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# Teaching Legal System

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NATIONAL CENTRE for LEGAL EDUCATION

# Contents

# Foreword

The National Centre for Legal Education was established to disseminate information about teaching and learning in law and to support the development of innovative teaching and learning practices. As part of its work, the NCLE has commissioned a series of Teaching and Learning Manuals of which *Teaching Legal System* is part. This book will be a valuable resource for teachers wishing to rethink, refresh or develop their courses and we hope that it will be widely used. In keeping with the objectives of the Teaching and Learning Manuals, the book is full of practical advice and commentary while being sensitive to the differing teaching environments and styles with which the reader is familiar.

## About the Authors

Anthony Bradney and Fiona Cownie are Senior Lecturers in Law at the University of Leicester, where they teach courses in English Legal System and Sociology of Law. Together they have written *English Legal System in Context* for Butterworths (1996) and, with others, *How to Study Law* (3rd Edn, Sweet & Maxwell, 1995). They are both well known for their research in the area of legal education, and in 1998 edited a special edition of the *Journal of Law and Society* entitled 'Transformative Visions of Legal Education'. Anthony Bradney is editor of the *SPTL Newsletter* and Fiona Cownie is the Legal Education Editor of the *Web Journal of Current Legal Issues*

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# Preface

This book is not intended to be a student textbook for English legal system type courses. A large number of such books already exist. We will be making frequent reference to them in this book. This book will look at the teaching issues and problems that surround teaching English legal system type courses. It will look at questions such as what should be taught, what methods of teaching are appropriate, what materials can be used and how courses can be examined.

The book is not prescriptive. It does not suggest a particular line that should be taken. We have our own personal views on what should be taught and the appropriate method of teaching. This book is not a vehicle for those views. Indeed we will discuss aims, methods and materials that we individually, or together, think are wholly inappropriate for use in a university. Our intention is to survey the teaching that is being done and to suggest some of the advantages and disadvantages that go along with that which is being done. The book looks at the full range of material available including the rapidly expanding resources that are open to us via the Web. Nevertheless it is not a bibliography. We cannot mention everything that there is. We can, however, give examples and we can suggest where more such examples can be found.

This is a book about *teaching* English legal system. We therefore refer not just to material about the English legal system but also to material about teaching in higher education. We think that, in constructing a course, attention to that material is just as important as attention to the subject matter of your course. All of us need to think both about the pragmatics or practicalities of teaching and, at the same time, about theories of education and learning.

> "Theory matters because, without it, education is hit-and-miss: the quality of education suffers; student choice suffers; and ultimately we risk misunderstanding not only the nature of our pedagogy, but the epistemic foundations of our discipline."
> (Webb, 1996, p.23)

We need to think about what we are doing and, in the context of learning theory and the theory of higher education, why we are doing it.

In writing this book we have assumed that the reader is a complete newcomer to teaching; familiar with their subject but never having had to teach it before. Some readers, of course, will not be in this position. For them we nevertheless believe that there is a value in looking at one's teaching as though they were a newcomer. "[G]ood teachers are always evaluating themselves." (Ramsden, 1992, p.217). In examining what one does afresh one may well decide to continue as before but there is always the possibility, and perhaps the probability, that even at the most basic level one might wish to re-assess some aspect of teaching. Without looking at everything from the beginning this can never happen.

Changes in things like the level of resource, our knowledge about the nature of teaching and the balance to be drawn between teaching, research and administration make a constant re-assessment of teaching practices necessary. We will have different objectives in doing that. Not all university law schools have the same mission (Durston, 1997, pp.5-9). Each of us will place a differing importance on the quality of our teaching and the amount of time we are either willing or expected to give to it. But for each of us who teach reflection on our teaching is now (and perhaps always was) a sine qua non of good academic practice. We hope that this book will contribute to that.

Each of the chapters in this book has been read by the members of the NCLE Teaching Panel on the Legal System: Vera Bermingham (Middlesex University), Mike Cuthbert (Nene University College Northampton), Professor Michael Gunn (Nottingham Trent University), Janice Lambert (Thames Valley University), Kim Marshall (De Montfort University) and Professor Robin White (University of Leicester). Their comments have been invaluable in improving the quality of this book and we offer them our thanks. We, however, take full responsibility for any deficiencies that there are in the book.

# What should be taught?

Writing any course begins with the questions who am I teaching, what else are they being taught (or what else are they going to be taught), do my colleagues have any expectations of my teaching, what resources are available to me and how long do I have to teach the course? The answers to these questions set the first parameters to what can be taught and the ways in which it can be taught.

## Service Teaching

English legal system and other foundational legal method courses probably suffer more problems in terms the expectations of colleagues than does any other kind of course.

English legal system courses are usually at least in part service teaching. Just as some law schools teach courses outside the law school, where the shape of the course is dictated largely by the needs of the other department, so English legal system type courses are partially shaped by the needs of other courses in the law school curriculum. Legal system type courses are taught because it is thought that "a failure to understand the English legal system will make much of what the student learns of those other subjects [in the LLB syllabus] either incomprehensible or misleading" (Bailey *et al*, 1996, p.3). The syllabus in which the ELS type is set has expectations of what is being taught in a way that is not so true of the contract course, the land law course and so forth. It is not just that there is an expectation of what might be in an English legal system course. This would be equally true of, for example, a tort course. Rather it is that the English legal system course is supposed to teach things that are not just interesting in themselves but are useful for, for example, the contract course. They are each department's answer to the question what "fundamental core of knowledge...would they [the students] need in order to embark on a meaningful study of substantive legal subjects"? (Lynch *et al*, 1993, p.216). The English legal system course will be expected to explain the system of appellate courts and the difference between ratio and obiter, what different judicial titles mean and so on. These expectations are frequently empirical. Students are expected to learn some facts about the English legal system that will help other courses in their analysis of a particular area of rules (Gardiner and Duff, 1993, p.248).

These service teaching expectations present two difficulties for people teaching on an English legal system course. First, the expectation of the facts to be learnt may be different from course to course. Contract may be interested in the students being taught about how to bring civil proceedings in a court. Land Law may want students to know the difference between equity and common law. In such a situation it is difficult to attain course coherence within the English legal system course. It has been frequently argued that the mark of a good course is the experience that it creates (Squire, 1990). How are we to create that experience out of the bits and pieces of knowledge that other courses say they need to be taught? Secondly, the various expectations of factual learning may not add up to a course which allows for the development of coherent argument or for the students to develop deep thinking about either the whole of the course or any part. Arguably an examinable course which merely presents students with a series of facts to learn has no place in a degree syllabus.

Beck has written that:

> "the basic aim of higher education is teaching students to think for themselves, to have confidence in their own judgement, but to be aware and capable of the discipline needed to form judgements while conscious of their own and others' prejudices. In other words, independent judgement is, at best, reflective."
> (Beck, 1985, p.197).

Courses, on this view, should always, to some extent, be developing students skills or knowledge. Many writers have distinguished deep and surface learning in students (Tribe, 1996, p.11). Surface learning occurs when students:

> "focus on the separate words and sentences of the text, rather than on the meaning those words and sentences were intended to convey; they 'skated along the surface of the text', as Marton and Saljo express it. They were not personally involved in the task. They saw it as an external imposition – a job to be completed for some purpose outside themselves. They anxiously tried to memorise what was in the articles..."
> (Ramsden, 1992, p.41).

Narrowly factual courses are likely to encourage surface learning where students simply seek to absorb information. Such surface learning is often seen as being correlated with a weak understanding of material and a poor examination performance (Entwistle and Ramsden, 1982, p.177). Arguably some material needs simply to be learnt in a factual manner (for example, how to find and up-date a statute in a law library). It may be that such material is properly taught in a short course devoted to that end.

Even if one does believe that courses which are merely factual have a place in a degree syllabus, the factual course may face student resistance if other courses, rather than requiring them to memorise information, ask them to participate actively in thinking about things.

An English legal system type course will have to weigh the needs of colleagues and the needs of the integrity of the course itself. And this must be done before the course is written. If colleagues expect the English legal system course to teach the difference between equity and common law but in fact it does not do so any success for the course may be at the expense of other courses failing. At issue then is who finally determines what is in the course. Is this a matter for a department as a whole or, finally, for the particular course teachers? If the answer is taken to be the former this will potentially raise the difficult question of asking someone to teach something they believe to be incorrect or, at least, inappropriate. If the answer is taken to be the latter this may lead to a syllabus being incoherent.

## Course Length

There is probably a greater variation in course length in English legal system courses than is the case for most other courses usually taught in the first year of an LLB syllabus. This is partly because English legal system courses do not receive the, admittedly minimal, protection that is afforded to courses which constitute the seven Foundations of Legal Knowledge under the qualifying rules of the Law Society and the Bar Council. Under the new modular structure to be found in most universities courses may last for one year (two modules), half a year (one module) or may be even shorter where more complex modular weightings permit such arrangements.

Lynch, Moodie and Salter's 1993 survey found that out of 52 responding institutions only 2 did not have a course designed to provide a foundation for the other courses in the curriculum (Lynch *et al*, 1993, p.219). In the remaining 50 institutions 59 courses were taught, varying in length from 3 weeks or less to a full academic year (ibid. p.220). The majority of the courses, 37 out of the 59, were taught for a full academic year. However, what are now new universities were slightly more likely to teach courses that lasted for less than a full academic year than was the case in the old universities (ibid. p.221). This survey was conducted before the widespread adoption of modularisation. Since modularisation was intended to, amongst other things, allow for a greater variation in the amount of time that students spent on different courses, if it has had any impact at all, it would be likely to increase this variation in the length of English legal system courses (Billings, 1996, p.2).

