s your basic model. however this is not enough. The next few tips tell you how to make the model work in some tricky circumstances that examiners just adore throwing in your direction.

**Tip #38: Work out what the issue really is**

We’ve just talked about the IRAC/ILAC method, and the fact that the very first letter is “Issue.” It constantly surprises me how many students fail to think this through properly. Many students will look at the facts of a problem question, and then waste precious words discussing “issues” that are not really issues at all.

For instance, let’s imagine you’ve been given the following problem question in Criminal Law:

At Christine’s 18th birthday party, Christine and her best friend Karen had both consumed a considerable quantity of alcohol. At one point, the two were out on the first floor balcony when an argument broke out between them, during which Christine accused Karen of attempting to “crack on” to Christine’s boyfriend Steve.

At the peak of the argument Christine shouted “I’ll show you, you bitch!” and swung a full glass of beer in the direction of Karen's head. Karen ducked out of the way of the blow and pushed Christine backwards with all her force. Christine fell against the balcony railing, which gave way. She fell to the ground below and was seriously injured. Police have charged Karen with inflicting grievous bodily harm upon Christine.

Advise Karen.
This is a typical, fairly simple problem question. There are only two real issues. First, did Karen's actions fulfil the elements of the charge; and second, are there any defences available to Karen? Any answer that covers these questions will receive a good mark.

However, I will bet you five bucks that some of the essays responding to this question will deal with “issues” such as:

1. Whether both parties were of majority age, and whether Karen should have been consuming alcohol.

2. Whether Christine's conduct was also a criminal offence.

3. Whether any defences were open to Christine.

4. Whether the occupier of the house has any liability because the railing failed to hold.

All of these things are arguably legal issues. None of them have diddlysquat to do with the question that was actually asked though. The moral of the story is that it is not good enough to just identify legal issues arising from the facts. It is more important to identify the right legal issues.

**Tip #39: Sometimes there is more than one issue**

This is a favourite trick of examiners, and now that I have become an examiner myself, I can see why. Here's how it works. Students are given a fact scenario in which one key, relevant legal issue is pretty clearly identified. Most students will be expected to identify this issue and present a pretty reasonable analysis. That will probably be enough for a pass.
However tucked away in the facts will be a second relevant issue. It won't be hidden, or unreasonably cryptic, but it won't be in your face either. The better students - the ones chasing Ds and HDs - will spot this second issue, and deal with both. Let's have a look at an example, from Contracts. The fact scenario is as follows:

Charlie is a painter with his own one-man business. His sister Erica hires him to paint the outside of her house. They agree on the specifications, and Erica is very clear about the exact colour that she wants the main exterior. When Charlie goes to his paint supplier, he finds that he is unable to get sufficient quantity of the exact shade Erica wants, however he is able to get another shade, virtually indistinguishable from the first, and slightly cheaper. He purchases the paint and completes the painting while Erica is away on holidays.

Erica returns home and at first seems happy, until she sees one of the paint tins, inadvertently left over after the job was completed. From the tin, she realises the shade was not exactly right. She is angry at this outcome, and hires another painter to overpaint the house in the right shade. She has now demanded that Charlie pay for the cost of overpainting.

Advise Charlie.

Now, virtually every student is going to identify the key issue here - whether the contract was breached, and whether the remedy should be for Charlie to pay (or, alternatively, whether Erica should have given him a chance to fix it). Any student
who deals adequately with this issue is going to receive a pass mark.

The hidden issue in this question, however, is lurking away in the very first few words. The contract is between brother and sister. In contract law, contracts between close family members are presumed to be nonjusticiable (that is, not open to enforcement by the courts) unless the plaintiff (Erica) can show that they intended otherwise at the time the contract was formed. A student who deals with the breach and remedy issue, and also with the contracts-between-family-members issue, is well and truly in D or HD territory.

There is no particular trick to spotting these issues. Just don't be in too much of a hurry, especially in exams. Don't just spot the first big issue and rush into writing your advice. Stop for a moment and think "Is there anything else?"

One final word on method. The IRAC/ILAC method works perfectly well when there are multiple issues, provided you deal with one issue at a time, in a logical sequence. Don't be sucked in to trying to list both issues, then both rules, then both applications, then both conclusions. The best way is to begin your introduction by saying, in the above case, "My advice to Charlie would deal with two issues: first, whether the contract with his sister was justiciable; and second, whether her proposed remedy is defensible in the circumstances.". Then off you go, with two separate IRAC/ILAC analyses.

Tip #40: Sometimes the law isn’t settled

Another favourite piece of trickery for the writers of assignment questions is to pose a problem which seems simple enough at first, until you dig into it and find that the law is not really clear. Perhaps there are two key cases, and the judges seem to have arrived at different conclusions.
Perhaps there was originally a key case, but the parliament has since passed legislation, yet the legislation does not seem to have completely over-ridden the case; or perhaps an older case gives hints on how to interpret newer legislation. Messy. Very messy – and that’s why your examiners love it.

Here’s the ideal way to handle one of these questions:

First, identify the legal issue in the normal way but make sure you explain the nature of the legal issue very carefully. This is really critical in these situations.

Second, identify which aspects of the relevant law are clear and settled. Note them, and note your authorities.

Third, identify the gap in the law. Identify exactly what legal question does not currently have a clear answer.

Fourth, identify the various plausible interpretations of the current law. So, if the current law seems to allow for two possible interpretations, explain both of them, and explain how they seem to be supported by the law as it stands.

Finally, you still need to pick one. Your client isn’t paying you to say “I don’t know”. So ultimately you are going to say something along the lines of “While the law is not settled in this area, interpretation X seems to be the better interpretation because …” or you might say “While the law is not settled in this area, interpretation X would result in a better legal outcome for this client, so this interpretation should be urged before the court.”

That way, you’ve shown the examiners that you can identify the issue, you can identify the gap in the law, you can identify several possibilities, yet in the end you have had the confidence to select a position and back it up. That’s a good assignment.
Tip #41: Think about how the case would look if you were wrong

I had a bit of a debate with myself about whether to include this tip or not. If you do it right, you can propel yourself right into the "massive marks" zone. However if it goes wrong, it can be a disaster. So before using this tip, you need to be completely honest with yourself. How good is your assignment? If you're confident that you have done a great job of setting out the answer for your client - and you still have a few words left to spare - then consider using this tip. In any other instance, you risk making things much, much worse.

OK, still want to give it a shot?

For as moment, put yourself in the position of the opposing lawyer. If you were in their shoes, what would you see as the weaknesses in your initial legal argument? What are the risks? What if you're wrong? As a lawyer, an important part of your job will be warning people about the risks they are tasking by commencing legal action; one of your duties will be to advise them of the weaker, as well as the stronger, aspects of their case. If you do this well in your assignment, you can demonstrate a genuinely deep and impressive knowledge of the subject.

Let's look at an example of how this can be done well, and an example of how it can be done really poorly. We're studying succession (which is actually a really interesting subject - much to my surprise as an undergraduate), and the question is as follows:

Christopher, an unmarried widower, has died. He has left his entire estate to his two children, Erica and Max. Erica is 20, and is the executor of the estate. Max is 14. Before probate is granted, a women named Alison comes forward, stating that her son
Cooper, who is 9, is Christopher's son. She states that Cooper was the result of a brief affair between Alison and Christopher. She had never told Christopher that she had fallen pregnant. She has no direct proof of paternity, but states she was not sexually active with anyone other than Christopher around the time of Cooper's conception. Alison is now making a family provision claim on Cooper's behalf. Assume, for the purpose of this question, that scientific methods of establishing paternity (such as DNA testing) are unavailable. Advise Erica.

