Preamble:

Welcome to Law131, and congratulations on defeating Law121. No matter what your grade was you can still get into part 2. But more than that, you should be proud of yourself just for surviving. Around half the students who started this year won’t have made it this far.

Law131 usually has about 900-1000 students and of that about 300 are offered a place in Law part 2. This means that your Law131 grade is crucial if you wish to succeed. Don’t worry; if you have bought this guide then you have already given yourself a good head start.

Law131 is vastly different than law121 in that it is not focused at all upon opinions or essays. What you learned in High School English or social studies won’t really help you here. On the other hand, what you will learn in this course will help you all through law school.

131 is far more formulaic and in essence it is trying to give students two unique skills. So the entire course is basically to help you master those skills, there is almost nothing to memorize and very little to “learn”. Legal method is also a course that is taught in all NZ universities not just Auckland, however I did encounter some stark differences with the approach (which basically meant that a $100 textbook I bought was all but worthless). This guide will of course be based around preparing you only for the Auckland course.
About the Course:

As I said before, Law131 is fairly formulaic and based around developing legal analytical skills. I personally found this a huge comfort after Law121, where it was very hard to tell if I was on the right track. If you can get hold of the necessary skills then it will be an easy A+.

Following that, it would be pointless for this guide to focus on the individual classes as opposed to focusing on the skills. If for no other reason than the cases can be different depending on what the teacher wants to teach. Thus, don’t be concerned if the pacing is different; the overall goals will be the same.

Since I will not include any of the filler information; I will likely move quicker than your teacher at various points. My goal is for this to allow maximum time to practise and utilize the skills before the test/exam. This is especially true in the second part of the course, where I cut out anything which isn’t directly examinable.

Study groups are again useful and I recommend them. But in Law131 they are far less essential than in Law121 and I personally didn’t continue mine. Conversely, the tutorials for Law131 were in my opinion very good and you should definitely go to all of them and definitely prepare for them.

About the Term:

Term 2 is the business end of the year; it is far more important and more permanent than term 1. What I mean is that law application is based on Law121+Law131+The last 6 papers that you did.

So if you do very poorly in an elective in Term 1 then it can be erased by taking another paper in summer term or an extra paper in term 2 and only the newest 6 will be counted.

But if you make a big mistake and bomb your GPA in Term2 then it will require 2 terms worth of papers to wipe it away.
Work hard during the term and play in the incredibly long summer holidays. Also since law exams are typically near the start of the exam schedule; I don’t recommend choosing any papers that don’t have exams. They will almost always have a huge assignment due in exam week. My friend fell into this and had two 15,000 word assignments that were both worth 100% of her grade, and no time to study for her early exam.

Anyway, good luck work hard and have fun
You will find out if you made it on X-mass eve, so make sure you get a good present for yourself.
Skills for this course

Last time I said that this course is all about mastering a few key skills. Today I am going to tell you basically everything you need to know.

Print this off hang it on your wall and when you can confidently do all of them then you can ace the exam.

Common Law

- Understand the hierarchy of all NZ courts, and have decent awareness of other common law countries hierarchies.
- Understand how precedent works in common law, and which courts must follow decisions.
- Be able to determine the *Material facts* from a case.
- Be able to determine a *Ratio* from a judge’s decision.
- Be able to determine *Obiter* from a judge’s decision.
- Be able to extend, distinguish or apply a *Ratio*.

*******UNTIL TEST*******

Statute Law

- Be able to read a statute and understand its parts.
- Be able to use statutory analysis to determine meanings of words and validity of arguments.
- Apply presumptions of law and canons of interpretation
- Understand the difference in precedent in common law from statute law.
- Based on your reasoning from the statutory analysis, make a decision as regarding the case you are given.

*******UNTIL EXAM*******
The first thing to learn is the structure of the courts in New Zealand. It may seem like a trivial matter, but it is actually really foundational you will be expected to know this stuff, and I guarantee you it will be important in both your test and your exam.

**Hierarchy:**

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Supreme Court / Privy Council (Before 2004)
| Court of Appeal
| High Court (Before 1980 was called Supreme Court)
| District Court/Family Court
| Tribunals
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Don’t worry about the specifics of the employment courts or the Maori land courts; the simplified structure above is all you should need to know.

**In Depth**

You should note that before 2004 New Zealand’s ultimate court was the Privy Council which is located in England. They are no longer used as we have established our own Supreme Court; but the old decisions are still legal. The Privy Council was basically a court that England provided for all the commonwealth nations to use as final court of appeals.

Besides this, remember that until 1980 the High Court was called the Supreme Court. This is something you should always keep in the back of your mind.
In exams, often you will get a decision to read which appears to be from the Supreme Court (thus very powerful) but is dated in 1950 and thus was only the High Court.

