13 LETTER THIRTEEN

Reading Cases and Statutes

Dear Sam,

Sorry it's taken me a couple of weeks, rather than a couple of days, to get back to you with some advice on how you should approach the job of reading cases and statutes. As you'll see, I had so much to say in this letter that it took me some time to write. Anyway, I hope you'll find it's been worth the wait!

Cases

Let's start with a very basic question. Why should you read cases? After all, many law students can do an entire law degree without reading any cases whatsoever – they simply rely on textbooks and potted summaries of the law to get them through the course. I suppose there are five reasons why it's important that you should read cases:

1 By reading cases you get an education in how lawyers think and reason. Read *any* case. Look at the facts of the case. Look at how the judge lays out the legal questions raised by those facts. Look at how he goes through the previously decided cases and statutes that are relevant to those legal questions. Look at how he discovers from those cases and statutes a legal rule or principle that can be used to resolve those questions. Look at how he checks that rule or principle to ensure that it is sound – that a special exception to it shouldn't be created in this case

to ensure that it doesn't work an injustice. Look at how the judge, reassured, applies the rule or principle and moves towards a conclusion.

*You will have to do **exactly** the same thing whenever you are asked to give an opinion as to what the law says in a particular situation.* So reading cases helps educate you how to be a lawyer. What would we think of a trainee surgeon who, on being invited to watch a particularly tricky operation so that he can learn from the experience, replies, 'Sorry, no – I never watch other people operating'? Well, a student who doesn't read cases is no different.

2 Cases are treasure houses of important insights into the law. They contain hosts of observations from judges about:

- how the law should be reformed
- why the law should not be reformed in a certain way
- how the law might develop in the future
- what the law might say in certain hypothetical situations that might become the focus of a case (or a problem question in an exam) in the future
- what principles underlie the law
- why the law has developed in the way it has
- why the decision in a particular case that was decided in the past was fundamentally flawed with the result that the case should be ignored
- why a particular case that was decided in the past is extremely important

and so on, and so on. If you don't read cases you are turning your back on all these insights and your notes will be much the poorer for it.

3 Reading cases encourages you to think about the law. If you read a line of cases, you start to think – how do these cases fit together? Does one principle underlie all of them or more than one? What principle or principles are at play here? By thinking in these terms, you enhance your understanding of the law and your interest in it.

Again whenever, in the course of reading a case, you come across a judge criticising or defending the law, you should adopt exactly the same procedure as I suggested you adopt when you come across an

academic criticising or defending the law in a textbook or an article. You shouldn't just make a note of the judge's criticism or defence and then move on – you should pause to think about whether you agree with the judge. And in the process of thinking about whether you agree with the judge, your own views about the law will develop.

If you don't read cases, then you will miss out on lots of opportunities to deepen your understanding of the law and thereby increase your interest in it.

4 Reading cases helps you to see that in many situations, the legal outcome of a case was not fixed in stone before the case was ever heard. Both sides to a case may have good arguments on their side. It's simply not possible in many cases to predict what the judge will say.

Reading cases makes you realise this – and that, in turn, will make you into a better student when answering problem questions. Instead of rushing into an answer that says, 'D is definitely guilty of . . .' or 'D will undoubtedly be held liable to . . .', you'll be encouraged to think: 'Hang on, can *nothing* be said here in D's favour to get her off the hook?' After all, in real life lawyers don't usually say, 'It's a fair cop, my client's guilty – you'd better get straight onto sentencing her'; neither do they usually say, 'Yes – there's no doubt my client's liable. Why don't you just get on and determine how much she should pay by way of damages?' *Right* at the moment you look to see what can be said in D's favour, you may see an argument for D that you would never have seen had you not been encouraged to realise, through the process of reading cases, that in many situations the law is not completely clear-cut.

5 Reading cases makes studying law more interesting than it otherwise would be. You get to see how the law has in the past impacted on real people's lives, real people's problems. The law comes to life in and through cases. Why wouldn't you want to read cases? Cases are the soul of the law – without them, the law can become very dull and turgid.