Interesting question, don't you think? Here's how an incredibly short good answer might look.

For a person to apply for family provision under the Succession Act 2006 (NSW) they must be an "eligible person" [s.57]. An eligible person includes a child of the deceased person. At this point, however, there is nothing beyond Alison's claims, to show that Cooper is an eligible person. Given that Alison cannot establish Cooper's eligibility, she will be unable to claim.

{Now, here's the "What if I'm wrong" bit}

If, however, Alison is able to present evidence that Cooper is the child of Christopher, then he will be eligible to apply for family provision regardless of his status as a child born outside a committed relationship. If he is eligible, the court may make a family provision order under section 59 of that Act, taking into account the factors cited in section 60. In particular, the Court will note that Christopher
would, under these circumstances, have had an obligation to pay Child Support; however the Court will also take into account Alison's obligations to provide support for Cooper.

See how that looks? It looks very much as though the student is 100 percent ahead of the game. They understand their stuff. They have given comprehensive advice to the client. It's a good answer (even though I am biased, having written it!). Now let's look at an answer to the same question, where it goes pear shaped.

If Alison can establish that Cooper is Christopher's son, then she will be able to apply for family provision under sections 59 and 60 of the Succession Act 2006 (NSW) because such an application can be made by an eligible person, which includes a child of the deceased person. Alison will have to prove that Cooper is Christopher's son and she has not yet done this. If she does, then the Court will consider the factors in section 60, including the fact that Christopher would have been liable for child support, and the fact that Alison has an obligation to support Cooper. However it is unlikely that Alison's claim on behalf of Cooper will succeed, as she has not demonstrated that Cooper is Christopher's son.

Now, nothing in this second answer is actually wrong. The student would get a safe pass mark. But can you see how much more of a shemozzle it is? The student is all over the place, arguing both sides of the case at once. Any student
trying this process is at grave risk of getting themselves so confused that they ruin their paper.

The answer is to be very clear and logical. First, provide your argument. Provide the whole IRAC/ILAC argument. One you have done that, then you can think about covering the risks and weaknesses. Keep them entirely separate, and all will be well.

**Tip #42: Conclude. That means actually conclude.**

About five minutes after starting my first legal job, as a military lawyer, I found myself in the office of a very senior officer who was very reluctantly seeking legal advice. He didn't really want me in his office, and he didn't really expect me to be able to help him. His first words were "I'm not sure you are going to be any use at all. I've spoken to you lawyers before, and you give me an answer full of mumbo jumbo and confusing bullshit, and I end up more confused than I was when I started. But apparently I'm required to get your advice. So let's do what we gotta do."

Despite his grumpiness, it was a great first lesson. When people come to see a lawyer, they don't want a law lecture. They don't want you to impress them with your knowledge of law Latin. They have three questions: "What should I do?" and "How will this turn out?" and "How much will you cost me?" They want straight, plain English answers, with practical courses of action. If you just sort of trail off into nowhere without actually providing the client with any advice, your marks will certainly suffer.

Strangely enough, your examiners want exactly the same thing. For sure, you have to provide the examiners with all of the legal mumbo jumbo and detailed argument, to prove that you
have actually developed some expertise, but at the end of the essay they want to see a neat, plainly packaged, simple English piece of advice. "Laura is therefore liable for assault and is likely to be convicted." "The contract is valid and Liam must perform his obligations." "Scarlett was not falsely imprisoned and her action is unlikely to be successful." "Isaac should plead guilty at the first opportunity to obtain the benefits of doing so." "The easement is valid."

Here's the really cool bit though. If you can provide a one line advice like that, and if you know the rest of your paper supports that advice, you have almost certainly written a successful essay; conversely, if you can't provide a successful one liner, then you probably need to think more deeply about the assignment. It's a great barometer.

**Essay Style Questions**

Essay style questions are relatively rare in many law degrees, but they are becoming more common in law schools which aim to help students to *understand* the law, rather than just knowing which bits fit where. Essay style questions are commonplace in Arts degrees, and students doing the common BA LLB double degree will have a head start as a result.

Essentially, in an essay style question, students are given a question or a topic, and are required to prepare an argument or a discussion on that topic. The key difference between essay questions and problem questions is that in essay questions you need to explain *why* your view is right. The topics are usually much less hard-and-fast and there are inevitably a number of equally “right”, or equally plausible answers. So you won't get any marks for coming up with the
right answer – your marks come from showing how you come up with that answer. The argument’s the thing.

**Tip #43: You need a plan. You really need a plan**

It always amazes me when I read the assignment of a student who clearly did not even start out with a plan. The assignment meanders around from idea to idea, never really going anywhere, and the student often just ends up confused, before desperately trying to state a conclusion at the end (and desperately trying to ignore the fact that the conclusion doesn’t actually follow from the argument). It also saddens me when this happens because there is just no way, with any professionalism, that I can give the student a good mark. Please don’t let this be you.

In the following two tips, I am going to outline what I consider to be the ideal planning process. At this point, however, I just want to emphasise the need for a plan. And by a plan, I don't mean a vague idea of where the essay will go. I've often heard students say "the plan is in my head.". Sorry guys, I don't buy it. You're best off to write the plan down really clearly - it will probably only be six or seven dot points - and then actually use the plan to structure your essay. Each dot point should be, in effect, a subheading for your assignment. It's the same process as I described for step one of tip #12, but in reverse - this time you're the author not the reader. So let's say you have a 2000 word assignment due, and the topic is "Judges in the High Court have strayed too far into making, rather than interpreting the law." Your plan, after you finish your research, might look like this:
You can see straight away that these few lines are going to make a massive difference to the final product. If I follow the plan I will end up with a logical, well-balanced, well-paced essay, hopefully leading to a great mark. You'll note the estimated word count - I don't follow that part of the plan too religiously, but it gives some good aiming marks for each section, and if I'm reasonably close the unders and overs tend to work themselves out so that I don't have too much work to do, to meet the word count in the end.

OK, that's the basic planning process. The next two tips improve it further.

**Tip #44: Rephrase the topic as a question**

An old trick of examiners is to present a topic as a proposition, and then stick the word "Discuss" on the end. Such a simple thing, but it seems to create a weird alternate reality for some students, who believe "discuss" is code for "please brain-dump everything Google can tell you about this topic." No thanks.
One of the best ways to get started on your planning process is to rephrase the topic as a question (unless it's a question already) and then turn on your inner child. Remember when you were a kid, and you were confused about something you'd heard? Remember plying the grownups with a series of "but why" questions? Do that now. It will help you dive into the research with a focus, rather than just swimming around in readings waiting for something to stick in your mind.

Let's say we're studying corporations law. The essay topic is as follows: "Voting at company General Meetings is essentially pointless. Discuss."

Well, we could begin dealing with topic by running off to generate research into the rules for general meetings or the rules for voting at such meetings; instead, let's begin by rephrasing the topic as a question. There are a couple of possibilities; I will go with the simplest: "Is voting at General Meetings essentially pointless?"