The time permitted for the course and course length are not necessarily the same things. Course length is in part a function of the style of teaching. Thus more material can be delivered to the students if there are three lectures a week than if there are two lectures a week. More material can be explored with a weekly cycle of tutorials than with tutorials every two weeks. Extra teaching is not necessarily an advantage. Whilst more material can be delivered the student is faced both with the extra quantity of material that they have been given and the diminished amount of time that they have to reflect on that material. If the material is purely factual this may be less of a problem. But if the material is purely factual, and the course is intended to develop the student as, for example, a "reflective learner", is it really necessary? Is the quality of reflection increased by the quantity of material to reflect on? Equally, given the first year nature of the course, one needs to take account of the fact that students are unfamiliar with matters like basic legal terminology, library facilities and so forth. They will be unable to deal with the quantity of material that they can use in later years.

Changes in course delivery may affect real course length. A course where old-style lectures and tutorials are supplemented by use of computer-assisted learning (CAL) material like IOLIS may be thought to allow for the delivery of more material and thus a real extension in course length. However, one should bear in mind the fact that if students are using CAL programmes they are not doing something else. If the CAL programmes stimulate the students more and they learn where previously they would have been drinking coffee then there is an increase in real course time. If they take students away from reading books, law reports, surveys or statutes then there is a difference in learning. Whether that difference is an improvement will depend on the quality of the CAL programme and the quality of the previous learning. (For a general discussion of the new possibilities opened up for law teaching by information technology see Alldridge and Mumford, 1998.)

Course length can also be measured by the number of teaching hours devoted to the course. Student numbers in most law schools have increased to a greater extent than have the number of staff. In the most recent study, Harris and Jones report a 3 per cent increase in the number of staff in law schools at the same time as a 50 per cent increase in the total number of students (Harris and Jones, 1996, p.82). There is, therefore, more pressure on staff time. There are a number of possible responses to this. One is to increase class sizes. In his 1993 survey of law schools, Wilson reported an average increase in tutorial size from 4 to 8 students in 1974/75 to 8 to 10 students in 1991/92 (Wilson,1993, p.170). Another is to retain the size of class but cut the number of contact hours that each class has. Yet another is to look at ways in which students can be brought together to facilitate learning without the presence of a member of staff. We look in more detail at this matter below.

## Modularisation

Modularisation is seen by some as offering great advantages to the university in general. By making course delivery more flexible it makes degrees more accessible to non-traditional applicants and those whose life-style leads to them moving around the country (Harris and Tribe, 1995, p.279). Syllabuses need no longer be written so that they can only accommodate the needs of 18 to 21 year old students who have no family ties. Modularisation facilitates credit accumulation allowing students to study in a way which suits their particular circumstances. Modularisation may seem to be of particular advantage to English legal system and legal method courses. Since the courses do not have the engrained one year long pattern to be found in courses such as Tort or Criminal Law they can make better use of the flexibility that modularisation offers. However, these advantages can be over-stated.

First, modularisation does not offer infinite flexibility. Each university will have some definition of acceptable course length and credit composition. Some schemes will offer more variety than others. Even the most generous may find it difficult to accommodate the very shortest of introductory foundation courses noted in the

Lynch, Moodie and Salter survey. Such very short courses then find themselves outside the modular system with the likely consequence that they cannot be assessed as part of the degree. Non-assessed courses in a diet which is otherwise assessed stand at risk of being regarded as unimportant particularly by those students whose approach to learning is superficial. If you are being asked to teach a non-modularised introductory course within a modularised framework will either your colleagues or your students take you or your course seriously? Secondly, variation in course length consequent on modularisation is not necessarily a good thing because it can produce a very complex, and thus very confusing, syllabus for the student (Watson, 1989, p.132). Thirdly, modularisation can bring with it an increasing number of assessments and thus a syllabus which is lead by the assessment rather than by the teaching or the learning (Harris and Tribe, 1995, p.287).

The attitude of law teachers to modularisation has been mixed. “Perceptions...vary dramatically by institution.” (Gregg, 1996, p.15). According to Gregg’s survey hostility to modularisation was greatest amongst those teaching on single honours law degrees and least amongst those engaged in service teaching outside the law degree. This in turn correlated with those teaching in old and new universities respectively.

The Harris and Jones survey showed that the majority of university law schools have now accepted modularisation (Harris and Jones, 1996, p.55). English legal system and legal method teachers clearly cannot stand outside the modular system if their department has accepted it. However, they need to consider whether the position that their course has been given in that modular structure is adequate to its purpose. The space allocated in the modular structure has to match both the objectives and aims of the course. Moreover, unless the course is simply in the syllabus to give students preliminary foundational knowledge or skills, the content of the course must not be implicitly devalued by giving it substantially less space than other substantive subjects.

## The Purpose of the Course

As we saw above English legal system and legal method courses are all intended to be foundational in some kind of sense. They establish a basis for other courses and further learning. However, what that foundation is taken to be can vary widely from institution to institution. Included within the range of courses that might be considered, to a lesser or greater degree, English legal system courses are courses that range from legal method courses to law and society courses. These differences in title indicate differences in ambition and focus for the courses. Lynch, Moodie and Salter’s study showed that 26 different titles were used to describe foundational English legal system type courses. Within this diversity there was a pattern to courses’ titles. 21 of the courses reported used “legal system” as part of their title and 18 used “legal method” (Lynch *et al*, 1993, p.223). The choice of course title is important, providing a vital signal to both colleagues and students about the nature of the course that is being taught. Thus a course that is about “method” might be expected to concentrate largely on issues related to legal argument and legal reasoning whilst a course which is about “system” might either incorporate both issues of reasoning and discussion of institutions or even focus on just the latter.

Foundational courses seem broadly to be about two different kinds of things. First they can be courses about the institutions and personnel of the legal system. Secondly they can be courses about the ways in which argument about legal rules and principles is constructed. In both cases the courses can either be taught at an elementary or a more sophisticated level. When taught in an elementary fashion the courses attempt to be essentially factual saying what the names of courts are, for example, or explaining in a simplistic fashion the divide between criminal and civil law. When taught at a more sophisticated level the courses become the examination of argument. Whether they are taught at an elementary or more sophisticated level

courses are either skills-based or knowledge-based. They are either courses which teach students how to do things or courses which teach students about things. Courses can also attempt to combine all these different things in a variety of ways.

In one sense any kind of English legal system course can be taught to any length. However, when designing a course, one might think that the time one has available may restrict what one can teach if that teaching is to be done at an appropriate length. A course that purported to cover the whole of the English legal system in terms of both rules and operation, both from a doctrinal and a socio-legal perspective, and sought to do that in, for example, four weeks would necessarily be superficial in its approach. A short course might suggest more limited or more precisely focused ambitions for that course. The reverse proposition does not, however, follow. If a course is to be only half a year or less long it might be appropriate to concentrate, for example, on English legal method looking at the way in which English legal rules are developed. However, if the course is to last an entire academic year legal method might still be the appropriate subject for the course; the extra time allows for issues to be developed at much greater length and in much greater depth.

## Student Preferences

Whether, and to what degree, student interest should dictate or influence course design is something which is much debated in the literature on higher education. There is clear evidence that:

> "while the emphasis of the undergraduates was clearly on the practical and instrumental aspects of law degrees, the emphasis of teachers...was very much on the global aspects of the degree."
> (Halpern, 1994, p.40).

Law teachers in general give a priority to legal education as a liberal education (Macfarlane *et al*, 1987). Students want to see a more direct relation to their lives. If university law schools are simply part of what Williams and Loder describe as "the knowledge industry" doing that which the customer does not want may be seen as not being cost-effective or at least not maximizing profit (Williams and Loder, 1990, p.39). The student consumer is not getting what she or he wants and may choose to take their custom elsewhere. If "student experience...does not dwell on the issue of academic respectability..." why should academics worry about it? (Brayne *et al*, 1998, p.262).

However, not all academics would regard student desires as having that degree of importance. D'Amato, for example, has argued that:

> "Advertising apotheosises consumer sovereignty.
>
> Teaching is the exact opposite. Teaching is an attempt to change the student's mind...the best teaching challenges and alters mental pathways, connections and 'censors' within the student's brain. But there is no doubt that teaching, totally unlike advertizing, is a deliberate form of interference with how students think. The student is likely to resist."
> (D'Amato, 1987, p.462).

On this argument whilst it is necessary to tell students what you are going to do, and whilst they plainly have a right to decide whether or not to pursue the degree or course you have set out, what they want out of a law degree is not as important as what the law teacher thinks it is appropriate to provide. In a similar vein Abel has urged caution in considering the results of questionnaires issued to students. He argues that we can neither be certain that students use appropriate criteria in answering such questionnaires nor that they accurately reflect the quality of the education that they receive (Abel, 1990).

Despite the above it is clear that there is an increasing use of questionnaires both in relation to individual subjects and in relation to the law degree as a whole. Many would accept Marsh's view, based on a survey of the literature on student questionnaires, that

> "student's ratings are clearly multidimensional, quite reliable, reasonably valid, relatively uncontaminated by many variables often seen as sources of potential bias, and are seen as useful by students, faculty and administrators." (Marsh, 1987, p.369).

When assessing both the content of their course and student reaction to it legal system and legal method teachers need to begin by thinking about what their relationship to students as well as to their colleagues ought to be.

## The Approach to be Taken

Linked to the question of the purpose of the course is the issue of the general approach to be taken. At one stage in the development of the British university law school this question would have provoked little discussion. Law schools taught on a doctrinal basis and this meant largely discussion of legal rules found in case law and statute and some description of legal institutions. Legal education is now more fractured with less and less agreement about what should be taught. The development of more varied approaches has affected English legal system courses as much and perhaps more than other courses within the law syllabus. The approach that each course, and probably each academic, takes is unique to them. However, we believe it is of some assistance when considering English legal system type course to divide approaches broadly into three different kinds, doctrinal, socio-legal and clinical.