6 You are going to have to read cases at some point in your life – so why not start now and become an expert at reading them?

If you are going to be a practising lawyer, you are simply going to have to be able to read cases – to be able to make arguments in court, to give clients legal advice, and generally to keep up to date with recent

developments in the law. Given this, you should really try to acquire the skill of reading cases while you are at university and have a fair amount of time in which to do so – the alternative is to try and acquire the skill in just a few days when you start practising as a lawyer.

Even if you are not going to be a practising lawyer, to prepare for your exams you are going to have to be well-acquainted with all the recent cases that came out about the time the exams were set and will undoubtedly have provided the examiners with much inspiration when setting questions. How are you going to get acquainted with those cases except by reading them? You certainly won't find those cases in your textbook or casebook, both of which were probably published two or three years ago.

So the argument for reading cases is overwhelming. How, then, should you approach the task of reading a case? Well, in each of my last two letters, I've laid down the basic approach. Your reading of a case should be question-driven. You should be asking yourself as you are going through a case: Why is this case important? Why was this case decided the way it was? Where does this case fit in? What would have happened had the facts been different? Does the case contain any interesting *dicta?* Can we criticise the way this case was decided? Does this case have anything relevant to say about any of the questions in my topic file? You should be seeking out answers to all these questions and making notes of the answers in your case file and, where necessary, your topic file.

Now for some tips on reading cases.

1 Don't get discouraged

Reading cases is a bit like riding a bike. When you start reading cases, you don't get very far and the whole process is quite painful. But if you stick at it, I promise things will get better and you will find that reading cases gets easier and easier – and pretty soon you'll be flying through them. But you'll never get to that stage of development unless you are willing to grit your teeth and go through the pains involved in reading them for the first time.

2 The facts of a case

It's almost always a good idea to make a note of the facts of a case in your case file. (I make an exception for minor cases which are only important

because they established some small legal rule or cleared up some small point which was previously undecided.)

You shouldn't try and get the facts of the case from the judgments in that case – the facts, as set out in the judgments, will be far too long-winded. Instead, look at the brief summary of the case which you will always find at the start. This brief summary is called the 'headnote'. The headnote will usually summarise the facts adequately enough for your purpose. But *don't* just copy the facts as set out in the headnote. Try and reduce the summary of the facts still further (this will usually be possible) and use your own words. Forcing yourself to do this will help ensure that you fully understand the facts.

Having said this, some modern cases are so complicated that the headnote and even a look at the judgments won't leave you any the wiser as to what actually happened in the case. In this situation, you should try and see if anyone has written a *casenote* on the case you are reading. A casenote consists in a summary of, and comments on, a case. The *Law Quarterly Review* and the *Cambridge Law Journal* are a good source of casenotes. You can also find casenotes (in smaller quantities) in the *Modern Law Review*. A search on Westlaw UK (inserting the name of the case into the 'Legal Journals Index') will tell you where casenotes on a particular case have been published.

If you find a casenote on the case you are reading it will probably provide you with a good, clear summary of the facts of the case that you can use as a basis for your own summary.

3 Don't feel you have to read everything

Having said so much to encourage you to read cases, I have to admit that there is usually quite a lot of 'fluff' in a case that you can skip over when reading it. You can skip over three things in particular:

- the judges' explanations of the facts of the case (you will have already got the facts from the headnote or a casenote)
- any parts of the case that deal with legal issues that have no relevance to the topics or issues that you are reading the case to find out about

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- any quotations from previously decided cases – you are interested in what the judges said in *this* case, not what judges said in previous cases. (You can easily spot when a judge is quoting from another case because the text of the judgment will be indented at that point – so if you see an entire page where the text is indented, just flick past it.)

Don't feel at all bad about simply flicking over pages where the judges are clearly simply talking about the facts or some legal issue that is irrelevant to you or quoting from other cases. Learning to do this is an essential part of learning how to read cases quickly.

4 Picking what cases to read

Your textbooks, lecture lists and any reading lists you have been given should alert you to what are the most important cases to read when studying a particular area of the law. But don't just read the cases that an average student studying that area of the law could be expected to know about. If you want to do well in your studies, you've got to do more than and know more than the average student.