That question is going to have a yes or no answer. For the moment, let's start with the "Yes" case. The obvious next question is "Why is voting at company general meetings pointless?" If we knew that, we'd be on the way to a good answer. At the moment though, I see more questions. What is a General Meeting supposed to achieve? What is voting, specifically, supposed to achieve? How is it supposed to achieve these things? Does it achieve these things? Which bits of the process, if any, work well? Which do not?

Guided by these questions, I can now dive into the research materials - not blindly groping for relevant material, but rather searching to ferret out exactly the information I need. And when I get that information, the questions suddenly turn into my plan:
Introduction

Purpose of General Meetings

Purpose of voting at General Meetings

Criticism of the voting process

Advantages of the voting process

Analysis (Balancing the advantages against the criticisms)

Conclusion

Here's the kicker: My essay plan now reflects the questions I found myself asking about the topic. That means when an assessor comes to mark my essay, the essay will answer - in logical order - the questions THEY are likely to be asking about the topic. That's the recipe for a good, clean, logical essay. It's a winner.

**Tip #45: Start with a syllogism; add evidence; stir and serve**

Start with a what?

A syllogism is basically a formalised logical argument, where you make a number of statements called *premises* and build those logically towards a conclusion. For example:

1. All children like ice-cream.
2. All ice cream is chocolate flavoured.

Therefore all children like chocolate flavour.
See how it works? The argument leads the reader step by step to the conclusion. If you can do that in your essay, you will write a very good essay. Let’s say you are asked to write an essay question on the topic, “Should dogs have rights?” You decide the answer is yes. Your syllogism might look something like the following:

1. All sentient beings are capable of having *interests*, for instance an interest in remaining alive, or an interest in avoiding pain.

2. If an interest is sufficiently important, it may be considered a *right*.

3. If a right is identified, it creates an *obligation* on other people (to respect that right).

4. Human beings are sentient, and have an interest in avoiding pain.

5. The law regards this interest as sufficient to be considered a right, so each of us has the right to expect the law's protection from others who intend to hurt us.

6. Dogs are sentient, and have an interest in avoiding pain.

7. The nature of a dog's sentience is indistinguishable from that of a human.

Therefore: a dog's right to expect protection against others seeking to hurt it, is indistinguishable from the same right held by a human.

Conclusion: A dog should have rights.
See how the essay builds, bit by bit? There's your essay plan, right there. You could go through the same process for the opposite argument, too:

1. The exercise of rights requires the ability to understand the nature of those rights.
2. The exercise of rights requires the ability to demand that others respect those rights.
3. Ultimately, the exercise of rights requires the ability to take legal action against those who infringe on our rights.
4. An dog has no legal personality.
5. An dog is unable to communicate with humans in a sufficiently sophisticated manner to enable it to insist on rights.

Therefore: A dog should not have rights.

Now, you should note that a syllogism can be *logical* without being *correct*. For instance, a critic of the first argument above might say “It’s not true that a dog’s sentience is indistinguishable from a human.” A critic of the second argument might say† “A human baby can't understand its rights or communicate them, but a baby still has human rights.”

A syllogism therefore doesn’t make an argument RIGHT. But it is by far and away the best, most clear way to set out a

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† With apologies to Peter Singer, who famously made this argument.
complex argument. It lets you build the argument, piece by piece. It lets you set in place your evidence and authorities for each step. It leads your reader to a conclusion which they will hopefully find compelling.

Developing syllogisms also takes practice. However for a lawyer, this skill is so fundamental that it simply must be learned.

Tip #46: Answer the bloody question!

I once got in trouble, when I was a tutor in political science, for writing those very four words on a student’s paper. But it was the third in a row to have made this mistake, and I was so frustrated I was almost tearing my hair out in tufts.

Here’s how it goes. The student has usually identified the right topic. They have probably done a lot of research. They’ve even probably come up with the right sources. It is screamingly obvious that they understand the material. But instead of answering the question which was actually asked, they answer the question they wish we had asked. Or, worse still, they don’t answer any question at all.

For instance, let’s imagine you’re doing Family Law. The essay topic is as follows:

Polygamous marriage and same-sex marriage are both unlawful in Australia, but lawful in some other jurisdictions. A partner to a polygamous marriage, who is now resident in Australia, is able to seek a divorce under the Family Law Act 1975 despite the invalidity (under Australian law) of the original marriage. A partner to a same-sex marriage, however, is unable to seek a divorce under Australian
law. Discuss whether the law should be changed to allow them to do so.

Now, the question for this topic is pretty darned clear. Should the law be changed to allow gay people, who have married in another jurisdiction, to divorce in Australia?

I'll guarantee that only a few students will spend their time discussing that actual question. Many others will spend most of their essays answering the question “Should polygamous marriage be allowed?” or “Should same sex marriage be allowed?” or “Is polygamous marriage better or worse than same sex marriage?” or “Would you like to generally rant on like a pork chop about your views on marriage?”

Others will spend their entire essay talking about the legal position of same sex and polygamous marriage. They'll discuss the case law in Australia and maybe even overseas. They'll talk about the amendments to the Marriage Act under the Howard government. They'll refer to parliamentary inquiries on the same sex issue. And they won't answer the question at all. And then their paper will come to someone like me ... and I'll be forced to give them a lower mark than they really deserve. And I'll probably get in trouble again for writing “answer the bloody question!” on their assignment sheet!

Tip #47: Deal with other possible answers too

This tip echoes tip #41, in which I suggested that you identify the weaknesses in your client's case, and advise what would happen if they lost on particular points. A similar process should occur in essay style assignments, except in this case it's not really an optional extra. Any good quality essay style
assignment will deal with other possible answers to the question.

That sounds simple enough, right? Actually, it's a bit harder than you might expect, but if you have got the above tips safely under your belt, this one shouldn't be too bad. The trick is that you have to start considering the alternative case from the beginning. So, when you rephrase the topic as a question, and develop a series of further questions, I suggest you do that twice. Once for your preferred answer, and once for the opposite answer. In fact, if you are unfamiliar with the topic, at this stage you might not even know which answer you are going to prefer.

Having done that, and supported it with some research, develop syllogisms for BOTH sides of the argument. At this point you can make your final choice as to which one you're going to go with.

The next step depends on what sort of essay question you're responding to. The keyword to look for is "discuss". Any time an essay question includes the word "discuss" it is almost certainly requiring you to present both sides of the argument. If the word "discuss" is not there, you're more likely being asked to make a specific argument in favour of your preferred outcome. This is important, because these two essay types will have different structures. Let's start with the "argument" essay and then do the "discuss" essay.

In the argument essay, you are entitled to spend most of your time and effort arguing your favoured case. Alternative arguments are really only presented in order to show that you're aware of them, and to show that your preferred argument is far superior. So the structure looks something like this:
a. Introduction

b. Present the syllogism for the main case (this is about 75% of your total wordcount)

c. Briefly present the alternative argument, and briefly indicate why you prefer your main argument.

d. Conclude.

