Jurisprudence scaffolds and summaries

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JURISPRUDENCE CLOSED-BOOK EXAM STRATEGY

1. Jurisprudence Exam: Probability & Study Strategy

You have:

- 11 examinable topics
- 8 questions in the exam
- 4 questions to answer

The objective is to prepare enough topics to give yourself a choice, without spreading your study too thinly.

Probability of having 4 prepared questions available

Assuming 8 different topics are selected from the 11, with each topic equally likely to appear:

Topics prepared	Chance of having at least 4 prepared questions
4	0%
5	27.3%
6	65.5%
7	90.9%
8	98.2%
9	100%

Recommended Prepare 7 topics thoroughly.

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3. Generic jurisprudence essay structure

Students should learn the following six-step structure. It can be applied to almost any jurisprudence essay question.

The six-step essay formula

1. INTRODUCTION
    - Introduce the topic and the central issue.
    - Identify the key jurisprudential question.
    - Briefly identify the philosophers or schools of thought you will discuss.
    - State your overall argument or position.

2. WHAT IS THE PROBLEM OR QUESTION BEING ADDRESSED?
    - What is the fundamental problem being considered?
    - Why is this issue important to law, justice or society?
    - What are the competing ideas or tensions?
    - What is the question that philosophers are trying to answer?

3. HOW HAVE DIFFERENT PHILOSOPHERS APPROACHED THE PROBLEM?
    - Identify the relevant philosophers.
    - Explain each philosopher's central argument or theory.
    - Explain how their approaches differ.
    - Identify the assumptions underlying their arguments.
    - Use relevant examples where appropriate.

4. WHAT ARE THE STRENGTHS AND WEAKNESSES OF EACH APPROACH?
    - What does each philosopher get right?
    - What are the advantages of their approach?
    - What are the weaknesses, limitations or criticisms?
    - Does the theory work in practice?
    - Does it adequately address the original problem?

5. ON BALANCE: WHICH APPROACH IS BEST?
    - Evaluate the competing arguments.
    - Explain which approach you find most convincing.
    - Justify your position with reasons.
    - Consider whether one theory should be preferred or whether a combination of approaches is better.
    - Demonstrate independent critical thinking.

6. CONCLUSION
    - Return to the original question.
    - Summarise the main arguments.
    - Reinforce your overall position.
    - Explain why your preferred approach provides the most convincing answer.

ESSAY OUTLINES TO MEMORISE

1. Crime and punishment

Problem: why is the State justified in deliberately imposing suffering/deprivation?

- **Retribution** — backward-looking; offender deserves punishment.
  - Kant: responsibility/desert; never use offender merely as a means.
  - Morris/Sadurski/Finnis: offender gains unfair liberty/advantage by breaking rules others obey.
  - **+** guilt + proportionality. **–** difficult to measure desert; little concern with future outcomes.
- **Deterrence — Bentham/Mill/Beccaria:** punishment justified only if it prevents greater harm.
  - **+** preventative/pragmatic. **–** could theoretically justify disproportionate or innocent punishment.
- **Rehabilitation:** address causes of offending/reduce recidivism.
  - **+** humane/future-focused. **–** may underplay responsibility/denunciation.
- **Moral education:** punishment communicates why conduct is wrong.
- **Hart/Rawls mixed theory:** utilitarian purposes justify system; retribution limits punishment of individuals.
- **Cases:** *Cleaver*, *Edwards* — no profit from wrongdoing; *Veen (No 2)* — individualised sentencing.
- **s 3A NSW:** punishment, deterrence, protection, rehabilitation, accountability, denunciation, victim harm → expressly plural approach.

Conclusion: no single theory works; retribution supplies limits, while deterrence/rehabilitation explain social purposes.

Introduction

The central jurisprudential problem of punishment is **why the State is morally justified in deliberately imposing suffering or deprivation on an offender**. The principal theories answer this either by looking backwards to desert and the restoration of moral equilibrium, or forwards to preventing and reforming offending; in practice, the strongest account combines these purposes.

Purpose of punishment / wrongdoing

- Criminal wrongdoing can be understood as disturbing the balance of benefits and burdens: the offender takes a liberty that law-abiding citizens have restrained themselves from taking.
- **Cleaver v Mutual Reserve Fund** — a wrongdoer cannot obtain rights directly resulting from their crime.
- **Edwards v Edwards** — murderer prevented from benefiting through survivorship.
- These embody the wider proposition that wrongdoing should not confer an **unmerited advantage**.

Retribution — Aristotle, Kant, Morris, Sadurski, Finnis

- **Core:** backward-looking; punishment is justified because the offender deserves it.
- **Aristotle:** corrective justice restores the equilibrium disturbed by wrongdoing; proportionality is essential.
- **Kant:** punishment respects the offender as a rational moral agent responsible for their choices; they must be punished because they deserve it, not because doing so produces useful consequences.
- **Morris:** law-abiding citizens accept burdens of restraint; the offender takes an unfair advantage by refusing that burden.
- **Sadurski/Finnis:** the advantage need not be material — it is the excessive **liberty to disobey**.
- **Why persuasive:**
  - explains why only the guilty should be punished;
  - supplies proportionality;
  - treats offenders as ends, not as tools for social policy;
  - fits the forfeiture principle in *Cleaver* and *Edwards*.