So be on the lookout for interesting cases that relate to the area of the law that you are looking into, but which you might not be expected to know about. Don't limit yourself to UK cases. Knowing about a few relevant Australian, Canadian or US cases can add greatly to your understanding of the area of the law under review and help you make a good impression on the examiners. Also look on Westlaw to see if any very recent cases (that inevitably won't feature in any of your textbooks or casebooks) have been decided that affect the area of law that you are studying. When setting questions, examiners often draw inspiration from the most recently decided cases – so knowing about those cases will give you a crucial advantage in the exam.

Now I'm not going to lie to you – if you want to follow my advice, then you *are* going to have to read *a lot* of cases. If you find the idea of doing this a bit offputting, then please bear in mind the following:

- As you read more cases, your understanding of the law will get better and better and, as a result, you will like studying law more and more. So reading a lot of cases is actually the best way of ensuring that you enjoy studying law.
- As you read more cases, you will become faster and faster at reading them. As a result, someone who only reads five cases a day can in fact take as much time to read those cases as someone who reads 15 or 20 cases a day. So reading lots of cases helps you to make the most of the study time available to you.
- It's always open to you to share the load involved in reading cases by forming a study group with five or six other (reliable) people. You could agree to read ten cases each on a particular subject and then share your notes. If you are used to reading lots of cases, it should take you a maximum of two days get through ten cases – only one day if you work hard. So after one or two days, each of the members of your study group would end up having files on 50 to 60 cases, depending on the size of the group. This is far more than any one student working alone could be expected to master and will give you a big advantage in the exams.

5 Headnotes

It shouldn't be necessary for me to make this point if you've followed what I've said so far, but I'd like to warn you off the habit some students fall into of making notes on a case by simply copying out or summarising the headnote at the start of the case. Doing this is a waste of time. It's doubtful whether anyone who merely reads the headnote of a case will be able to answer more than two of the seven questions that you should be thinking about and trying to answer whenever you read a case.

6 Casenotes

If you've read and taken notes on a case that is quite important, it's worth spending a little time finding one or two casenotes on the case and adding to your notes on the case any points (and supporting arguments) made in

those casenotes. (Make sure that any casenotes you read are actually on the case you are taking notes on. If the case you are reading is the decision of the House of Lords in a particular case, *don't* read a casenote on the decision of the Court of Appeal in the same case.) This will help deepen your understanding of the case and its merits and faults. However, don't believe everything you read in a casenote. A lot of casenotes are dashed off to meet a deadline set by the journal that has commissioned the casenote. The result is that casenotes can sometimes be quite superficial and ill thought out. So every time you come across an author claiming in a casenote that the decision in a particular case was unsatisfactory for various reasons, make a note of that – but also *always* ask yourself whether the author's arguments stand up to scrutiny.

7 Casebooks

There are now casebooks available covering every area of English law. These reproduce excerpts from important cases in a particular area of law, usually alongside short summaries of other relevant cases, as well as some commentary on the cases and the way they were decided.

Students often find using casebooks a useful substitute to reading cases in the law reports. (And, indeed, many students never ever read cases in the law reports, but simply rely on casebooks to improve their knowledge of the case law affecting a particular area of law.) It's easy to see why. Instead of searching through a report of a case to find passages that are relevant to the topic or issue you are looking into, a casebook does the hard work for you, finds the relevant passages and presents them to you on a plate.

Despite their usefulness, it's dangerous to rely on casebooks too much. First of all, there is a limit to how much material from a case can be set out in a casebook. A typical case will be about 25 pages long in a law report. Of course, the editors of a casebook won't reproduce the whole case because doing so won't leave them room to cover that many cases in their casebook. So they'll be looking to get their coverage of the case down to about five pages. To reduce 25 pages to five you have to cut a lot of material and some of the material that's left on the floor can be very useful. So if you rely exclusively on a casebook to read a particular case, you can often miss out on some very useful dicta and ideas in the judgments in that case.