### The Black Letter Approach

The traditional doctrinal or black-letter approach continues to be one taken by some law schools. Such an approach concentrates on inculcating into students the content of various statutes and judgements. In courses at an elementary level such an approach takes that content to be unproblematic and descriptive. More usually, when taught at a more sophisticated level, a core of material is treated as known and to be learnt in a factual manner by the students whilst a penumbra is treated as open to argument. In an elementary course the course is successful if the students know the material. In a more sophisticated course the course is successful if the students know how to debate the material.

The success of books such as "Walker and Walker" testify to the popularity of the doctrinal approach. The great strength of this approach lies in the way that it contributes to law students learning to "think like lawyers". Not only does the approach provide a coherence for what is happening in the English legal system course itself, it also means that the course connects with other courses taught from a doctrinal stance. The student thus has a clear idea of what it means to be a law student, of why and how they are different from students of sociology or literature. Moreover, because the approach can be maintained over a number of courses, the students can improve their doctrinal technique by applying it to different areas of law. Their learning in, for example, contract law thus has an effect in improving their learning in English legal system and vice versa. If the syllabus as a whole or the English legal system course in particular is thought to have a vocational element the doctrinal approach can be seen to contribute to that by teaching students about the very things that lawyers will use. Finally, the doctrinal element can seen as being the basis for anything else. Doctrinal material is the English legal system and therefore, before anything else is to be done, that material must be learnt.

In some ways doctrinal study can be very appealing for students. Whilst the material might sometimes be dry it is seen as being fixed and certain. For those law students who intend to become lawyers the material relates to what they think their

professional lives will be about. Halpern's cohort study of law students showed that students put a much greater emphasis on the importance of seemingly vocationally relevant material than did their teachers (Halpern, 1994, pp.39-40). Equally, if law students tend to want a "right answer", as Hudson has suggested, doctrinal material, approached in a certain way, will be particularly palatable. Hudson divided students into convergent thinkers and divergent thinkers. He saw science students as being typically convergent thinkers and arts students as being typically divergent thinkers. In Hudson's terminology law students are more likely to be convergent thinkers; are more likely to want to see the world in a clear and settled way (Hudson, 1967, p.57 and p.150).

The problem for the doctrinal law teacher will be that the student's very acceptance of doctrinal material may be based upon a misapprehension of the use of that material. Lord Goff has argued that the essential function of doctrinal analysis is to search for that principle which underlies the individual decisions in an area of law (Goff, 1983). If this is so what the doctrinal lawyer is concerned with is largely the point of difficulty, not the matter that seems clear. Whilst the doctrinal English legal system course might in part be concerned with setting the legal boundaries of the system that is to be found in cases and statute its intellectual focus is on matters not yet decided and still in issue. It is these matters which are uncertain which may be least interesting to students.

## The Socio-Legal Approach

A doctrinal approach to an English legal system course is in the end a purely theoretical approach in the sense that it describes an ideal type. It sets out to describe what lawyers and legal institutions should do as judged by the purely internal criteria of the law itself. It does not describe what they actually do nor does it think this process of describing what they actually do is important. A socio-legal approach, by contrast, draws on a much broader range of material to look at how the legal system or some aspect of it actually functions. The source of material for a doctrinal approach is relatively clear. This is one of its strengths. Primarily it depends upon an examination of reported judgements and on statutes. The source of material for a socio-legal approach is less clear. For some writers a socio-legal approach involves the use of work from a range of social sciences, for others the "only common feature of such [socio-legal] work is that it is not doctrinal work" (Campbell, 1997, p.247. See also Wheeler, 1997, p.285). Using this wider definition writers may draw on material from anywhere in the university. Common to both definitions is the fact that socio-legal work involves the use of techniques and material taken from outside that which hitherto has been regarded as being legal. Bailey and Gunn in *Smith and Bailey On the Modern English Legal System*, White in the *The English Legal System in Practice* and Cownie and Bradney in *The English Legal System in Context* are typical examples of the socio-legal approach in drawing upon this wide range of materials.

Hepple in his recent essay on legal education has, in defending the importance of the socio-legal approach, highlighted the difficulty that it brings for the teacher. Hepple argues that a law student must have "the ability to comprehend the evidence and methods of social scientists, such as economists and sociologists..." (Hepple, 1996, p.481). For him this socio-legal approach is one of five approaches that a law student must become familiar with during the study of law. How, one might ask, is a law student to be not only a law student but also an economist, a sociologist, a psychologist not to say a historian, a philosopher and so much more? Does this not present the danger that that which is learnt is learnt at best superficially? This argument can be put starkly in the context of an English legal system type course. If one is to learn the rules of the system, to know, for example, the mechanisms of appeal within the criminal justice system, how can one also undertake a detailed analysis of how that system works? This difficulty takes on added significance when one remembers the socio-legal ambition is not just to learn the conclusions of socio-legal studies as a series of facts but to put the student in a position to assess the quality of such research on its own terms.

One partial answer to this problem might lie in looking carefully at the amount of detail and the breadth of coverage in the course. Whether the course is titled legal system or legal method one might ask why does the student need to know whatever it is that you are teaching? Why must a student know the mechanisms of the criminal appeal system? Must they know all of them or just some of them? Must they know them or must they know how to find out about them? No course, no matter what its approach, can teach everything. Each course must be selective. Why then have you selected this particular aspect of the system to be studied at this particular level of detail? Such an approach permits factual detail to be removed in order to give more space for studying material in different ways. By so doing it gives students enough time to get used to these different ways of analysing material.

Realising that one is always only teaching about part of the legal system and teaching less but in more varied ways answers part of the problem of the socio-legal method. It may, however, raise further difficulties. In selecting an area to teach one emphasises the importance of that area for the student. Implicitly or explicitly one is saying that that area being studied is very important in itself or is very important because it is typical or representative of some aspect of the legal system. It must be important in one way or another because it and not some other area is being taught. But are we misleading the students by choosing things that are neither important in themselves nor typical of the system or, perhaps, are both but miss out on other things which are important or typical in other ways? Thus, for example, if we choose to look at personal injury actions but not divorce cases in an English legal system course we tend to give students the idea that all court cases are at least approximately similar to personal injury cases. Given the fact that they are likely to be studying Tort in either their first or second year students may gain the impression that this area of law is of major significance. Yet is this in fact the case? Is there not an argument for saying that the very different characteristics of the divorce action should be brought to the attention of students given the very high number of actions each year?

The final problem presented by the socio-legal approach is setting the boundaries of the course. For those who take a doctrinal approach this issue is relatively unproblematic. The English legal system course is about the state's courts and the rules about those courts set out in statute and case-law. The course may go beyond courts to encompass tribunals or other state dispute-resolution mechanisms but there the boundary is set. For those who take a socio-legal approach the problem is that an increasing body of literature has questioned whether or not it is possible to legitimately draw clear distinctions between that which is legal and that which is non-legal in the way suggested within doctrinal analyses. Socio-legal literature has always accepted the inter-relationship of the legal and social and has seen the study of that inter-relationship as being central to studying law. More recently there has been an increasing interest in the question of what the nature of law is and whether law is inherently linked to state power.

> "We ought...to stop thinking of legal regulation primarily as something imposed on the rest of social life; and to think of it equally as something that might grow spontaneously out of everyday conditions of social interaction, and might provide a part of the cement that gives moral meaning to social existence."
> (Cotterrell, 1995, p.307).

Arguably society is pluralistic not just in the commonly accepted sense of containing different communities but in the more specific sense of containing contending legal communities. The systems of dispute avoidance and dispute resolution to be found in the various ethnic, religious and social communities are, on this view, not just similar to law but are law; a law which may be in opposition to state law. "[S]uch a broader conception of law indicates a more complex relation between law and society, since there is not one single law but a network of laws that must be matched with society." (de Sousa Santos, 1987, p.281). Whatever its intellectual attractions the problem presented by this view for the English legal system or legal

method teacher is that it leaves them unclear what they should be teaching. One of the sources for arguments about the existence of and importance of legal pluralism is legal anthropology. Ever wider conceptions of law within legal anthropology have lead some writers to conclude that "the phenomenal boundary between politics and law has proved largely chimerical" (Comaroff and Roberts, 1981, p.12). Legal system or legal method teachers who accept this argument are then left with the difficult matter of defining the content of their course without, on their own account, make purely arbitrary distinctions between what is to be studied and what is not to be studied. Why teach about the county court and not teach about the Jewish Beth Din? But if we teach about the Beth Din why not teach about the Hindu samaj?

Part of the rationale for the answer to the questions above might lie in a pragmatic consideration of the materials available. There are far fewer studies of groups, institutions and communities outside what might be regarded as being the traditional conception of the English legal system than there are studies within it. It is more difficult to teach about groups outside the traditional English legal system simply because the materials for the students are not there. Equally one might look to the relationship between the English legal system or method course and other courses taught within the LLB syllabus and argue that most courses concentrate on what might in reality be a mythical "English legal system". From the standpoint of legal pluralism it might be enough for the English legal system or legal method course to critique the notion of "the English legal system" by a constant reference to the similarities between the behaviour of courts and other traditional legal actors and the behaviour of those outside this group. However, an acceptance of legal pluralism might also prompt the law teacher to consider whether there is any legitimate purpose in having a legal system or legal method course: to ask if its very existence constitutes a way of misleading students about the nature of law and legal systems.