In a discussion essay, however, your attention to each side of the case should be much more evenly balanced. The real task is to present both sides of the argument in their best light, and then to choose from between them. Here's my recommended structure:

a. Introduction

b. Present the syllogism for one of the cases.

c. Present the syllogism for the alternate case. The two should be about the same length, but the second one may be a little shorter if the two of them share some of the source material or key concepts.

d. Analyse each of the arguments, by identifying and comparing the strengths and weakness of each.

e. On the basis of the above analysis, choose which argument you consider to be more persuasive, and explain why.

f. Conclude.
With those basic plans, you should be able to handle virtually any essay questions you are likely to encounter during a law degree. Give yourself enough preparation time, and put in enough effort in your research, and assignments will be a breeze.
As a law student, there’s no escaping exams. Live with it, my friends: at the end of every teaching period, exams will loom. Most students will look towards them with an impending sense of dread. And most students will have absolutely no idea of how to prepare.

I am convinced that the biggest reason for exam-anxiety is lack of preparation. And by that I don’t mean that law students are just bludging before the exam sessions. Rather, what I mean is that most law students “prepare” by listening to lecture recordings all over again, or re-reading their readings, or re-reading their summaries, and in all honesty the chances of retaining that material is not good.

The students who do best in exams – like the lawyers who do best in court – are the ones who have thoroughly prepared.

**Tip #48: Know the material**

Most law exams are open book, essay or problem style exams. This leads to two traps which seem to trip up undergrad students - especially first years - on a regular basis. Both of these traps can be avoided simply by making sure you know the material, before you go into the exam.

**Trap 1:** "I'll dive into the textbook if I really need this information; so long as I've tagged it, it will all be good.” This one is so very tempting. You get a general idea about a topic, and convince yourself that if you need more detail, it’s all there in the textbook, so there is no real need to learn it. Lecturers will tell you this doesn’t work - and they are right - but students continue to fall into this trap anyway. So rather
than just saying they are right, I want to explain why they are right.

When setting an exam, your course co-ordinator is aiming to set an exam that will be challenging, but not impossible, for an average student, who knows the material, who has access to open books, and who will use the entire available time if they work reasonably swiftly. The exam is not designed to have "slack" built into the timings to allow you to learn new material. It's been designed to challenge those who already know the material. If you're not one of those people - one of the ones who already knows the material - then you are behind the eight ball before you even begin.

**Trap 2**: "This stuff probably won't be on the paper, I'll just ignore it." Actually I can see the sense behind this one. There are usually around ten topics in a subject, right? And there are usually, say, three to five questions on the exam paper. So if you assume each question focuses on one topic, that means maybe 30 to 50 percent of the material is going to be tested. Under those circumstances, why wouldn't you take an educated punt as to what material is likely to be on the exam?

Well, there are two reasons. The first is obvious - if that material DOES come up on the exam paper, you're completely stuffed. Your only option will be to madly scrabble through the textbooks trying to piece together something that comes close to being a pass; maybe a narrow fail will still get you over the line if you do well enough in the other questions. Not a good place to be. The second reason is that exam questions rarely include just one issue. As noted above in tip #39, it is a favourite trick of examiners to include more than one issue. If you've only studied half the topics, you may well find that you miss issues altogether, which means you miss the opportunities to go for those extra marks.
Basically, what it comes down to is this: there are no short cuts. You have to know your stuff, and an open-book exam doesn’t create a comfort zone, it just creates a different type of challenge.

Tip #49: Pare the material it back, then pare it back again

If you have been reasonably diligent along the way, then by the end of the semester you will have gathered quite a voluminous quantity of notes. There will be your lecture notes, your reading notes, your notes from the text, your assignment notes - sometimes it can amount to a couple of hundred pages. And it can all be good stuff. However there is just way too much to get your head around. Remember, you're trying to compress everything so you can spit it back out in two or three hours. You might end up with thirty minutes to do an essay. The simple reality is that, of the hundreds of pages of notes you will take, maybe 1 percent will ever end up on your exam answer book. As a result, during your exam preparation, you need to begin reducing your material. I suggest that you do it in two stages.

First, go through and remove the interesting-but-not-critical material. You'll be surprised how much of it gets built up. It's the nature of the task. You sit during a lecture, scribbling furiously, and once you have your head around the topic you find that half your notes are junk. It's the same when you do readings. Ditch it all. What you want to do at this stage, is put together the reading list you would give to someone who only had a weekend to learn the entire course. Ruthlessly cut out anything which does not contribute directly to the objective! In my experience you will out to one side approximately half of the material you started out with. Don't chuck it away - you might need to dip into it - but definitely put it to one side.
Second, go through and remove the important-but-explanatory stuff. This will leave you with the bare bones of what you need for your exam. So, if you're studying criminal law and looking at marital rape, you should have already put aside the interesting-but-not-critical contextual stuff about the prevalence of domestic violence, and all of the contextual material about the history of the marital rape exception (this was an old, ridiculous doctrine which said it was legally AOK for husbands to rape their wives. In fact it wasn't even regarded as rape, because wives were taken to have given lifelong consent to sex with their husbands, any time, anywhere, and any way he wanted it). All of that material is important for understanding, but it should have gone at stage 1. At this point, you are left with notes about the famous British case *R v R*, the famous South Australian "rougher than usual handling" case, and the changes to Australian law in the late 1980s. With each of these you have a paragraph or two of context, thus:

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*R v R*: British case, 1991. Overturned the previous doctrine. Noted that in modern marriages wives are no longer subservient to husbands; marriages are partnerships between equals. "Any reasonable person must regard [the marital rape exception] as quite unacceptable."

*Question of Law on s.350(1a)*: South Australian case. Famous for the first instance judge saying husbands could use "rougher than usual handling" to persuade wives to have sex. Caused public outcry. Appeal court clarified that consent of wife, if obtained by force or threat, was no consent at all.

*Crimes Act s.61T*: inserted 1989. No marital immunity in NSW.

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Now, at first glance, they seem like pretty good notes. and, for second-stage notes, they are. But now we are trying to pare them back even further, to the bare bones:

Marital Rape Immunity: Removed in NSW (CA s.61T, 1989). Marriages now equal partnerships ($R v R$). Cannot use force or threat to obtain wife's consent ($Qn of law 350(1a)$).

See how this subtopic, which would have started life as thirty or forty pages of readings, then became a couple of pages of notes; then it became a couple of paragraphs of brief pointers; then it became one line of immediate facts? That's examination goodness, right there.

If you do this well, you will be able to pull down your entire semester into about 15 to 20 lightly typed pages. This will be your exam bible.

Some of you, right now, are objecting heartily. How will you be able to write an essay, or a three page problem answer, if you just have such brief notes? Strangely enough, in most cases this will be plenty. However if you do find you need more, you can then refer to your second-stage notes, which will be longer and have more detail. But you'll be diving into those notes for a specific purpose, rather than just swimming around in a far-too-big mass of notes, hoping to come across the stuff you actually need.

Furthermore (and here's the really tricky bit) the mere process of paring back, and paring back again, will actually pack a lot of this information into your head. Without realising it, you will learn a heap of this stuff as you go. Why? Because the process of paring back requires you to read, understand, and
analyse. It's the perfect, gold standard study technique. It rocks.

**Tip #50: Know the three stages of preparation: Concepts, Detail and Reference**

This tip is similar to tip #49, but with a slightly different focus. It's best if you understand both of them, because both are incredibly important, and once you understand them both you will find they actually work together stupendously well. I have always found there are three levels of knowledge about legal topics: concepts, details and reference.