Secondly, there is a natural limit on how many cases can be dealt with in any casebook. Let's assume that you are using a *giant* casebook on a particular subject – about 800 pages long. Let's assume that 200 pages are taken up with the editors' comments on cases, short summaries of the outcome of various minor cases and introductions to particular areas of law. That leaves 600 pages for excerpts from the big, important cases affecting the subject you are studying. At five pages a case, your giant casebook will only cover about 120 cases. This sounds like a large number, but it isn't. A comprehensive reading list on a particular subject will probably require the reader to look at twice that number of cases. So it's unlikely that even the largest casebook will cover *all* of the cases that you need to know about for your studies.

Thirdly, and finally, it can be good for you to have to search through case reports yourself to find the passages that are relevant to the topic or issue that you are studying. It helps develop your skills at reading cases and finding your way around them – and it also means you get a bit more satisfaction out of reading cases.

However, I must emphasise that I don't want to put you off looking at casebooks entirely. As I said, they can be very useful at helping you see why exactly a case is significant. In addition, some of them provide the reader with a lot of stimulating and interesting commentary on the law. (I am thinking in particular here of Tony Weir's classic *A Casebook on Tort,* 10th edition (Sweet & Maxwell, 2004), which is well worth reading for the comments alone.) Further, in certain subjects such as international law (where the official case reports are ridiculously long), casebooks are indispensable. Finally, if you don't have access to a decent law library with a full set of law reports, casebooks are a lifesaver.

8 Remembering cases

Students often find it a challenge to remember cases. Cases are a lot like small, shiny beads. If I told you to hold out your hand and I poured 50 such beads into it, it's doubtful whether you'd be able to keep hold of more than ten of them. All the rest would simply bounce out of your hand and fall onto the floor. But if I ran a string through 50 beads and tied the two ends of the string together, you'd have no problem keeping hold of all

of the beads in one hand. In fact, all you'd have to do is hold *one* of the beads and the rest would be under your control.

Cases are the same. If you try and remember them individually, the likelihood is that you'll only remember one-fifth of them. But string them together and you won't forget a single case. So how do you string cases together? Well, what you've got to do is come up with a *story* that helps explain why the cases were decided the way they were. Say you've got 15 cases to remember and those cases were decided over 40 years. There are a number of different stories that you could tell to try and link these cases together.

For example, try and see if the decisions in those cases were affected by political ideas and views that held sway at the time those cases were decided. If they were, then you've got a story onto which you can thread your 15 cases. You can say: 'In the 1950s and '60s, the political consensus was that the interests of society were very much more important than the interests of the individual and you can see the judges giving effect to that consensus in cases *A, B* and *C*. But that consensus started to break down in the 1970s, and by the '80s, there was a new emphasis on protecting the interests of the individual and letting society "look after itself" – and the decisions in cases *X, Y* and *Z* illustrate that new consensus at work.'

Alternatively, you could try and come up with a principle or policy that underlies almost all of the 15 cases. If you can, then again you've got a story that can link all of your cases – even the ones that don't give effect to the principle or policy in question. You could say: 'Almost all of these cases give effect to the following principle/policy . . . For example, in case *A* . . . Similarly, in case *B* . . . This is also true of case *C* . . . However in cases *X, Y* and *Z* the courts chose not to give effect to this principle/policy. For example, had the courts given effect to this principle/policy in case *X*, we would have expected them to find in favour of . . . But they didn't . . . Similarly, in case *Y* . . .'

A more radical version of the same story would identify a fundamental conflict in the law – with roughly half of your 15 cases giving effect to one principle or policy and the other half giving effect to a completely different and opposed principle or policy. A 'battle of the cases' story line can prove very

effective at helping you to remember a large number of cases because battles are always interesting and therefore memorable. But don't invent battles where none exist – the story that you come up with to link your cases must actually *work*. Otherwise the story will have no plausibility and will be extremely hard to remember – just as it's hard to remember the details of a crazy dream where all sorts of people were acting in odd ways.