## The Clinical Approach

In a new book on clinical legal education Brayne, Duncan and Grimes argue that there is a growing recognition that employers need:

> "graduates with an ability to reflect and analyse and become self-reliant. There is a growing recognition that knowledge of the law is best understood in the context within which it operates in our complex society...Educational theory clearly suggests that learning is most effective when it involves students actively. Clinical techniques provide a powerful way of achieving all these goals."
> (Brayne *et al*, 1998, p.xiii).

Clinical legal education focuses on what lawyers do. By use of live-client in-house cases, simulated cases (including the use of role play), CAL programmes, games or placements students learn how law is actually applied (Boon *et al*, 1987, p.172; Grimes, 1996, p.140). Its advocates argue that it provides a completely different perspective from that offered by other approaches to learning law.

> "[T]he direct experience of doing law, as compared with listening to, reading or discussing others' views on practice and theory, represents a significant departure from, and an exciting addition to, the traditional means of legal education."
> (Brayne *et al*, 1998, p.1).

Advocacy of clinical legal education in part links in with advocacy of skills training (although a belief in skills training does not necessarily lead to a belief in clinical legal education), skills enhancement being one of the aims of clinical legal education. Clinical legal education allows students a chance to develop at least some of the skills of the lawyer and in particular allows them a chance to develop skills such as advocacy, negotiation and interviewing that are difficult to learn in other settings outside the clinic. However, most of its advocates would argue that "clinical legal education is not primarily about skills" (Grimes, 1995, p,172). Lundy has listed

three additional objectives for clinical legal education, to increase knowledge, to develop a critical awareness of how law operates in practice and to allow the student to draw lessons from experience (Lundy, 1995, p.313). Equally clinical legal education is a form of experiential education although experiential education can also take place outside the clinic. Clinical legal education frequently takes place within the context of vocational education and is sometimes seen as being inexorably linked with professional training but its proponents would argue that:

> "In the context of undergraduate legal education in the U.K....the objectives of the employment of clinical legal methods should not be the same as those of the use of the method in an exclusively vocational context (although some may be common to both)."
> (Boon *et al*, 1987, p.64).

The main objections to clinical legal education are the focus of the study and the kind of knowledge it engenders. Clinical education is inevitably about the work of dispute-settlement bodies and lawyers. That is not to say that it has to be about the work of courts and solicitors and lawyers. In principle there is no reason why clinical legal education cannot, for example, focus on para-legals or non-state adjudication institutions. But its focus must be on individuals cases, individual institutions and individual practitioners. From the doctrinal lawyer's point of view this may be seen as being problematic because the centre of attention is fixed on people whose work has no value in creating precedents and thus shaping law. From the perspective of those who take a socio-legal stance clinical legal education may be seen as being problematic because of its focus on a very limited aspect of law and legal system. For either the kind of knowledge that clinical legal education produces is questionable. As some of its exponents have noted "[e]xperience unrelated to academic goals may add little or nothing to the students' understanding of the discipline..." (Boon *et al*, 1987, p. 67). Clinical legal education must involve the student integrating their observations into the knowledge they have gained from more traditional methods of study through the reading of research, statutes and cases. But, even if this integration is attained, the value of the observations remains in question. The observations can be seen as being mere anecdotal knowledge in an environment which seeks a more general account of the phenomena under examination. For practitioners of clinical legal education it is "axiomatic that it is easier to comment on a subject...if the commentator understands the issues through direct experience" (Brayne *et al*, 1998, p.262). For those who doubt the value of such education such comment is mere personal assertion. Those who favour clinical legal education in particular, and more generally experiential learning, will then retort that this is to privilege propositional knowledge over other forms of knowledge.

In principle an entire LLB syllabus can be taught from the doctrinal or socio-legal perspective although in practice most syllabi will tend to mix the two approaches together. The clinical legal approach is only suitable as a method for use in part of a law syllabus and even then cannot be used on all courses. One of the courses that can use this approach is an English legal system course. For example, Bergman, Sherr and Burridge have shown how the clinical approach can be used in way that will help students understand the process of bringing a case in court. They describe a series of 19 exercises divided into four sections, "Preparing the Court", Opening the Case", Examination in Chief" and Cross-Examination" (Bergman *et al*, 1986, p.23). Equally the clinical legal technique can be used not just for a whole legal system course but for some part of it.

## The Content of the Course

Lynch, Moodie and Salter's study of legal system courses suggested that in both old and new universities "the most popular Syllabus Elements are what might be called the traditional aspects of preliminary legal instruction" (Lynch *et al*, 1993, p.226).

50 per cent or more of all courses include Legal Institutions, Legal Techniques, Legal Personnel and Criminal Justice System whilst 40 per cent or more include Practical Skills, Sources of Law, Legal services, European Community and Civil Justice (ibid.). However, this uniformity conceals a discrepancy of practice between old and new universities which was sometimes quite striking. Thus, for example, whilst 61 per cent of new universities included Practical Skills within their legal system or legal method course this was so for only 37 per cent of old universities (ibid.). Similarly whilst 33 per cent of old universities included Historical Issues only 4 per cent of new universities (just one respondent) did the same.

> "[Old] [u]niversities were more traditional in this regard than New University/Polytechnic courses..."
> (ibid.).

Descriptions of the elements that can be included in a legal system or legal method course are, to some extent, unhelpful. As we have seen above, the approach taken to the course can alter enormously precisely what is taught and the way in which it is taught. In their survey Lynch, Moodie and Salter broke down the element Legal Technique into 13 constituent parts and found that only one part, Judicial Precedent, was taught in all the courses that included Legal Technique (ibid). Even in the case of Statutory Interpretation there was one course which taught Legal technique but did not consider Statutory Interpretation sufficiently important to warrant a place on the course (ibid.). None of the other 11 constituent parts was taught in at least 50 per cent of all universities including Legal Technique in their legal system or legal method course. This lack of consistency applied both between old and new universities and within the category of old or new universities (ibid.).

It appears that legal system and legal method courses are fragmented with little disciplinary consistency amongst those teaching the courses. It is not possible to argue that anything must be taught, or that anything must be taught in any particular way, simply because the subject demands it. What is being taught in a legal system or legal method course and the way in which it is taught is a matter for those teaching the course and, perhaps, those teaching elsewhere in the law school and those being taught.

More important than what is being taught is why it is being taught. In their article on writing the curriculum for an introductory course Gardiner and Duff say that their purpose in constructing a curriculum was to deconstruct the common student view that law was characterised by certainty and logic and instead reconstruct a view of law as being "deeply problematic in its nature and form" (Gardiner and Duff, 1993, p.246). Very similar motives lay behind the writing of *English Legal System in Context* (Cownie and Bradney, 1996). As an alternative the first edition of Walker and Walker's *English Legal System* (1965) was written with the needs of the then Law Society Part I Qualifying Examination in mind. Infused into particular questions about the purpose of the English legal system course are more general questions about the direction of legal education. Is the University law school a "'House of Intellect' for the [legal] Profession" as Savage and Watt have argued in a recent essay, the multi-purpose centre of learning serving the legal system and society as a whole favoured by Twining, or simply a place for the pursuit of knowledge as advocated by one of the authors of this book? (Savage and Watt, 1996; Twining, 1994; Bradney, 1992). Implicit in each English legal system or method course will be an answer to this question. This implicit answer needs to be made explicit to the students.

# Small Group Teaching

## Introduction

Small group work has several advantages as compared with the traditional lecture. In small groups, students are encouraged to engage with the materials involved in a much more active way than is possible in the generally passive environment of a lecture. If encouraged to do so by a skilful tutor, they can practise skills of analysis and critical thinking, and they may also practise oral skills such as presenting and defending an argument, and explaining ideas clearly. Feedback from the tutor is immediate, and the opportunity for personal contact between students and tutor greatly increased (Lublin,1987, p.1). Small group work can also be used to inculcate team-work skills into students (Prince and Dunne, 1998). Traditionally in law schools the standard vehicle for small group teaching, the tutorial, "provides a setting in which undergraduates can supplement knowledge of legal product with an understanding of legal process" (Mullender,1997). Some consideration of the integration of small group into the course as a whole is desirable. This is likely to involve co-operation between those delivering lectures and those delivering small group teaching, the extent of which is likely to vary, depending on the culture of the institution involved.

## Group Size

Many courses will have some form of small group teaching, although 'small groups' may be anything from a small tutorial group of eight students to a seminar containing 30 or more. (See Wilson, 1993, pp.170-1 who also notes that not all courses need to include small group teaching, instancing "English Legal System" courses as an example.) Sometimes tutorial groups will be used as an adjunct to a traditional lecture course; in other cases, the decision may be made to use seminars as the main teaching vehicle for the course. The larger the group, the less opportunity there is for individuals to participate, although with a large group, there is likely to be a greater diversity of ability and experience available, which can often be an advantage. Research carried out by social psychologists suggests that the best group size for a group dealing with complex issues is five or six, and that twenty is about the upper limit for group interaction (see Brown and Atkins, 1988, p.51). The *ideal* size of group will vary, depending on the purpose for which the group activity is used; the *actual* size of group with which tutors have to work may be far from ideal for the purposes involved; as far as possible, suggestions will be made as to how to improve upon the less-than-ideal situation.

When devising a course, the *teaching methods* should be considered as an integral part of course design. Ideally, the size of teaching groups should be chosen bearing in mind the purpose of the group and the type of learning which it is intended should take place. For instance, in a course using a clinical approach, it might be decided that small group work, with groups of no more than four students, is essential in order to allow students to participate on an individual basis in client interviewing, drafting etc. Teachers on a doctrinal course may decide that relatively large groups could benefit from discussion led partly by the tutor and partly by group members. Given the constraints which are likely to be placed on resources, in terms of staff time, student time and the physical environment, it may not be possible to achieve your ideal. If not, consider structuring the teaching time so that appropriate group sizes can be used; for instance, a tutor faced with large groups who wishes to involve students in a high degree of individual participation may wish to devise at least some activities which involve dividing the large groups into smaller sub-groups.