"Concepts" are all about understanding. If you were going into, say, a real property exam, and you had a note that said "Easements are registrable" you would have a perfectly accurate, yet perfectly useless little note. Information like that only makes sense if you understand what an easement is, if you understand what the purpose of the register is, and if you understand how the registration of an interest in land affects people’s legal positions. So you need to learn that stuff first, at a conceptual level. You need to actually understand it. Unfortunately, it’s too late to do that during exam-cramming season. Sometimes you might try to understand something that’s still giving you trouble. However if you don't understand most of the material already, you're unlikely to be able to change that much.

"Detail" provides the bread and butter for lawyers. An understanding of the law is vital, but then you need to understand the actual details of the relevant legal rules, and how to apply them. This material is typically pretty close to your second level of notes from tip #49. At this stage you really do need to have the information in detail - the principal
rules, the exceptions, and flowcharts of how they all fit together.

If you've got both of these covered, you actually have all the knowledge you need to pass the exam. The next stage, Reference, is all about packing that information into a logical package so that in the exam, you can quickly and easily extract it and apply it. Again, this is your third level of notes from tip #49. The information in this form is not actually all that informative - it's more like an advanced form of index, it lets you get your hands on key information quickly and reliably - and under pressure!

So: first understand the concepts, then understand the detail, then finally establish a reference system. Follow that pattern, and you'll do well in exams. You almost have to.

Tip #51: Develop a retrieval system

I used to have a (possibly mean-spirited) laugh at some of the other students in the exam room. I particularly liked the ones who brought in so many materials that they just about needed a forklift. I once quite literally saw a woman have to make three trips to her car to collect all her stuff. I felt bad giggling about it, but it was seriously funny. Here's a crazy fact: you can have all the answers under the sun, in every textbook known to humanity, and it's all pointless unless you have a retrieval system which will let you get the right information, in a real hurry, without getting disrupted by irrelevant stuff.

That's easy enough to say. How do you establish a system?

Unfortunately, there is no simple answer. Brains are weird, and a retrieval system that works perfectly for me might leave you in a world of confusion. The only thing you can really do is try a couple of different options, and gradually work out
what works best for you. Here are four ideas to get you started.

**Flags:** These are probably the most common. Whoever invented those little adhesive flags you can stick on the sides of paper, has changed the world - for better or for worse. Most students give this a try at least once, but there are some pitfalls to consider. First, think about the number of flags you are using. Sometimes you see students with 200 or 300 flags in a textbook, going right around the top, side and bottom of the textbook, in several layers. It must take hours to prepare! The problem is, it may also take hours to find the right flag if you're looking for information in the exam. A retrieval system that can't be used quickly is not worth a pinch. My rule of thumb was 15 flags. No more than 15 flags in any textbook.

The second problem with flags is working out exactly what to write on them. Too much information and the writing has to be tiny (and therefore hard to see in a hurry). Too little information, too many acronyms, and you may not be able to find what you need. It's a tricky balance, but it's one you will have to think carefully about if you choose to use flags.

On the other hand, the biggest advantage of flags is that they are the only realistic retrieval system for use in textbooks. None of the other methods discussed below will allow you to reliably dive into a textbook in the midst of an exam.

**Lists:** By the end of my degree, lists were my preferred choice. Attached to the front of every book, booklet, file, or pile of papers was a single sheet with five or six dot points, in large font, telling me exactly what was inside. Sometimes I flagged the specific pages, but usually the lists were enough to let me get my hands on things very quickly. The benefit was that looking at lists, written in large writing, was much easier than fumbling my way through flags. The disadvantage is that lists are less precise.
Maps: Some people swear by "mind mapping" techniques which involve graphically representing different pieces of information and the linkages between them. I have seen students successfully adapt this concept to their exam notes, setting them out as mind maps, with links between sources. Personally, my brain just doesn't seem to work this way, so I'm reluctant to offer "tips" that I have never actually used myself. Like I said, brains are weird. If you want to learn more about this technique, just google "mind map" and see what others say.

Colour coded paper: This is a simple but effective technique. Bond paper is available in a vast array of different colours: take advantage of that. If you're sitting a torts exam, white paper might be your top level summaries, blue paper might relate to intentional torts, green paper might relate to duty-of-care aspects of negligence, red paper might relate to breach of duty in negligence, and yellow paper might relate to nuisance. You'll still need a mechanism to get to precisely the bit of information you're after, but colour coding at the top level is a terrific way to get started.

Tip #52: Closed book exams are different

My first degree was the much - and unfairly - maligned Bachelor of Arts. My BA taught me a number of skills that I would never have obtained from law studies alone. For one thing, the amount of conceptual thinking required by an Arts student is much higher than for the average black-letter law student; more importantly, my BA taught me how to do closed book exams. Closed book exams are rarely used in law schools, but when they are used they tend to scare the willies out of most students.
Happily, tips #48 and 49 above are just as valid for closed-book exams as they are for open-book ones. Maybe even more important.

For starters, to tackle a closed-book exam, you really will need to understand the material. Understanding aids memory. Imagine, for instance, two people who had to give an impromptu explanation of the rules of Australian Football, to an audience from overseas. The first speaker had never seen a game, but had plenty of opportunity to cram with a rulebook. The second person had no access to a rulebook at all, but had grown up watching, playing and loving the game. Who would give the better, more informed presentation? Obviously the second speaker - because they understand.

Second, the process of paring the material back several times is still important. Once you have pared it back twice, the material is likely to be brief enough that you really can learn it in detail, as a manageable block of information. Once you are at the point where it is all very familiar, then you can start working to add detail to your arsenal.

There are a million tricks out there to aid memory. Some people set the material to music, some people create long and involved mnemonics. Some people record material and listen in their sleep. There doesn't seem to be a "best" way to do it - you may have to try a few, and see if they work for you. However all of these techniques work better if you understand what you're talking about, and if you reduce the material down to manageable portions.

**Tip #53: Choose your pen wisely**

OK, at this point some of you think I am going crazy. “I'm a university student for Pete's sake, why on earth does he need to be telling me about choosing the right pen?”
I'm telling you, this is important, and I've read heaps of exam scripts by people who screw this up. You do, seriously, actually need to think about which pens to use. There are several things to consider:

1. **Reliability.** Nobody sensible walks into an exam with just one pen. I usually took in 5 or 6. However you're much better off not having to rely on those extras. Having a pen run out while you are mid-sentence is irritating at the very least, and it can throw you slightly off balance. If it happens at the end of the exam while you are racing the clock, it can be a real issue. So, reliability is a factor.

2. **Nib size.** When you're testing pens out, look at how thick or thin the line of ink is on the page. Generally speaking, thicker lines will require larger letters. If you write small letters using thick lines, your writing will quickly become completely indecipherable. The examiner can't mark what they can't read.

3. **Smudgification factor.** Yes, “smudgification” is a word. It is now, anyway. Depending on how you hold your pen, and depending on how rapidly the ink dries, and depending on whether the exam paper has a shiny surface, you may find that an accidental movement of your hand obliterates the line above where you are writing. Ouch. You've just lost a minute or so rewriting, and the whole thing becomes harder to read.

