



BECOMING A LAWYER

SUCCESS
AT
LAW
SCHOOL

THIRD EDITION

Michael Brogan
David Spencer

OXFORD

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BECOMING A LAWYER

DEDICATION

Michael dedicates this book to his inspiration—his gorgeous and intelligent daughters Giselle and Georgia.

David dedicates this book to his darling wife and best friend Mary-Anne and to his daughters and mates Millie and Prue.

‘You complete me’

Stolen from:

Tom Cruise as Jerry Maguire in *Jerry Maguire*

Heath Ledger as the Joker in *The Dark Knight*

Keyshia Cole singing ‘You Complete Me’

Mike Myers as Dr Evil in *Austin Powers: The Spy Who Shagged Me*

Preface

Welcome to this renamed and fresh edition of the book formerly known as *Surviving Law School*. The new title, coupled with updates to every chapter, not only reflects the most recent technological changes that affect learning and teaching in law schools, but our desire to emphasise part of the hidden curriculum of law school programs. We acknowledge that law school provides opportunities for a tremendous general education as well as an opportunity to develop a profession. However, the increasing emphasis on ethics in law schools, the growing incidence of professionally-inspired JD programs, and the increasing use of practical skills-development in assessment tasks, suggested a need to focus on the evolution of the legally-inexperienced student into an adept and competent individual who may seek admission to practice as a lawyer. In addition to referring to professional cultural practices and expectations we have made significant changes to our discussion regarding legal research, statutory interpretation, and professional ethics.

As always, we trust that this book provides you with the tools and advice to confidently complete your studies and become a lawyer.

We wish you the best of luck on your journey and we hope you find as much satisfaction and enjoyment at becoming a lawyer as we did.

Michael and David.

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1

WHY AM I STUDYING LAW?

Law courses are usually very tough to enter and can involve a great deal of hard work ... Law is a terrific field because it offers the opportunity for intellectual absorption, as well as career preparation ... The increase in law students in recent years has caused the LLB to transform from a purely professional degree to a popular generalist qualification.

'The Good Universities Guide'

Introduction

Congratulations! You did it. You made it into law school. Now the hard work really begins! You are about to join an honourable profession that has dedicated itself to a number of ideals, such as: the pursuit of justice; equality before the law; the pursuit of truth; the pursuit of the maintenance of the 'rule of law' (a term to be discussed below); the pursuit of a satisfying career; the pursuit of intellectual stimulation; and, for some, the pursuit of a comfortable living.

Congratulations on
making it to law school

You may have entered law school in search of one or more of the above ideals, but whatever the reason, getting there is only half the battle. Staying in law school, managing the enormous workload and meeting the challenge of understanding what are at times difficult concepts are the real challenges. The attrition rate in law is high—in some law schools, up to two-thirds of students who commence studies fail to graduate with the coveted Bachelor of Laws (LLB) or equivalent. While this book cannot increase your intellectual ability, it will provide many useful hints on how to deliver what a university law school demands. Simple things—such as being able to analyse cases and solve legal problems in a structured fashion that display a high level of analysis and synthesis—will allow you not only to succeed at the study of law, but also to maximise your potential.

Gaining entry to law school
is only half the battle

The first thing to accept is that studying law is very different from other disciplines (a point to be discussed in more detail in Chapter 3). Second, most students enter a university law school to undertake a combined law degree straight from their final year of secondary school, and will soon find that, unlike school studies, the study of law at university in Australia does not rely on 'rote' learning; that is, memorising parts of judgments and statutes is relatively useless! Not even law firms look for that ability any more, at least not since the advent of sophisticated legal databases accessible through the World Wide Web. Within two hours of the High Court handing down a decision in Canberra, any lawyer around the country (and, indeed, overseas) can download the case, read it and apply it. Therefore, the ability to regurgitate judgments is a task now performed by machines.

Studying law is not about
'rote' learning

What does the study of law entail?

The study of law in Australia is about critical analysis and synthesis. When we say 'critical', we mean that you need to be able to consider the law and how it

affects—and is in turn affected by—the society within which it operates. Put simply, law does not exist in a vacuum, so your ‘critical’ analysis requires you to consider the social, economic, historical, and philosophical implications of the law and its impact on the community it serves. When it comes to ‘analysis’ it is important to be able to identify the legal issue(s) and then cite the appropriate authorities, but then you must be able to analyse the fact pattern before you can argue the facts and law in a coherent manner that produces a well-reasoned conclusion. ‘Synthesis’ requires you to take your critical analysis and mount an argument that is informed by the current state of the law together with persuasive reasoning as to why a court should vary or overturn its previous decisions.

Studying law is about critical analysis and synthesis

Lawyers should know what the law is when they enter a courtroom. If they do not know the law, then by rights they should not be charging their clients fees for service! Every day, in courtrooms around Australia, lawyers seek to explore the difference in facts between their client’s case and the case that is the current precedent (‘precedent’ meaning a court decision that states the current law in relation to the issue before the court). Every day, lawyers seek to exploit the grey area of facts that may allow a court to apply precedent, distinguish precedent (where precedent is not applied because some essential difference exists between it and the case before the court), or perhaps overturn precedent (where the court, considering a similar fact situation, decides that the precedent was wrong). The use of precedent will be discussed in Chapter 5. For the moment, all you need to appreciate is that in this process, lawyers rely on analysis and synthesis. They analyse the facts in a way that will allow the court to apply or distinguish the accepted precedent, or they find new law or a variation of existing law, and then they argue their point. The sooner you learn the intellectual skills of analysis and synthesis, the sooner you will start to ‘think and act like a lawyer’. Thinking like a lawyer is a guarantee of good marks being achieved in assessed tasks at law school.

Learn the intellectual skill of legal analysis and synthesis; ‘think and act like a lawyer’

What is law all about?

While different lawyers would answer the above question differently, from the community’s perspective the law provides a set of rules within which it operates. The importance of law is that people know what they can and cannot

do. Without laws, society would be disorganised. Even simple things such as travelling on the roads would be reduced to chaos, with people not knowing which side of the road to travel on and who to give way to at intersections. You can imagine raising the level of importance of this analogy to violence within our society and the need for laws to protect the defenceless in society.

The law provides a set of rules within which the community operates

So the law is about the development and the maintenance of the rules by which we live. But it is a bit more complex than that. In Chapter 8 we will explore the development of the law and embark on a historical journey that will help to explain further what law is all about, but first, let us look at the rule of law.

The rule of law

So while the question ‘What is law all about?’ can be answered simply by stating that it is about a set of rules, that is not a complete answer. A second concept to understand is a concept called ‘the rule of law’. The rule of law is an English doctrine that essentially means that all people are equal before the law. It does not matter if a person is a government official, a police officer, a judge, or a bricklayer; all people will be treated the same before the law. A notable exception is the sovereign. The rule of law has three important components:

The rule of law essentially means that all people are equal before the law

- i) the law is predominant, so the government has no arbitrary power over the citizen;
- ii) the law administered by ordinary courts applies equally to all; and
- iii) the citizen’s personal freedoms are protected by the law rather than by any special constitutional guarantees that favour certain sections of the community.

The reason that the rule of law is important is because our courts are the guardians of the rule of law and the law itself serves to ensure the survival of the rule of law, thereby protecting all people equally. The preservation of the rule of law is, some would say, the most important answer to the question ‘What is law all about?’