## Physical environment

Work on group dynamics has shown that a number of factors affecting the behaviour of groups is affected by the physical position of group members. Dominant members will tend to choose the more central seats, with reticent ones at the margins. The further apart members of the group are seated, the less talkative and more formal the group interaction (Jacques, 1990, p.5). This suggests that there are a number of factors relating to the physical environment which might be considered before embarking on small group work, the most basic of which is whether it is possible to arrange the seating to improve communication within the group.

A layout which is similar to that of a lecture, with the tutor at the front facing rows of students, is likely to result in a tutorial which is tutor-dominated, with most of the interaction likely to come from the centre of the first two rows, and least interaction taking place between the tutor and students in the front and back corners of the room. A circular lay-out of chairs, with the tutor sitting as a member of the group, increases the probability of all the students talking to the tutor and to each other. It is increased further if the tutor varies the seating pattern by changing places each session (Brown and Atkins, 1988, p.58).

## Planning Content

A tutor must be clear about the purpose of the tutorial. There may be a number of pedagogic objectives, such as increasing students' knowledge of a particular topic, developing their problem-solving skills or research skills, or their ability to engage in critical argument. There may also be subject-matter aims and objectives relating to the content which it is intended to cover. The objectives will vary depending on the approach being taken to the legal system or legal method course and may also vary within a course from tutorial to tutorial. Early tutorials in a black-letter course may, for example, focus on making sure students understand elementary, basic material. Later tutorials may focus more on ensuring that students learn the techniques of doctrinal analysis.

### Aims and Objectives

Setting out the aims (that which it is intended to teach the students, both in terms of content and intellectual skills) and the objectives (what the students should have learned or be able to do as a result of the session) is often regarded in the literature as good practice. The intention is that in writing down aims and objectives, the teacher has to reflect upon what those aims and objectives are, and it is easier to devise teaching materials which clearly meet the intended educational purposes than if this process is left to chance. However, since not all the outcomes of an educational activity can be specified in advance because of the complexity of the process, some educationalists regard the use of aims and objectives as too mechanistic or inaccurate, arguing that it is easy for creativity on the part of the tutor to be stifled if the objectives are regarded too rigidly. On balance, the general consensus appears to be that setting aims and objectives for educational activities is generally beneficial (Le Brun and Johnstone, 1994, p.154). If aims and objectives are set, it is important that they are communicated to the students. This can be done by a brief statement on the written materials which accompany the small group work. In the example which follows, the first paragraph sets out the aim (the purpose of the tutorial) and the second paragraph states the objectives (what should be achieved):

### Example Tutorial: Bail

The purpose of this tutorial is to increase your knowledge of the legal rules and socio-legal materials relating to bail, to develop your legal research skills and to increase your ability to engage in critical analysis of written and oral arguments.

When you have completed the tutorial, you should have increased your knowledge of the relevant legal and socio-legal materials, and increased your abilities to carry out legal research and to engage in critical analysis.

Once the purpose of the session has been established, the tutor then has to set work which, when completed, will allow the students to achieve the relevant objectives. Careful preparation of teaching materials is an important part of the tutor's role, both to ensure that educational objectives are met, and to ensure that the materials are interesting and stimulating. It is important to match the task set with the educational objective which the tutor has in mind. Setting a traditional legal problem, with relevant statutes and caselaw as set reading, would develop the students' problem-solving skills, but would not go a long way to develop their research skills, because it is the *tutor's* research skills which have been used to identify and supply the relevant materials; in order to develop their research skills, it is the *students themselves* who need to find and use relevant materials. Faced with broadly-expressed learning objectives, such as 'to improve students' legal research skills' the tutor must decide precisely *how* the students are going to improve those skills. What task should be set which demands that students carry out research, and extends the research skills they already have? The following task is clearly research-based:

**Example Tutorial: developing students' research skills**

Writers in all of the following fields have produced work which may be said to have contributed to the development of an integrated, or pluralistic, theory of the civil justice system: legal anthropology; legal realism; informal legal systems. Use the textbook to identify one writer from one of these fields and investigate their work more thoroughly than the textbook allows you to do. Come to the tutorial prepared to:

a) explain the main ideas of your chosen writer
b) identify the advantages and disadvantages of their ideas
c) identify the contribution their work may have made to the development of a pluralistic view of the civil justice system i.e. one which looks beyond the traditional courts to other dispute resolution agencies.

If students are used to this approach, no reading is given with such a task. However, at the start of a course, students would be overwhelmed by such a task; it is then necessary to offer additional guidance.

**Example Tutorial: guidance to students on developing legal research skills**

This tutorial involves you in gaining hands-on experience of legal research. Think CAREFULLY about how you are going to find the information BEFORE you start. (Re-read the relevant part of your induction course materials, for instance). Remember that the library's electronic catalogue generally only identifies BOOKS held by the library. As well as finding books, you may well need to find academic articles (not newspaper articles). There are Guidance Notes in the library which help you to locate academic articles. You may also find it helpful to consider whether the following sources may be useful in locating relevant articles: The Index to Legal Periodicals (now on CD Rom); Social Science Citation Indexes; footnotes in textbooks.

In the tutorial, we shall discuss how you went about your research and try to identify good (and bad!!) practice in academic legal research, as well as discussing further sources of information which you may need to use in future tutorials.

Consideration should always be given to the need to structure learning tasks so that they are relatively straightforward at first, but become more difficult as the students gain greater knowledge and become more proficient in using the relevant skills.

## Teaching Style

In general, it is important for the tutor to have given some thought to the kind of small group dynamics which it is intended to promote, and closely related to this, the kind of tutoring style it is wished to adopt. In some cases, where students are being taught team-work, the group dynamics are the focus of the course (Prince and Dunne, 1998). This cannot be so in a legal system or legal method course because there is always the need to acquire particular legal knowledge and/or skill via the course. However, just as learning IT can be seen as being an additional feature of a

legal system or legal method course, an added-value bonus, so learning team-work might be seen in the same way. Once again the general approach taken in the course will affect the ease with which team-work skills can be introduced into the course. A course which focuses on the student as an independent learner may find it harder to inculcate team-work skills.

The sort of decisions which need to be made here are indicated by the following distinctions, though other similar decisions will have to be made at every stage of the teaching process:

- directive (tutor clearly directs the group)
- non-directive (tutor encourages group to make decisions for itself)

- structuring (the tutor uses a variety of procedures to bring structures to the group)
- non-structuring (tutor works with the group in a relatively unstructured way)

- disclosing (tutor shares his/her thoughts, feelings, experiences with the group)
- non-disclosing (tutor keeps his/her own thoughts, feelings and experiences to his/her self and plays a neutral role)

(Gibbs and Habeshaw, 1984, p.89).

In thinking about the process of teaching in small groups, there are a number of choices to be made about the mode of teaching which is to be employed. Below are some of the most common options:

## Tutor-centred, tutor talking

Using this style of teaching, a tutor will effectively deliver a mini-lecture. This format can be valuable if the purpose of the small group work is for the tutor to explain material clearly, especially if new material is presented. It can also be used successfully with larger groups at the beginning of the session to explain tasks or give background information before the group begins to work in a number of smaller units. However, in general, this style of tutorials results in students being passive, rather than active learners. Normally a course which only makes use of this style will not produce a high level of student learning. However, some very short legal system or legal method courses are used solely to introduce students to factual material which will then be used in other courses. In such instances a concentration on this style of teaching, which enables tutors to get through material quickly, may be appropriate.

## Tutor-student questions and answers

Here, the tutor is the focus of the group once again, but there is interaction between the students and the tutor. The tutor asks questions of the students, responds to their answers, and encourages students to ask further questions of their own. Using this format a skilful tutor can lead a class to new insights, and students can clarify their understanding by asking questions of the tutor. Such an approach allows tutors to direct discussion very closely and thus ensure all the material is covered. However, there is no formal opportunity within this process for student-student interaction.

## Tutor-facilitated discussion

In this format, the tutor plays the role of facilitator, but unlike the methods above the aim is not to be the central focus of the group. The tutor seeks to decrease their control of the students' learning and to encourage them to take active responsibility for their own learning within the group situation. This the tutor does by skilful management of the discussion. One possible way to manage such groups is to set work which involves research by the students, or application of more familiar material to a new situation, or in which there are clearly differing perspectives or interpretations. Often the tutor makes some introductory remarks, but it is crucial that these should be short, and should end with the question which is to be discussed, or some remark such as "How should we begin to answer this question?"

or "What do you think of this?". Considerable patience and confidence is need to ensure that the tutor does not follow up their opening remarks with a prompt, or a clue, too soon. The idea is gradually to allow the students to take control of the discussion; at first, they are likely to turn to the tutor with questions and appeals, but if the tutor responds to these pleasantly but firmly, deflecting appeals for 'right answers' and turning questions back to the group, students will gradually get the idea that this is 'their' discussion. It is not a good idea to refuse to answer all questions; it is a matter of judgement to decide when withholding information would frustrate the progress of the discussion, and when it is preferable to ask the group to think about a particular issue which has been raised (see Lublin, 1987, p.4).