4. **Writing pressure.** How hard do you need to press down on the pen while writing? This can be a trade-off with smudgification, because the pens that require the least writing pressure are also often the ones with the most “moist” ink, which are most prone to smudging. Try a few different pens and see which works best for you. Remember, you are going to be maintaining the writing pressure for several hours,
essentially non-stop. In my view this is one of the biggest factors influencing legibility, and writing fatigue, both of which are so important in written exams.

5. **Barrel thickness.** The thickness of the barrel or “tube” of the pen is also important. A thinner pen will allow you to be more precise when forming letters, and thus more legible. However a thin pen will also usually be somewhat harder to hold, and may result in finger cramping before the end of the exam. I have seen students' fingers cramp up to the point where they virtually couldn't write by the end of the exam, and I'm sure barrel thickness was the culprit. Some of you are thinking, by this point, “Wow, I thought that was just me.”

6. **Luck.** Don’t ignore luck. I don’t really believe in lucky pens. However if you have a lucky pen, one that you associate with success and confidence, then that pen is going to help you be in the best frame of mind for the exam. Maybe it’s a pen your Dad gave you when you started studying. Maybe it’s the ratty old plastic pen you used in the Jurisprudence exam which you expected to fail but got an HD for. The pen might improve your performance just by raising your spirits.

OK, convinced yet? Pen selection really is something you need to think about as part of your exam prep. At the very least, it might help you by that fraction of a percent that gets you over the line.

**Tip #54: Practice, to avoid writing fatigue**

I once read about a qualification called “Master of Wine.” It's not formally a university degree, but it requires as much commitment, or more. Students follow a course of study set by the Institute of Masters of Wine in the UK, and then when they sit the exam, it is a monster. An absolute monster. Essay after essay after essay on wine theory, followed up with a
series of practical wine-tasting tests where they may be asked to identify wines from all over the world.

The article followed several students who were trying for this qualification. One of them had to pull out, half way through the exam, because his hand cramped up and he quite literally lost a fingernail, from gripping and writing for that long.

Now, I don’t know whether the story is true, but it leaves me with two conclusions. First, I have the most profound respect for any Master of Wine. Second, it doesn’t matter how much you know, if you can’t get it onto the paper you won’t pass.

Years ago - when I was going through high school - writing fatigue was not an issue. We all used pens, all day every day. We all took notes longhand. By the time we got to university we had each written countless hundreds of thousands of words, sometimes for hours at a time. Nowadays, things are different. Students spend a far greater portion of their time taking notes or undertaking research on computers. Penmanship is a disappearing art. It would be entirely possible for a student to go through their entire semester without actually using a pen in the course of their university studies.

Exams, however, must be handwritten. And, like any other skill, writing must be practiced. The muscles must be trained. Otherwise, I promise you, towards the end of a two or three hour exam, your hand will be cramping up and screaming at you. Your writing may become all but illegible. You will lose precious time flexing your fingers and trying to convince them to keep going. You will not be concentrating properly, because you will be hurting.

Some of you, at this point, think I am mad. Writing fatigue? Seriously? But if you think about it, most exams are 2 hours. That’s about how long it takes a fit person to run a half
marathon. Imagine if you did no exercise, no running, and then all of a sudden you had to run a half marathon, with your entire semester’s work riding on the outcome. That’s what you’re asking of your fingers.

Pen selection is important, but in the end there’s only one way to beat writing fatigue - practice. You need to write something longhand every day if you can, and you should (as I’ve mentioned in tip #10 above, seriously consider taking your notes longhand. If you can write notes for 2 hours at a time, several times a week, the exam will be a breeze.
I once added up that over the course of three coursework degrees, I've done more than 60 exams. I'm pretty sure that is a form of masochism, and I should probably see a therapist or something. However it does mean I've learned a couple of things about how to actually handle the exam process itself. There are a few things you can do to make the process feel slightly less like torture.

Tip #55: Arrive early

When I was an undergraduate, I sat a few external exams at Wagga in NSW. There was this one dude - never found out his name - who used to arrive at the exam venue literally ten seconds before the start of the exam, grab a desk, and start writing. Every single time. Damn I admired his cavalier attitude - but I was never tempted to emulate it.

My personal advice is to be at the venue early. And I mean *early*. My own practice was usually to aim to be at the venue two hours prior to the start of the exam. Why so early? Well, that way I knew that if my car broke down, I could get a cab - or walk. Traffic, public transport interruptions, none of these things could stop me from being at the venue on time. See, the thing is, if you miss the exam, it's generally a case of "tough bickies". You fail the subject, and your semester's study is for nothing. Against such an outcome, what is two hours?

Generally I found that being at the venue so early meant that parking was easy, I could identify the exact venue, grab something to eat and/or drink, and have one last browse through my notes. It was almost boring.
OK, I realise most of you are not going to arrive 2 hours early. Virtually nobody else used to arrive as early as me. But the moral of the story is, make sure you are there in plenty of time - you just don’t need the additional stress.

**Tip #56: Know where the venue is, and where you’re going to park**

This one is kind of derivative from tip #55, but I still think it justifies its own separate consideration. First up, make absolutely sure you know where the venue is. This is especially important for external students, who may be sitting exams in all sorts of weird and wonderful places.

By knowing where the venue is, I don’t just mean know where the uni is, or where the building is. Prior to having an exam at a new venue for the first time, you should go and visit. Work out exactly where the room is. Where the entrance is. I have heard disaster stories before of people finding that there were security passes required to get into buildings, or that the building was easy enough to find, but the room was hidden in a rabbit warren of corridors. In my own experience, I once sat an exam on a University campus. Thank goodness I visited the venue a few days before the exam - there was a construction site outside the window, with jackhammers and bulldozers! I complained and was able to have the exam location moved.

Second, know where you're going to park. Universities in particular have bewildering parking systems, and sometimes you need a law degree to understand the sign which says “This is a staff red-permit and student yellow-permit zones between 8AM and 4PM during semesters, excepting disabled blue permit holders and visitor voucher parking after 2PM.” I'm not kidding.
I have seen people in the past just park wherever they wanted, and cop the parking fine so they were not late for the exam. This works fine, but gets expensive. Much better to sort it out beforehand. Find out where the nearest suitable parking is, and how to get from there to your exam venue. The last thing you need is to be circling, looking for a car park, knowing that the precious minutes before “go time” are ticking down.

**Tip #57: Organise your workspace**

Walk in to any open-book exam, and you can tell the more experienced students straight away, by the way they have organised their desk space in the exam. Remember, in your exam, everything is against the clock. You want all of your information there and ready to retrieve easily. Generally speaking, here are the items you need to be thinking about:

1. **Your writing space.** Obviously, right in front of you, you need sufficient space for your exam script. You don't want to feel too cluttered in this space - it's your key workzone.

2. **The question paper.** Sometimes you will be writing the answers directly onto the question paper; however more often, the questions will be on one sheet and you will be writing your answers into a separate answer book. In that case, you want the question sheet close by, so you can see it at all times.

3. **Your key notes.** Your thrice- pared-back summary of the course notes should also be immediately at hand, so you can constantly get it in a hurry and flick through as you plan out your answers (see Tip #59).

Beyond those three items, you need to have the following materials set up, so you can get to them easily without them being in easy reach.
4. **Spare answer books.** Sometimes you will have several answer books, for instance with one essay to be written in each book. Keep those spare books to one side.

