

HOW TO GUIDE #2

USE COMMENTARY AND SOURCES



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How to: Use Commentary and Sources

Detailed and in-depth research is the key to developing a strong legal argument. However, it is one thing to have good sources, and it is another thing to use them effectively in your essay. Randomly referencing secondary sources left, right, and centre is nearly as problematic as failing to use your research at all. This Guide explains how to use your research strategically and develop a sophisticated argument that meaningfully contributes to the literature.

Engage with your sources

In the process of developing a strong legal argument, High Distinction papers will interact with their analytical sources. For example, their paragraphs will outline the views of key authors, draw upon their examples, identify counter-arguments, and critically evaluate the validity of these views. Perhaps most importantly, students who write High Distinctions papers know where their own views sit within this framework.

Engaging with your materials in a meaningful way involves asking yourself: What point am I trying to make here? Do any authors write on this topic? If so, what is their view? What examples do they draw upon to support their view? What do other authors think of their view and examples? Can opposing views (if any) be reconciled? Do I agree or disagree with these arguments and counterarguments? Why?

Considering these questions before you attempt to construct a paragraph promotes the development of a self-reflective and sophisticated argument - it gives you perspective. It also prevents you making the mistake of presenting the conclusions of commentators as if they are your own, or presenting contentious arguments without acknowledging an underlying debate.

Footnoting versus quoting and paraphrasing

It is not always obvious when you should footnote a source, as opposed to directly quoting or paraphrasing an author. However a good rule of thumb is that the more key the argument or example to your thesis, the more time should be spent interacting with the source. In this instance, direct reference to the author's name in a paragraph is appropriate. For example, 'Jones argues that....' or, 'This argument is put forward by Jones...' or 'Jones criticises this approach....'

If you cover many different points in your essay and you are unsure how many words to allocate different commentators, be guided by the amount of time that your key sources spend on the point. For example, if 75% of your research discusses a seminal paper that critiques your area of law, it is probably appropriate that you devote at least a paragraph to the seminal author's arguments. Simply footnoting such an important source may not be enough to satisfy the marking criteria.

Citing descriptive material

Quality essays are persuasive because they are technically sound and convey an impression that the author is in command of the research material. One way to show the marker that you are in control of your argument is to focus your use of commentary on the analytical aspects of your paper. This means that when you are writing the descriptive elements of your paper (for example, outlining legal tests and guiding principles), you should go to the relevant statute or case and either summarise the law using your own words or directly quote the provision or rule. Do not draw upon secondary materials that are primarily descriptive such as textbooks, government factsheets, solicitor briefs, and trade journal articles, for this information. Quoting a summary of straight-forward legal principles comes across as lazy and is an ineffective use of your research.

Instead, descriptive secondary sources can be cited for their identification of key issues or controversies in legal debates, conflicts in legal tests, or their discussion of reform options.

Using government reports

Many undergraduate law essay questions are inspired by recent law reforms or the pressing need for law reform in a particular area. In both of these instances, there will often be a key government report that informs the debate. However, unless your essay question specifically asks for the impact of a particular report, you need to be careful that you do not allow your argument to be high-jacked by discussion of government reports. While government reports give a good background of issues

and often contain useful recommendations, they might not examine an issue in as much critical depth as journal articles or specialised books on the same topic. Critical analysis is necessary to achieve the higher mark ranges. Cite government reports in a targeted manner in your essay, and do not use them as a substitute for critical analysis and commentary.



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