One of the most common difficulties for tutors in conducting tutorials (other than those which are intended to be fully tutor-centred) is resisting the temptation to talk too much. Brown and Atkins cite a number of studies which show that whether it is intended to be the case or not, small group teaching tends to be tutor-dominated, characterised by low level thinking on the part of the students, and by transmission of information rather than debating ideas and critical thinking (Brown and Atkins, 1988, p.53). Tutors therefore need to guard against the feeling that they have to fill in any awkward silences (thereby doing the work of the tutorial themselves) and concentrate on asking questions which will induce the students to participate. This is not easy, particularly when, as Brown and Atkins point out, students may engage in a number of ploys (playing games such as Grand Silence or Hobby Horse) to try and ensure that the tutor does the majority of the talking (and the work) (ibid. pp.60-61).

It is also important to remember the games tutors might play in tutorials, the majority of which are not conducive to student learning. With apologies to Brown and Atkins, a few of these are: Know-All (the implication being that students know nothing of any interest); Great Scholar (tutor displays so much learning the students are intimidated); Sloppy Joe (tutor has clearly not prepared – why should the students?). Whilst it will generally be true that the tutor has far more knowledge, and can deploy it much more skilfully, than students, the purpose of tutorials is for students to learn, and it is the tutor's role to encourage them in that process. Students often find it difficult to make contributions, even in small groups, but it is possible for the tutor to increase the possibility of student participation, and thereby student learning, if positive strategies are adopted, but the constant display of superior knowledge is generally not helpful to the learning process.

Each approach to legal system or legal method courses has its own inherent dangers in this respect. For example, tutors on black-letter courses will find it difficult to make sure students assimilate sufficient quantity of legal rules without intimidating them with the quantity of cases that the tutors know. Socio-legal courses, which draw on a wide range of material, will want students to be aware of the intellectual range and provenance of the material without the students feeling that the background is too vast and too arcane for them ever to be able to comprehend it.

## Starting Out

At the beginning of a series of small group sessions the tutor has a unique opportunity to create the learning environment which will best facilitate the type of learning which it is wished to encourage. It is important to communicate to the students any expectations held by the tutor about what will take place in the learning sessions; expectations can vary widely from tutor to tutor, and the best results will be obtained if it is clear to the students from the outset what is expected of them. Here, the approach taken on the course – black-letter, socio-legal or clinical – should be made clear to the student. It is good practice for the tutor to explore what the students' expectations of the tutor are as well, and to indicate which of these expectations are likely to be fulfilled, which not and why! Clarity about mutual expectations is essential, if the small group experience is to be a positive learning experience.

There appears to be a clear consensus in the literature that it is important for tutors to introduce themselves, to learn students' names, and to facilitate students learning each others' names. It is argued that since most adults would prefer to be introduced when meeting a group of strangers in a social situation, the same applies to tutorials; a group can also become more purposeful more quickly if the tutor can engender a sense of group identity. Using a person's name also indicates interest on behalf of the person speaking and respect for the individual (Lublin, 1987, pp.11-12).

A number of strategies can be employed for introducing students to each other and learning their names. These can vary from strategies which are mainly directed at assisting the tutor remember names, such as taking a register, making a seating plan with names attached or directing questions with names attached to more elaborate procedures which also involve the students in the name-remembering process. These include the cumulative names-in-a-circle game, where person A says "I'm Kate", Person B says "I'm Adam and this is Kate" etc. The tutor should always come last, so that they have the hardest task. Another possibility is to divide the group into pairs, ask them to find out a few simple things about each other – name, interests, reason for studying law etc. Then Person A introduces Person B to the whole group and Person B does likewise, for all pairs. The latter processes are more time-consuming, but have the advantage that each person in the group will know at least one other, while the tutor-oriented strategies are relatively quick, but do not assist the students in getting to know each other and introduce the possibility of mispronouncing difficult or unusual names when reading off a page (ibid. pp.12-13).

The time that can be given to such strategies will vary from course to course. If part of the function of the course is to inculcate more than propositional knowledge, if the course is also about developing personal skills, and attitudes (which, for example, is commonly the case in clinical courses) than there is a greater justification for devoting time to these strategies than there is in the case of a course which is largely devoted to delivering ideas and techniques of analysis (as is typically the case in a socio-legal or black-letter course).

## Questioning

Asking effective questions is a skill which is fundamental to successful small group teaching. The questions which are asked may be of various types, some of which require the students to engage in higher levels of thinking than others. It is important to ask the type of question which will facilitate the intended learning objectives.

### 'Open' / 'Closed'

A question may be framed to require a relatively narrow answer "Which section of PACE gives a constable power to arrest without warrant for an arrestable offence?" This type of question is often referred to as a closed question, and is most effectively used to elicit a precise piece of factual information. Questions may also be framed in such a way as to invite a wide-ranging answer "To what extent do you think the civil justice system is fair?" Answering this type of 'open' question involves the student in higher level thinking in order to provide a coherent answer. Closed questions tend to yield short answers, and when used too frequently can inhibit discussion. Open questions are more challenging. However, research discussed in Brown and Atkins shows that some tutors who use open questions are actually looking for a specific answer; this is very confusing for the students, and once they realise what is happening, inhibits discussion as effectively as closed questions (Brown and Atkins, 1988, p.70).

### 'Recall' / 'Thought'

Recall questions can be open or closed, but in either case the question asks the student to recall information which they already know. This is clearly less demanding than a 'thought' question, which requires the student to speculate or evaluate new information.

Whichever type of question is used, it is important that it should be put clearly. Clear questions, even open ones, tend to be relatively brief and direct, and firmly anchored in a context, so that it is quite obvious to the student what it is about. Confusion tends to arise with long questions, often including several auxiliary questions, so that it is unclear exactly which topic the tutor is addressing and the student is unsure exactly what question is being asked (Brown and Atkins, 1988, p.71).

## Tactics of Questioning

As well as being aware of the type of questions being used, there are several strategies which can be used to make the questions asked in small groups more effective.

**Pitching**

- Pitching involves the use of a variety of types of question, some recall, some thought, some closed, some open. Pitching also involves awareness of the use of pauses in questioning; much longer wait-times are necessary after questions involving higher level thought, for instance. Pauses are also helpful when the level of question changes.

**Prompts**

- Prompts can be used once a question has been asked; hints or clues can be introduced, or the question can be rephrased, to encourage students to answer.

**Probes**

- Probes are a most important aspect of questioning, since they are the questions which require students to think further once they have given an answer to a question. “Can you give me an example?” “What is the authority for that proposition?”

If questions are asked skilfully, it is possible to promote higher level thinking by the students, increasing their abilities to engage in critical thinking, for instance. However, there are many pitfalls in the questioning process. Some of the most common are: asking too many questions at once, asking questions in a threatening way, not giving time to think, ignoring answers and failing to see the implications of answers. The fact that legal system and legal method courses are first-year courses is important in this context. For many students the style of learning in universities will be entirely new. If the course is a clinical one it may be different from any other course the student is studying. Novelty and unfamiliarity make it particularly likely that students will be confused by questioning. As a result they may lose confidence in their ability to learn course material; students may then say that the course content is too difficult when, in fact, the problem is the delivery of the material.

## Listening

Although questioning is clearly a vital part of small-group teaching, it is easy to overlook the equally vital role of listening. The tutor needs to engage in active listening, which allows them to consider the implications and hidden meanings of the content of what is being said, enabling them to build on student contributions by judicious use of probing questions in order to promote further and deeper thought by the student.

**What is said (the content)**

The key things to consider here are :

- The clearer and more structured the content of a contribution is, the easier it is for others (tutor and peers) to understand. To assist students in clarifying their thoughts, tutors may have to intervene, using checking questions or prompts, or probing an answer which has been given.

**How it is said (tone and feelings)**

- The way in which a person says something or what they do not say may reveal confidence, uncertainty, anger.....a tutor should be sensitive to these underlying messages and be able to respond to them appropriately.

**When it is said (time and priority)**

- The timing of a student's response may be important. For instance, a taciturn student who suddenly states views boldly may feel strongly about the topic under discussion, or may have gained confidence in their abilities, or in the group.

  The time of the week may also have a bearing on the ability to listen. Effective listening is hard work and requires energy, which may be in greater supply on Tuesday mornings than at four o'clock on a Friday afternoon.

## Responding

Tutors can respond to contributions made by students in a number of different ways and for a variety of reasons. Possible reasons for responding to student contributions include:

- to challenge or confront statements
- to encourage and promote confidence
- to clarify or check knowledge
- to help the student find new meaning

If an appropriate response is made, it is possible to improve the learning experience considerably, and to engage with students in that process.

Many authors have noted (and tutors have experienced) that students who are remarkably talkative outside classes are often reluctant to contribute in a small group situation when the tutor is present. Appropriate responses to contributions which *are* made by students in seminars or tutorials can encourage the kind of open debate which most tutors seek to encourage. Jacques discusses a number of strategies which can be employed to encourage student participation in group discussion (Jacques, 1990, pp.16-18):

**Glancing around the Group**

It is clearly helpful for the tutor to look round the group when talking, ensuring that all students appear to be listening, to have understood and to see if any of them wishes to make a contribution. Cues from students who are puzzled or anxious to check something can be quite subtle – a shifting of position or a frown; sensitivity to these signs allows the tutor to make a decision about the appropriate response, which may or may not be a fairly immediate response.

Although it is contrary to conventional 'good manners', scanning the group when students are contributing allows the tutor to encourage the student who is talking to do the same, so causing the whole group to give that student more attention, discouraging the tendency for discussion to become a series of one-to-one dialogues.

**Using non-verbal communication**

At times when it is difficult to interrupt a discussion without sounding too critical, or when an intervention by the tutor threatens to disrupt the ambience of the group, non-verbal signals may be effective. These can range from catching a student's eye and giving an encouraging smile, to raising an eyebrow to invite a student to speak, or using 'traffic cop' signals to block someone out of a discussion or bring them in.