Anytime you have a decision which is from the Supreme Court; make sure it is newer than 2004. You will see why this is when we focus more on precedent power, but as general advice; Be super suspicious of any material you are given from above High Court level—it is almost certainly a trap.

You don’t need to know the specifics of each of the courts as to the limits of their jurisdiction; but you will need to know at what stage they can hear a case.

**Jurisdiction:**

Jurisdiction means the right of a court to hear a case and give a decision. There are two types of Jurisdiction in New Zealand; Original Jurisdiction and Appellate Jurisdiction.

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<th>Original Jurisdiction</th>
<th>Appellate Jurisdiction</th>
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<td>the court has the power to make the first decision of a case, to hear it before anyone else does. Called hear a case in first instance.</td>
<td>the court has the power to review the decision of the previous court and make sure that the law is correctly applied.</td>
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This goes back into the structure of the courts; lower courts hear issues as they arise with original jurisdiction and higher courts resolve the matters with finality.

**District Court** = has original jurisdiction, it will be the first court to decide on smaller matters and give a resolution. Technically it can also hear appeals from some tribunals. But don’t worry about this.

**High Court** = has appellate jurisdiction and original jurisdiction. It can review a matter from the district courts and
ensure that the law is applied correctly. It will also be the court of first instance on more serious matters such as murder.

**COURT OF APPEAL** = has *appellate jurisdiction only*. This court will review matters which have come from the lower courts and give what is usually the final judgement.

**SUPREME COURT** = has *appellate jurisdiction only*. This court is the ultimate court in New Zealand and can review a decision that has come from the CA. However, the Supreme Court is can only hear a case it meets certain requirements, such as public importance. So for most claims, the CA is the final court.

In all that is the relevant structure of New Zealand court system. It is largely the same in most commonwealth countries. But the names may change; you should also know the different names for the main English courts.

In England the High Court is the *Queen’s Bench* (or Kings Bench) and the Supreme Court is the *House of Lords*.

Lower level courts handle more cases and give quicker decisions and higher level courts are able to review those decisions and correct any they believe are incorrect. Thus the higher level judges are more concerned with controlling the direction of the law and the lower level judges are concerned with dealing with each case.

Don’t get caught out with the old Supreme Court or with the Privy Council issues and you should be fine as far as structure and proceedings are concerned.

Just in case, you probably don’t need to know this but. The Australian naming system is basically the opposite of everyone else. Their Middle level is the “Supreme Court” and their Highest Level court is the “High Court of Australia”.
Overview

Now that you know the structure of the courts you need understand *stare decisis*, or the doctrine of precedent. I am sure you will have touched on the fundamentals of it in your 121 study, but now you need an actual understanding that you can put to work.

For the sake of legacy we will start from the start.

*Stare Decisis* is the idea that a decision in a higher level court will be binding on those in the lower level. This evolved from the old English courts where the law was vastly different all around the country. It is based on the idea that **like cases should be treated alike**. So if the courts today say that a person in *situation A* must pay damages; then any future people in *situation A* should also be told to pay damages.

**Precedent Power**

The power of precedent is based on the hierarchy of the courts; each level of the courts creates precedent that binds those below it. So as you move up the hierarchy the decisions become very powerful.

For instance, a decision made by the Supreme Court will be *binding* on the Court of Appeal, the High Court, and the District Court in any *similar cases* in the future. But a decision from the High Court will *not be binding* on the Court of Appeal, and they may choose to overrule it (correct it).

Any precedent decision can be classed into two categories; *binding* or *persuasive*. 
**Binding Precedent**= the court has **no** choice but to follow along with the decision made earlier. A Supreme Court decision is binding on the High Court and thus a high court judge will have no choice in his decision.

**Persuasive Precedent**= the court **has a** choice of whether to follow the previous decision or to go in a different direction. Lower court decisions are not binding on higher courts, but they may be *persuaded* to follow the decision anyway. The more powerful the court that made the decision the more persuasive it is.

These concepts (like many you will cover) may seem nebulous but it is rather simple once you grasp it.

Every New Zealand court is bound by decisions of the court above it. New Zealand courts are neither bound by their own decisions, nor by overseas decisions.

Thus a previous decision by the Court of Appeal will bind the High Court and District Court, but will not bind the Court of Appeal.

In the same way; even a decision from the Highest Court of Australia will not be binding on the family court of New Zealand. But it is important to keep in mind that even though they are not binding; decisions from supreme courts overseas are considered **very** persuasive. Ie) English House of Lords decisions are not easily ignored by District Courts.

Besides just the level, how the judgment was determined, when it was determined and whether the judge spent time considering it or solved it urgently etc; will all be sub-factors to determine the persuasive value.