5. **Your “mid level” notes.** These are the notes and summaries you have made either during the semester or during your exam preparation. They are probably about five to ten times the length of your key notes, so they supply more detail if you really need it and are having trouble recalling. Again, you need these to be readily available, but not necessarily within immediate reach.

6. **Your spare pens.** Again, you don’t need these within immediate reach but boy oh boy if you need a spare pen, you will want it in a hurry without any searching.

7. **Your textbooks.** By the end of my degree, I didn’t bother taking my textbooks into my exams, but it took me a long while to get to that point. Basically, though, textbooks are really no more than a good security blanket, because the chances of successfully diving into them and extracting just the right bit of information, in the middle of an exam, are not high. You can safely put your textbooks way up the back out of reach, because you probably won’t touch them at all.

You may, of course, have an entirely different system - my point is just that you need to have a system! Take a few seconds before the exam to make sure everything is in its place so you can find things in a hurry.

**Tip #58: Carefully consider food and drink**

When I started as an undergrad, this tip would have been unnecessary. No, more than that: it would have been heretical! The very idea of food and drinks in an exam room would have given our elderly exam invigilators repeated heart palpitations.
These days, in most venues, nobody will have a real problem with you bringing food and drink into the exam venue. This is cool, but it does lead to some additional complications. Let’s start with food.

First and foremost, unless you are alone in the exam room, you have some responsibilities of decency to those around you, who are all also facing their own exams. This means please don’t bring in food that comes in a crackly package whose noise is going to disturb those around you, please don’t bring in crunchy food that you can’t avoid eating loudly, and please don’t bring in food with a pervasive odour. Exam rooms are, by their nature, unnaturally still and quiet. You don’t have the right to disturb that.

Second, think about why you need to take in food at all. Not too many people starve in two or three hours. If you are diabetic and need to manage your insulin levels, then clearly some food might be necessary. If chewing gum helps you concentrate, it might be OK. But seriously, unless you have a genuine purpose, why bother with the food at all?

I did once receive one food-related tip which I’ll pass along. Apparently good-quality dark chocolate is awesome for elevating your levels of serotonin, which is a brain chemical heavily involved in elevating mood. I was once told that a good hit of chocolate about twenty minutes before entering the exam room would help overcome nerves and get you started. I tried it, and it worked for me. I don’t know if it was just a placebo thing, and frankly I don’t care. It worked. Chocolate = good.

Drinks are actually a bigger issue. Lots of people bring a water bottle into the exam, and personally I tried never to go into an exam room without a Coke Zero by my side. However drinks bring with them two concerns. First, if you go drinking a heap of water in the first hour of the exam, guaranteed that by the
end you will be busting for the toilet, which in turn means either you lose time by nicking out to the loo, or alternatively you have to sit there trying to concentrate while ignoring your need to pee. Good luck with that.

Second, more importantly, a spilled drink can be a disaster. The old saying says, there is no point crying over spilled milk. However there is every point crying over the tipped-over water bottle which has just obliterated your answer-book. I'm not kidding, I have seen it happen. So if you do take in a drink, sit it on the floor next to you. You might kick it over, but at least the spillage will be on the floor, not all over your work.

**Tip #59: The first fifteen minutes are vital:**
Choose questions, plan your answers, and plan your timings

This is perhaps the most important tip in this whole book - and those first fifteen minutes are the most important minutes in your whole semester. Read that again. I mean it. Read it again one more time!

Once upon a time, most university exams were divided into a fifteen minute "perusal" period, followed by a two or three hour writing period. During perusal, you were allowed to read the exam paper, and you were allowed to write on the exam paper or your own notes, but you were not allowed to write in your answer book. The result was that every student was forced to spend fifteen minutes THINKING.

Recently, many universities seem to have done away with perusal. Some have extended the exam times, so the exams are now two and a quarter hours, but you can start writing
straight away. And many students do. And many of them write terrible papers as a result. So here is your rule:

Never, ever, ever write anything in your answer book in the first fifteen minutes of the exam.

That doesn’t mean you should waste those fifteen minutes. Far from it. Here's what you should be doing.

First, skim read the exam paper very quickly. I mean in 30 seconds to a minute, cover the whole paper. This accomplishes two things: it removes the inevitable "fear of the unknown" that will plague you before the exam. Suddenly you've seen the exam paper, you know that the task is ahead of you, and you can get on with it. Second, in exams where you are able to choose which questions to answer, some will jump out at you immediately as questions you want to do, or want to avoid.

Your second task is to select which questions you are going to answer. A typical exam paper might include five essay questions or problems, from which you have to answer three; choose those three. Scribble a great big line through the ones you're not going to do - they no longer exist.

Your third task is to plan. This should take the final ten minutes of perusal - and if it takes longer, it is still time well spent. Remember tip #43 (planning an assignment) and tip #45 (syllogisms)? They apply just as much in exams. Set out, in dot point form or IRAC/ILAC form, the answer you are going to give to each question. If key references or authorities come to mind, set them out as well.

Finally, budget your timings. Let's say you have three exam questions, and a two hour fifteen minute exam. In that
situation I'd recommend your "starting budget" should be 35 minutes for each essay, with 15 minutes at the end for overflow and last minute dot points (see tip #61). Then, on the front of your notes, actually write down your timetable, thus:

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.00 - 2.15</td>
<td>Planning</td>
</tr>
<tr>
<td>2.15 - 2.50</td>
<td>Question 1</td>
</tr>
<tr>
<td>2.50 - 3.25</td>
<td>Question 2</td>
</tr>
<tr>
<td>3.25 - 4.00</td>
<td>Question 3</td>
</tr>
<tr>
<td>4.00 - 4.15</td>
<td>Wrapping up and overflow</td>
</tr>
</tbody>
</table>

NOW, and only now, are you ready to begin writing. You have a plan. You know your answers. You have the confidence that comes from knowing you can handle the exam. You can now attack your answers while those around you are still panicking.

**Tip #60: When you start writing, don’t panic. Follow the plan.**

Occasionally, some students develop a perfectly sensible plan during perusal ... and then they forget all about it once they commence writing. They get spooked by the pressure of the exam, and go "off-script".

In my experience this usually happens for two reasons. One is that the student finds that their timings have gone astray - they get to the end of the time allocated for the first essay, and they're not done yet. The second is that they second-
guess their initial approach to the exam question, and decide to answer it in a different way.

Let’s deal with each situation separately.

First, timing issues. If you get to the end of the time allocated for your first essay and you haven’t finished, well: you have a problem. No question there. However if you run over-time on the first essay, then you will have even less time for the second one, and so on. It can become a disaster. In most cases, you are far better off to stop at the allocated time and go on to the next essay. I say this for two reasons. First, an incomplete essay will still get you marks; an essay which you did not even begin because you ate up all the time on previous essays, will get you no marks. If you have a choice between handing in three not-quite-complete essays, and two complete ones, you go for the first option every time. Second, you may find that some of the later questions don’t take as long as you expected, and then (if your plan is like mine in tip #59) you will have some time set aside at the end for "overflow" anyway. So you may be able to go back and tie up the loose ends, or switch to dot points (see tip #61).