A third possible story line is to link your 15 cases to one 'master' case, which all your 15 cases have 'descended' from. For example, a very effective story line that would link your 15 cases together might go, 'In *Roe* v *Doe,* the House of Lords decided that . . . Applying this decision has created huge problems for the courts ever since. In case *A,* the courts applied *Roe* v *Doe* to find . . . But in the very similar case *B,* the courts came to a very different conclusion, holding that . . .' and so on.

A fourth possible story line that could help you link your 15 cases may be provided by the *way* the cases were decided. In some of the cases did the judges adopt a very *formalistic* approach and decide the case by simply applying the law as it was established at the time? In the other cases, did the judges adopt a much more *substantive* approach and simply decide the case on its merits, not paying much regard to what the established law said? If so, then you again have a story that you can use to provide a link between your 15 cases. You can say, 'Well, in cases *A, B* and *C* the judges adopted a very formalistic approach to deciding the cases, but in time they gradually loosened up and became much more willing to depart from the established law if the merits of case demanded it – cases *X, Y* and *Z* are examples of that.'

So if you want to remember lots of cases, remember them in *groups,* where each group of cases is linked by a story that helps explain why they were decided the way they were. (This is why it's *so* important to ask yourself whenever you are reading a case – Where does this case fit in?) Remembering cases in this way will not only work wonders for your ability to recall cases in the end-of-year exams but it will also, of course, help deepen your understanding of, and interest in, the law. Which is all to the good.

One last point on this – don't miss out on any opportunity to *use* cases. Talk about them with your fellow lawyers. Form study groups where you can have regular discussions about them. Participate in moots where you will be called upon to use cases. Write as many essays and problem answers as you can – even if no one else ever sees them. Take advantage of *any* chance you get to talk about or write about cases you have studied. The more you use cases, the more deeply they will penetrate into your memory.

9 *Ratio decidendi*

If you've read any introductory books on studying law, you may have been expecting me to give you some advice in this section on how you discover the *ratio decidendi* of a case. (Just in case you haven't read any introductory books on studying law, the *ratio decidendi* – or *ratio* for short – of a case is the rule of law that underlay the decision in that case.)

In practical terms, the only time you'll ever have to worry about finding the *ratio* of a case is *after* you've left university and started practising law. If you are arguing a case in court, you may well be called upon to discuss what the *ratio* of a case was. For example, suppose there is a *dictum* in a previously decided case that is unhelpful to your argument. If you can establish that the *dictum* was *obiter* – that is, not essential to the outcome of the case (in other words, not part of the *ratio* of the case) – then you can invite the court deciding your case to disregard that *dictum.* Alternatively, suppose there is a *dictum* in a previously decided case that is very helpful to your argument. In that situation, you will want to establish that that *dictum was* part of the *ratio* of the case – with the result that the court before which you are arguing your case may be bound to apply it.

But as a law *student,* you'll never have to spend time determining what the *ratio* of a case was – so I don't think I should waste your time discussing such things as how you determine what the *ratio* of a case was when three judges all decided the case in the same way but they all gave different reasons for their decision. Instead, I'll now move on to talk about how you should approach the job of reading a statute.

Statutes

Students find reading statutes extremely boring. Unlike cases, statutes tend to be very dry and technical. As a result, it's hard to work up any enthusiasm for reading a statute and it's even harder to remember a statute once you've read it. I'm not going to pretend that I have any magic method for taking the pain out of reading statutes, but following the approach below will inject a little bit of interest into the process and make the job of remembering what that statute says a bit easier.

Suppose you have been told to read a statute or some sections from a statute. (You may not be familiar with the term 'section', so I'll briefly explain. Every Act of Parliament is made up of sections, or 's.' for short. A section in an Act of Parliament is usually divided up into sub-sections, where each sub-section is denoted by a number in brackets. So if you want to refer to sub-section 1 of section 1 of the Guard Dogs Act 1975, you would simply write 's.1(1) of the Guard Dogs Act 1975'.) Of course, you shouldn't just read the statute – you should also make some notes about it in your case file. (Remember, 'case file' is short for 'cases and statutes file'.)