## Bringing In and Shutting Out

In order to encourage students to talk, tutors may need to invite individual members of the group into the discussion "What do you think about that, Simon?". Whilst this can be effective in some cases, it can also be perceived as threatening, and as 'putting someone on the spot', so it is a technique which should be used with sensitivity, especially with regard to the very different cultural backgrounds which may be found among any group of students. That is also true when the tutor decides to hold someone out of the discussion "Could you just hold it there for a moment, Sushila – it would be interesting to know what everyone else thinks about that."

## Correcting errors/ developing ideas

Whilst too frequent or too aggressive correction of students' errors is generally counter-productive, students' ideas must be challenged in discussion if they are to develop their ideas. Questioning answers which are offered by students with phrases such as "Let's just look at that in more detail..", 'How does that tally with what you said before.." or 'Why do you think that is the case?" enables the discussion to be pushed on, while minimising the possibility that students will just clam up.

## Techniques for use with small groups

It was suggested above that a tutor can use various styles when working with small groups, ranging from a mini-lecture to the facilitation of student-centred discussion. It is also possible to use a number of different techniques to vary the format of the teaching sessions. It is important to note that techniques such as these are used for educational purposes, rather than just for the sake of variety. Altering the method of teaching can increase interest, motivation and learning. Students have an increased opportunity to make contributions in a smaller group, and are more likely to become interested and motivated. The removal of the tutor from the immediate process also increases the need for students to take responsibility for their own learning. Subgrouping techniques such as those discussed below can be particularly effective if the 'small' group involved is in fact quite large, and the tutor wishes to engage the students in active learning.

Le Brun and Johnstone (1994, Ch.6) provide particularly detailed suggestions about the use of these techniques in law teaching.

## Buzz Groups

Students are divided into twos or threes, asked to discuss a question or problem together and then asked for their views. Gathering together the conclusions of all the groups is desirable, because it is likely to expose the students to some new ideas, and it allows the tutor to correct errors or misapprehensions. However, the 'reporting back' stage can be boring, so it is important to think of imaginative ways in which this can be achieved; for example, buzz groups can be split up and members sent to form new buzz groups with some members from other groups; they can then report back to each other before having a short concluding session with the whole class.

For this tutorial, all students are asked to prepare an essay plan for the following question (including the main references/citations needed):

> The Pearson Commission found that only 1% of all civil litigation actually gets as far as a trial. The rest is withdrawn or settled at an earlier stage of the proceedings. What are the advantages and disadvantages of using settlement as a means of resolving litigation? Include in your analysis some discussion of the device of payment into court.
>
> In the tutorial, you will be divided into small groups. Each group will pool ideas and come up with an essay plan, which we will record on the white board, so that we can compare the approaches of different groups.

## Brainstorming

Students are given a problem or question, and asked individually to write down all the ideas which occur to them in answer to the problem set. At the initial stage, students should be encouraged to explore all ideas, however apparently wild they are. Time is then allocated to collect all the ideas, which are recorded so they are visible to everyone, and they are then subjected to general critical discussion. Students should be encouraged to develop and improve upon the contributions of others, or to combine suggestions to form new ideas.

"What is the best method of appointing judges?"
"What aspects of police culture undermine the formal legal rules?"

## Snowballing

Individual students spend time thinking and noting down ideas, then shares views with one other student. This pair then compare their views with another pair. Snowballing can be particularly effective if the tutor gives different instructions to the students when working in pairs, fours and in the larger group; Le Brun and Johnstone give a helpful example of this in action :

> "..we can ask students individually to spend a few minutes identifying the crucial facts, legal principles, and practical and ethical constraints involved in resolving a legal issue. Then in pairs we can ask them to compare notes, form a basic agreement about the important points and begin to resolve the issue. Thereafter, we can ask each pair to join another pair, explain and compare their tentative solutions and set about resolving the problem. Finally, in the full class discussion, we can ask one group of four to explain their answer to the problem. The other groups can be asked if they took a different approach. The full class can then discuss these approaches and conclude the activity..." (Le Brun and Johnstone, 1994, p.298)

Students are all asked to prepare notes in relation to the following:

"Examination of the law in action shows that suspects in police stations are inadequately protected by the Police and Criminal Evidence Act 1984 (PACE)."

In pairs, they are asked to decide where the main gaps in protection of suspects lie.

In fours, they are asked to make suggestions for reform of the legislation to fill the gaps which have been identified.

The findings are then reported to the whole group.

## The Learning Cell

This is a method of peer learning, in which students alternate in asking and answering questions on materials which they have both read. During preparation of the materials assigned for the class, students write out questions dealing with the major points raised in the materials. At the beginning of the class, students are randomly assigned to pairs. One of the pair asks the first question; the other students answers, and if necessary is corrected or is given additional information. Then the roles are reversed; this process continues for as long as the tutor wishes. While the students are working in pairs, the tutor moves around, giving feedback and asking and answering questions.

Read Shearing, C. and Stenning, P. "Private security: implications for social control" (1983) 30 *Social Problems* 500. Once you have read the article, imagine you are a law tutor. Prepare a list of 6-10 questions which you intend to ask students who have read this article. Your questions should be designed to cover the whole article. Your aim is not just to get the students to describe the contents of the article to you, but to get them to think critically about it. In the tutorial, you will have the opportunity to test out some of your questions.

The procedure can be varied by requiring each of the pair to read different materials. Each then has the task of 'teaching' the other the essentials of the reading which has been done. This procedure can be used with groups of any size.

It has the advantage that in preparing to teach, students involve themselves in more meaningful learning (Le Brun and Johnstone, 1994, p298).

Half the students are asked to read chapter 5 of P. Goodrich *Reading the Law* and half chapter 6. In pairs, they teach each other the content, and are then asked to explain how Goodrich's ideas relate to the traditional ideas about statutory interpretation which were discussed in lectures.

## Student-led Groups

Assisting students to make effective presentations and to act as leaders in small groups can have a number of benefits; it can increase motivation and self-esteem, and it allows students to take responsibility for their learning. The dangers of such an approach are that, unless the learning experience is very well planned by the tutor, the benefits can be restricted solely to the student making the presentation.

If it is intended to experiment with small group sessions in which students will present papers and lead discussions, it is important that the students leading the group should be carefully briefed. Not only does this allow the tutor to decrease any anxiety which the potential group leaders may be experiencing, but it also means that the standard of their performance can also be greatly enhanced. Left to themselves, students frequently prepare the *content* which they wish to cover, but give little or no thought to the *process* which is involved. A brief oral discussion, together with a hand-out which sets out the most important points and can be taken away for future reference, will greatly increase the quality of the ensuing session.

## Guidelines for Group Leaders

- Establish what your objectives are – to impart information, enable students to participate in critical discussion.....etc.
- Draw up a plan for your session which shows how you are going to achieve those objectives. Do not concentrate solely on the CONTENT of the law you want everybody to learn. It is equally important that you identify the METHODS / ACTIVITIES you are going to use to achieve your objectives.
- Do not just plan a mini-lecture; if you set reading, you should presume that everyone has done it!! Your plan should include a list of questions which you will ask to provoke discussion. the questions should be written out as direct questions, not just as topics to be covered.
- Consider how you are going to involve the other members of the tutorial group – e.g. you could ask people to carry out activities, or work in groups.
- Remember you only have 50 minutes to fill! Your plan should indicate how long you are going to devote to each part of the tutorial.
- Make sure your timing is accurate – you should rehearse the session once you have finished planning it. Don't be afraid to cut something out if necessary – bring it with you to have 'up your sleeve' in case things move more quickly on the day.
- If you are going to use the white board or overhead projector, look at the course booklet for hints on their use.

In order to assist the student leader in carrying out the task which has been set, the tutor should make it clear that this session is the responsibility of the student, not the tutor. The tutor can reinforce this message by sitting in a different place and letting the student sit in the tutor's place. The tutor should also try to interfere as little as possible; if the student leader dries up, it is important not to undermine them, but to intervene in a supportive manner, perhaps by prompting with "You were talking about X and Y, weren't you?".

## Conclusion

Small group teaching is an area in which tutors may be able to experiment with different teaching techniques more easily than, say, methods of assessment or delivery of lectures, where constraints on an individual tutor's freedom of action may be greater. This, together with the increased possibility of personal contact, makes teaching in small groups one of the most rewarding aspects of teaching in higher education.

# Lecturing in Legal System or Legal Method

## Purpose

There are several possible purposes in giving a lecture. You may find that you have more than one of these in mind, but that one is a dominant purpose, or you may wish to fulfil a single and very specific purpose. Whichever is the case, it is important to think about the purpose of each lecture before you start to plan it. Some possible purposes are:

- to convey information
- to construct an academic argument
- to present conflicting viewpoints
- to convey enthusiasm for the subject

You then need to organise the content of your lecture so that it achieves the objective(s) you have in mind.

## Structure

A clear structure is vital if lectures are to be clear and convey the desired information and ideas to the audience. The classical structure of a lecture involves its division into broad sections, each of which is divided into subsections, which may themselves be divided into smaller units. Each subsection is important, because it aids understanding; it will contain main points and a variety of examples, elaborations, reservations and a brief summary. To be effective, the lecturer needs to signpost the beginning and end of each section so that students do not become confused (Le Brun and Johnstone, 1994, p.262).

Brown (1982) has found that four components of structure in particular are related to high findings of clarity: signposts, frames, foci and links.

### Signposts

Signposts are statements which signal the direction of a lecture: “Today I am going to talk about sexual discrimination in the legal profession. The first important issue is .....”

### Frames

Frames are statements which delineate the beginning and ending of topics and sub-topics:

“That’s the end of my discussion of sexual discrimination in the legal profession. Now I’d like to look at racial discrimination.”