Next, let’s look at the oh-no-my-answer-is-completely-wrong scenario. This one is never pretty. In many cases, however, it's unjustified. Usually, your first answer is actually pretty close; the later answer pops up when you're already doubting yourself, and often it is wrong. So in most cases, my best advice to you is to stick with your original answer. However, just for the sake of the argument, let's imagine that you really are truly convinced that you have got it wrong. What do you do?

You go back to tip #59. You still need a plan. The only thing worse than changing answers mid-stream is changing answers and then trying to write your paper without a plan. So, even if it costs you time, I still strongly advice you to pause, write a
new plan, and then get on with the essay. Even if you run out of time at the end, a well-planned-but-incomplete essay is going to get you more marks than a completed essay that reads like a bowl of scrambled eggs.

**Tip #61: If you’re short on time, dot points are fine**

Is is another one of those tips that feel a bit like cheating, because there is no way that I'll be the only person to offer you this gem of advice. However most people only tell you half the story.

If you get to the end of your exam, and you are running desperately low on time, you can stop writing proper sentences and paragraphs and switch to dot points, to show what material you WOULD have covered if you had more time. It's a way of saying to the examiners "look I really do know this stuff, I just ran out of time, please give me some more marks please please please." It usually works, too. Dot points will never get you as many marks as properly scripted answers, but they will get you some for sure.

However ... now we get to the real question. What do you put in the dot points, to try to get as many marks as possible?

If you have followed tip #59 and started with a plan, then you are in great shape. What you need to do, in dot point form, is provide the rest of the plan, in logical sequence, so the examiner can see the skeleton of the argument you would have written. Then, if you can, add authorities to show you are also aware of those.

Let's try an example. We're in our Family Law exam. Disaster has struck. The question is "Nicola has just been left by her husband. She attends your office, stating that she wants to
"sue the bastard for everything" including full custody of their three primary-school aged children. She states that she is not interested in mediation or negotiation, she wants to sue. Advise Nicola in relation to process.

My perusal-time plan was as follows:

1. Family Court committed to ADR.
2. Can’t go to court without trying mediation (s.60I)
3. Mediation often secures better outcomes anyway.
4. Risks of costs order if unnecessary court action.

Because the rest of the exam was difficult, and I let my timings get away from me, let’s assume I barely got started. All I wrote was the following:

Nicola appears to be keen to pursue a contested, court-based outcome to her family law dispute, but it is not clear that this would be in her interests, and she will not be able to file at this point in any event.

The Family Law Act and the Family Court are now committed to resolving matters by alternative dispute resolution wherever possible, while acknowledging that some matters will require a contested hearing. The reasons for this commitment are that alternative dispute resolution often results in better outcomes for the parties, who are able to maintain some level of control over their own circumstances; and that it results in far less legal expense.

At this point I’ve run out of time. Time to switch to dot points. Some students write a little message to say this is
what they are doing. Don't bother, it just wastes additional time, switch immediately to dot points. Provide them in as much detail as you can, in sequence, with authorities attached:

- ADR actually compulsory in most cases (Family Law Act s.60I)

- Facts don't indicate family violence or any other good reason for Nicola not to participate (FLA s. 60I(9))

- ADR may well have better outcomes for Nicola even if it doesn't let her vent her anger at her ex

- Kids are involved, so Nicola needs to focus on their best interests and consider the court's encouragement to cooperate (FLA s.63B)

- If Nicola rejects a good offer and insists on going to court, she risks a costs order against her (FLA 8.117(2a)(b))

- Conclusion: Strongly urge Nicola to reconsider her attitude re ADR.

Now, pretend you were the examiner. Would you give this a pass? I probably would. A bare pass - no more than half the available marks - but a pass nevertheless. Even if it failed, it would be a narrow fail so (with luck) better answers elsewhere in the paper could compensate. The dot points tell the examiner that you understand the law, and that you understand how to apply it. Everything is in logical sequence. They can see that you have met the knowledge-based requirements for the course. They have every reason to give you a passing grade.

I hope, for you, that it never comes down to this - but at the end of the day, dot points are better than nothing, and they may just be enough to get you over the line.
Tip #62: Develop a sense of post-exam fatalism

"Hate" is a strong word. During my time as a law student I don't think I really met anyone that I hated. However the closest I came to hatred was the angry feeling I had towards those idiots who, the moment they got out of an exam, would turn around and ask "So what did you say for Question 3?"

Let me translate for you, what they were really trying to say.

"I'm feeling really unconfident about my answer to Question 3 and I'm hoping you will reassure me by saying we got the same answer. However if you didn't I'm going to try to make you feel like you screwed up by getting a different answer to me."

Or alternatively they might mean:

"I'm so awesome. I bet you wish your answers were all the same as mine, because I'm awesome. Did I mention that I'm awesome?"

Either way, I wish they would put a sock in it. The best thing you can do after an exam is develop a sense of fatalism. For better or for worse, you've finished the exam. Nothing can change your result now. Making yourself feel better, or making others feel worse, is all kind of pointless. Put the exam out of your mind, put your notes in your filing cabinet, and forget it. Resist the temptation to go through your textbook looking at the answer you could have given. Resist rewriting the whole thing in your head. The anxiety changes nothing.

I remember walking out of my Admin Law exam convinced that I had made a complete mess of one answer. I disobeyed my own rules and went through my text. Every reference I could find seemed to be mocking me, every paragraph seemed
to provide gems of information that I could have, should have, MUST HAVE used in the exam. I was driving myself crazy.

And in that subject - for almost the only time in my academic career - I topped the class and was awarded a prize. Yes, I am that big of a nerd. The point it, that I frazzled myself out for nothing. If you've done well, there's no point stressing; and if you've done poorly, there's no point stressing. Which means, overall, there's no point stressing. I suggest you head off and do something completely unrelated to study, preferably something that will let you release your stress, and get ready for your next exam (or for the seemingly-never-ending wait for results).
9. Good luck!

Feel a bit more confident yet?

Nothing I can say in this book is going to make law study easy. It's not easy. It is hard yakka, and will keep you working for long, long hours. However it can be done. And the fact that it's hard makes the final sense of accomplishment all the more worthwhile.

Hopefully, though, access to this book has given you a chance to find some short-cuts. To learn how to study law in a way that took me a few years to learn for myself.

So where to from here? I'd like to make two requests if I can please.

First, I'd love to hear from you. If you tried these tips and they worked like a charm, I'd love to know about it. If you tried these tips, failed everything and you completely blame me for the fact that your study life is a mess, then I'd like to hear that too. I'm not sure that I'll agree, of course, but I'll certainly hear you out!

More to the point, if you want to offer any tips of your own, please do. At this point in time I have no idea whether this book will be a raging success or whether it will be read and then forgotten by no more than four people, including my Mum. However if it does well, I'd love to include tips from others in future additions - with due attribution of course!

Second, even though I know this is getting repetitive, I'd like to repeat my sincere request that you consider making a donation to support AUSTLII. My whole purpose in undertaking this project, besides spreading some good karma to other students, was to try to make some money to support the work of AUSTLII, which really is changing the world. Even
if it's just five bucks - please take the time to donate something. I promise you, I won't be making a cent, but like you I'll get to benefit from the continuing access AUSTLII provided us to the law of the land - of many lands.

OK, that's enough from me! Good luck on your own journey as a student-at-law. Ignore the lawyer jokes, focus on your study goals, and remember that when your assignment deadline is looming and it is 3AM, there is no such thing as a bad pizza.