Now, in making notes on the statute, you *shouldn't* try to *summarise* what the statute says. There's a very good saying that 'You can't paraphrase a statute'. In other words, if you attempt to summarise what a statute says, your summary will always omit some crucial details. And if you attempt to avoid missing out any crucial details in making your summary, you will usually simply end up copying out the statute. And copying out the statute is the *last* thing you want to do. Copying out a statute is such a passive activity that you will simply get bored, your brain will shut up shop and you won't take in anything of what the statute says.

So how should you make notes on a statute? Well, you'll probably not be surprised to hear me say that your notes on a statute should be question-driven. Suppose that you have been told to read sections 1–10 of the Theft Act 1968. Take a separate A4 sheet for each section. Write the name and title of the section in the middle of the sheet. (The title of the section is literally that – the short title that appears above the section.) Around the name write five questions:

1. Why was this section enacted?
2. How does this section apply in concrete situations?
3. Why does this section go as far as it does?
4. Why doesn't this section go further than it does?
5. Is this section in need of reform?

Then, on the same A4 sheet, make notes on the answers to these questions by consulting the statute, textbooks, articles, your brain and a very useful publication called *Current Law Statutes* (which provides the reader with comments on virtually every section in an Act of Parliament).

Let's now look at these five questions in more detail, by seeing how they would apply to certain sections of the Theft Act 1968.

1 Why was this section enacted?

Section 1(1) of the Theft Act 1968 (title: 'Basic definition of theft') provides that:

> A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "theft" and "steal" shall be construed accordingly.

If you are told to read s.1(1) of the Theft Act 1968, the first thing you should do is ask yourself: Why has this section been enacted? Why does the law criminalise the dishonest appropriation of property belonging to another when that property was appropriated with the intention of permanently depriving that other of it? Why doesn't the law simply allow the owner to sue for her property back – why does the criminal law have to get involved here at all? Use your textbook, your brain, any relevant articles you have read, *Current Law Statutes* and any relevant *dicta* in any relevant cases you have read to come up with some answers to these questions and make notes of the answers in the appropriate place in your case file.

No doubt the answers to these questions are pretty obvious. However, the important thing is that by asking these questions, you are *thinking* about s.1(1) of the Theft Act 1968 instead of just passively reading it. And your thinking about s.1(1) is doing three things:

1. It is helping to make s.1(1) more interesting and therefore more enjoyable to read.
2. It is deepening your understanding of s.1(1), thus putting you in a great position to answer questions about it later.
3. It is helping to cement the place of s.1(1) in your memory, which again is helping to put you in a great position to answer questions about it later.

2 How does this section apply in concrete situations?

Section 2 of the Theft Act 1968 (title: " 'Dishonestly' ") provides that:

> **(1)** A person's appropriation of property belonging to another is not to be regarded as dishonest –
>
> **(a)** if he appropriates property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or
>
> **(b)** if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or
>
> **(c)** (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
>
> **(2)** A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

Let's assume you've considered why this section has been enacted. Now you've got to ask yourself – How does this section apply in concrete situations? To answer this question, you should come up with a number of different hypothetical scenarios and see how the section applies in each of them. You should consider *at least* as many scenarios as there are rules laid down in the section. So for a section like this – which lays down four rules – you should probably make notes on how the section will apply in *at least* four different hypothetical scenarios. But to really come to grips

with this section, you should probably consider how it applies in eight different hypothetical situations.

Try and think up the scenarios yourself and make them as memorable as possible by using the names of people you know about, preferably doing things that they would never do in real life. (These kinds of scenarios will stay longer in your memory than scenarios that might have been supplied to you by a textbook.) Here are some examples of scenarios you might come up with:

1. Peter realises that a DVD in a shop has been wrongly priced as being for sale for £1.59, rather than £15.99 (which is what other identical DVDs are being sold for in the shop). He takes the DVD up to the counter and pays £1.59 for it.
2. Hannah finds a wallet that has been dropped in the street. There is a £20 note in it. She hands the wallet in at a nearby police station but keeps the £20 note as a 'finder's fee'.
3. Megan, a student living in college, makes a cake for everyone on her staircase using ingredients that she has found in the fridge that everyone on the staircase uses to keep their food in. None of the ingredients belong to her, but she figures that as everyone on the staircase is going to get to eat some of the cake, the rightful owner of the ingredients won't mind her using them.
4. Hugh owes Beka £5 but is refusing to pay up. Beka takes one of Hugh's DVDs out of his room when he isn't looking and auctions it on eBay. Someone pays her £10 for the DVD. Beka keeps £5 and slips the remaining £5 into Hugh's wallet when he isn't looking.
5. Maryam has read a textbook on 'Natural Law' which says that 'no law is valid if it is contrary to the will of God'. Believing that God desires all living creatures to be free, she releases Clare's parrot into the wild.

Having come up with some such scenarios, work out when s.2 will apply to acquit someone of being dishonest in these scenarios – and when it won't. (To do this, make use of your textbooks, any relevant articles, *Current Law Statutes*, your brain and – importantly – any cases that have helped clarify how s.2 of the Theft Act 1968 is to be applied.) In your

notes, make a note of these scenarios, how s.2 will apply in them, and the reason it applies or does not apply in each of them.

It may be pretty obvious how s.2 will apply in the above scenarios. But the point of going through these scenarios isn't to anticipate potential problem questions that you might be asked in the exam – exam questions will probably pose more tricky issues than the scenarios set out above. The point of going through these scenarios is to get a solid grasp of how s.2 of the Theft Act 1968 applies in concrete situations. This will help you to remember how s.2 works. This, in turn, will help you apply s.2 with confidence when you are faced with trickier problem questions about s.2 in the end-of-year exam.

3 Why does this section go as far as it does?

Section 3(1) of the Theft Act 1968 (title: " 'Appropriates' ") provides that:

> Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

Let's assume you've considered why this section has been enacted and have got a good grasp of how it applies in concrete situations. The third question you have to ask yourself is – Why does this section go as far as it does?

You will have discovered in considering the second question (How does this section apply?) that the case law seems to suggest that merely touching an item of property will amount to an 'appropriation' of an object. Why should merely touching an item of property potentially amount to a criminal act? Or was s.3(1) never intended to have that effect? Have the courts misinterpreted it?

Again, make notes on the answers to these questions using your textbooks, any relevant articles, any relevant *dicta* in any relevant cases, *Current Law Statutes* and your brain. Asking and answering these questions will:

- help you to remember what s.3(1) says
- deepen your understanding of, and interest in, s.3(1)

- put you in a good position to answer our fifth question about s.3(1) (Is this section in need of reform?)
- put you in a great position to answer any essay questions that might be set on s.3(1) in the end-of-year exam.

4 Why doesn't this section go further than it does?

Section 4 of the Theft Act 1968 (title " 'Property' ") provides that:

> **(1)** 'Property' includes money and all other property, real or personal, including things in action and other intangible property.
>
> **(2)** A person cannot steal land. . .
>
> **(3)** A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or for other commercial purposes.
>
> For purposes of this subsection 'mushroom' includes any fungus, and 'plant' includes any shrub or tree.
>
> **(4)** Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the [carcass] of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in the course of reducing it into possession.

Let's assume you've taken notes on the first three questions relating to this section. So you can now move on to consider our fourth question: Why doesn't this section go further than it does? This raises a host of sub-questions.

Dead bodies don't normally count as 'property' – so why doesn't the law of theft cover someone's taking away a dead body? Is it because there are already other areas of law that criminalise this sort of conduct? Information doesn't normally count as 'property' – so why doesn't the law of theft cover

the situation where someone sneaks an advance peek at an exam paper or gives out advance copies of an exam paper to his friends? Why can't someone steal land? (Note, however, that you can in certain situations – s.4(2) is quite long and to save space I have cut it down.) What would stealing land involve? Is this sort of conduct covered by some other area of the law? Why are you potentially guilty of theft if you pick wild mushrooms on someone else's land for reward but not if you pick them to deprive the owner of the land of the opportunity to pick them herself? Is doing something for reward worse than doing something out of malice?

The point of asking and trying to answer these questions should be obvious by now. Doing this will:

- help cement the details of s.4 into your memory
- deepen your understanding of – and therefore interest in – s.4
- put you in a good position to answer our fifth question about s.4 (Is this section in need of reform?)
- put you in a great position to answer any essay question that you might be set on s.4.

5 Is this section in need of reform?

Section 5(1) of the Theft Act 1968 (title: "'Belonging to another'") provides that:

> Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

Let's assume that you've run through the first four of our questions relating to this section. Having done so, you'll have realised that s.5(1) means that someone can be convicted of theft for stealing his own property. This happened in one case where a man left his car with a garage to be repaired and after it had been repaired he drove the car away without paying for the repairs. Because the garage had possession and control of the car at the time

the car-owner drove the car away, the courts held that the car 'belonged' to the garage under s.5(1) at the time it was driven away, with the result that the car's owner could be convicted of stealing it.

The fifth question you should ask yourself about this section and make notes on is: Is this section in need of reform? Is it right that someone can be convicted of stealing his own property? Should the law of theft go beyond protecting the ownership of property and help protect people's possession of property? Asking these questions and trying to answer them (again, with the help of your textbooks, any relevant articles, any relevant *dicta* in any relevant cases and any thoughts you yourself might have) will help deepen your understanding of – and therefore interest in – the law of theft as a whole and its functions, putting you in a great position to answer essay questions either specifically on s.5 of the Theft Act 1968 or on the law of theft as a whole.

Three further points

So that's the basic approach you should adopt in reading statutes (or statutory instruments, for that matter). I don't have any further tips for you on how you should approach the job of reading a statute. However, there are three more points I want to make.

1. *Statute books and the exams.* Almost all universities now allow their law students to take statute books into their exams so that they can consult them in the course of answering problem questions or writing essays. Given this, you may wonder if there is any point doing work which is geared to helping you to remember what particular statutes say. I think there is.

   The more time you spend in the exam looking through a statute book trying to find out what a particular statute says and trying to figure out how it applies, the less writing time you will have in the exam. You want to maximise the amount of writing time you have in your exams – so it is very important that by the time you do your exams, you have a good knowledge of all the statutes that you will need to know about for the exams.

2. *Only look at statutes that you are going to be examined on.* While I normally encourage you to do more reading than you are actually asked to

do by your teachers, this doesn't apply to statutes. There is no real point in knowing about a statute that isn't going to figure in the exam – so unless you have been told about or asked to read a particular statute, the chances are that it's not worth knowing about and you shouldn't bother looking it up.

3 *Statutory interpretation.* Again, if you've read any introductory books on studying law, you may have been expecting me to say something here on various techniques that can be used to interpret statutes, such as the 'literal rule' (where words in a statute are interpreted according to their plain meaning) or the 'mischief rule' (where words in a statute are interpreted in light of the problem or evil that the statute was trying to address) or the 'golden rule' (where the courts try to avoid interpreting words in a statute in a fatuous or stupid way). Again, I'm not going to waste your time by talking about such things. If a particular word in a statute is ambiguous or needs to be interpreted, your textbooks will give you sufficient guidance as to how that word has and should be interpreted. You won't need to worry about what rule you should apply to interpret that word. This is something you may need to worry about if you are a practising lawyer advising people on how a new statute applies – but for the time being, you have better things to worry about.

Summary of This and the Previous Two Letters

That concludes the third and final part of my guidance as to how you should approach your studies. I thought it might be helpful if I tried to sum up everything I've said in this and the last two letters in the form of ten rules. Here they are:

1 Never be passive.
2 Never work when you're bored.
3 Always be asking questions.
4 Make connections between the things you read.
5 Make sure your notes are interesting.
6 Always think about what you read.

➔

7 Don't ever assume that what you are reading must be correct.
8 Always be looking to rework and beef up your notes.
9 Always do more than your teachers expect of you.
10 Work with other people whenever you can.

If you forget everything else I've ever told you, don't forget these ten rules. They are the key to ensuring that your experience of studying law will be interesting, stimulating and enjoyable.

Best wishes,

Nick