### Foci

Foci are statements which highlight and emphasise key points: “Order 19 of the County Court Rules sets out the rules of procedure for the small claims court.” (pause).

### Links

Links are statements which link sections of the lecture together; they may also link the lecture to the previously-acquired knowledge of the students: “Just as we saw in relation to the Magistrates’ Court, the informal rules and procedures which have been discovered in the Crown Court are highly significant.”

The opening stages of a lecture are particularly important. Effective openings gain the attention of the students; it is important not to begin until it is clear that their attention is held; beginning too quickly means that many students are not listening and will lose the first few minutes. If that happens, it becomes difficult for them to tune in to the content of the lecture and their attention begins to wander. It is also important to use the opening minutes of a lecture to establish a relationship with the class; making eye contact and introducing yourself can assist this process. Openings also indicate the content and structure of the lecture, thus providing students with a framework for note-taking, reducing their uncertainty and increasing their confidence in the lecturer's skills (Brown and Atkins,1988, p.31).

## Interest

Generating interest is widely regarded as the most challenging feature of lecturing. There are a number of strategies which can be used to generate interest. These fall broadly into three categories (Cannon, 1988, pp.13-17).

### Variations in non-verbal communication

Using eye contact establishes a rapport with the audience and involves students in your presentation. Gestures can add emphasis, and help maintain attention – but only if they are used purposefully; waving arms about for no apparent reason is merely distracting and often unintentionally humorous.

### Variations in verbal communication

Variations in the pitch, pace and volume of your voice can all create interest, help to maintain attention and be used to add emphasis to what you are saying. Examples and illustrations add authenticity and topicality to a lecture, while humour, used sensitively, creates a more relaxed atmosphere for learning.

### Variations in media of presentation

Handouts enable the lecturer to give precise definitions, case names and citations, academic references and to supply the students with headings which will form a good basis for note-taking. Audio-visual aids maintain interest, and permit examples and illustrations to be offered; these can vary from overheads, through slides to full-scale video clips.

## Preparation

Given that a clear structure is such an important part of effective lecturing, preparation of lectures which are well organised is vital. Brown and Atkins (1988) used their experience in working with new lecturers in universities to evolve a systematic approach to planning lectures, from which the following suggestions are adapted (ibid. pp.36-38).

### What is the topic?

You should be able to choose this. You are giving the lectures and the content should reflect both your perceptions of which points are sufficiently important and sufficiently interesting to include in lectures and which matters relate most closely to your research interests. However, as we have noted, legal system and legal method courses are in part service teaching so you will have agreed with colleagues, explicitly or implicitly, that some points must be covered. Equally, whilst you might be able to divide out the lecturing so that you lecture on those topics which interest you, some accommodation and compromise may be necessary. The larger the department the greater the chance that your lecturing can relate to your interests.

For the purposes of this example we will assume that the topic you have chosen for your lecture is "small claims in the civil justice system".

## Free associate

Write down any facts, ideas and questions which come to you that relate to the topic. Group your ideas as you go along; delete those which become irrelevant, e.g.:

Definition
CCR 0.19
New O.19

Dissatisfaction in the past

Latest research by Baldwin

Criticisms of small claims procedures (Research)

Use by litigants in person
Why?
Difficult?
One shotters/repeat players

Other small claims issues
e.g. Lay Rep. Order

## Clarify the content of the lecture

One way to clarify the content of the lecture is to give it a *working title* e.g. "*Small Claims (history and introduction)*." The content will be affected by the number of lectures you have allocated to the topic you are preparing. You also need to decide what your purpose is in giving the lecture. How will your purpose in giving the lecture affect its content?

## Prepare a rough structure of the lecture

A rough structure of the lecture should be no more than a page.

history of small claims
key features of original CCR O.19
major criticisms
Civil Justice Review
New O.19

## Directed reading resulting in a more detailed plan

Up until this stage, the guidelines have been concerned entirely with thinking. It is likely that your initial ideas will need fleshing out, and in order to do this you will need to read some relevant books, articles and legal materials. In order that you are not overwhelmed by reading, you need to read with purpose, looking only at those parts of books, articles etc. which are relevant to your lecture. As you read, note down any suggestions, questions or important areas that you may have missed earlier. After you have done this, you will be able to make a more detailed plan of the lecture.

history of small claims – originates 1973 – use of arbitration in existing CCR O.19 – intended to facilitate use by litigants in person.
Key features of O.19 – automatic referral to arbitration (note financial limit) - more informal procedure - 'no costs' rule – supported by explanatory leaflet.
Major criticisms – cf especially Appleby, also Galanter "one-shotters' and 'repeat players'
Civil Justice Review 1985 – increase financial limit – cases conducted on interventionist basis – increased assistance from court personnel/advice agencies – evening hearings
New O.19 - £5,000 limit – preliminary hearings only when necessary – interventionist hearings – right to lay representation – detailed expenses rules for consistency – also new LCD leaflets (awarded Crystal Mark)

## Structure the lecture

Set out the lecture in note form, leaving plenty of space between major sections. Use headings and sub-headings, and ensure that the signposts, frames, foci and links are clearly indicated. You will need to re-work these notes so that you are confident that you can give the lecture competently.

## Prepare handouts, visual aids and activities

The handout is an important part of lecture preparation.

## Give the lecture

Make sure that you devise a quick and efficient method for distributing handouts, and that before you start to speak you check that any equipment which you intend to use, such as markers for whiteboards or the overhead projector, is working. If you are at all unsure about timing, it is sensible to rehearse beforehand.

## Reflect

After you have given the lecture, make time to evaluate it. Note any changes you would like to make, additional overheads or alterations to the handout, so that when you come to plan the lectures the following year, you know what should be done before you give the lecture again.

# Delivering the lecture

It is important to bear in mind that the attention-span of students in lectures is about 20 minutes, so some sort of break needs to be introduced at intervals, if the rest of the time is going to be used effectively. Various devices can be used – talking informally, allowing a 5 minute break, or organising an activity such as 'buzz groups'.

Delivery of the lecture needs to be clear; talk much more slowly than you do in ordinary conversation, and think consciously about putting expression into what you say. Some lecturers read verbatim from a prepared script; this is not a good idea, because reading out a script, unless carried out by a professional actor, generally sounds lifeless, dull and boring. When reading, it is all too easy to speak in a monotone and never to look at the audience – and to ignore all the other suggestions which have been made above about injecting interest into lectures! The notes you make should enable you to look at your audience and engage their interest. Various suggestions have been made about different ways in which you might prepare notes for the purpose of giving a lecture (see for example McKeachie, 1994, p. 63). The key features of all these methods are:

- avoid the temptation to write down every detail of content
- indicate the major points, including frames, foci etc.
- indicate the major *events* as well as content - "use overhead projector slide" "write headings on whiteboard" "draw attention to diagram on handout"

Whatever method you use, the aim is to ensure that you can deliver the lecture in a natural, relaxed manner.

One variable sometimes not appreciated by either students or lecturers is that lecturing styles differ greatly from one lecturer to another. Since legal system and legal method courses are usually first year courses this will be the first time students have met this variation in a university context. Unless warned that there is a wide variety of appropriate lecturing styles students may be puzzled and perhaps fear that one style is "better" than another in terms of course delivery.

# Audio Visual Materials

There are many pitfalls to be avoided in using audio-visual aids, not least of which is to avoid any temptation just to use them because it is expected in these days of modern technology. Audio-visual aids can be very effective teaching tools, but only when they are used purposefully. There are a number of different reasons why a lecturer may choose to use audio-visual aids:

- to introduce a lecture
- to provide visual or sound-recorded examples
- to present material that is particularly complex

- to stimulate interest
- to provide variety
- to summarise or integrate ideas which have been presented.

It is important to think carefully what you intend to achieve by using an audio-visual aid; the following suggestions relate to different media which might be considered (see generally on this topic Cannon, 1988, pp.17-23).

## Overhead transparancies

The way in which your transparencies are prepared tells the audience a lot about your effectiveness as a teacher. Illegible, scrappy writing merely frustrates any efforts which students are making to follow what you are saying! The key features of overheads are size and clarity. Many excellent lecturers make the mistake of producing slides which contain writing that is too small to be seen at the back of the lecture theatre, thus defeating the whole object of the transparency. Writing needs to be

this big

(36 or 48 point font size)

to be seen at the back of a medium sized lecture room. Apart from ensuring that the audience can read the slide, using large print also cuts down the amount of information which can be conveyed on the slide, thus avoiding another common mistake – that of including too much information on one slide. Particularly if you intend students to copy down the contents of the slide, information should be provided in small chunks. That means that photocopies of diagrams in books are *not* suitable for use as overhead transparencies. Such diagrams need to be specially adapted by the lecturer before they can be used as a visual aid. Software programmes such as Microsoft Power Point make the production of professional-looking overheads relatively straightforward.

You also need to pause for long enough for the students to write things down if that is what you want them to do. The OHP sends out a very authoritative message to students. The lecturer has taken the trouble to distil an idea or some information into a brief OHP. It is very difficult for students to resist copying the information, but very often, if you are going to use several slides, it is a good idea to include reduced-size versions of them in the handout, so that students can pay attention to what you are saying, rather than concentrate on copying.

If you wish to use overheads to help explain a complex idea, overlay might be helpful. This is where a sequence of overheads are placed one on top of the other, each one adding a bit of information until the complete picture is built up. There are various other techniques, such as masking (revealing the slide gradually to the audience). When lecturing, leave the slide on long enough for the students to be able to take it in, but switch the machine off when the material on the slide has all been dealt with, so as to avoid competing with the noise (and distraction) of a machine which is left on.

## Film/video

It is not generally desirable to plan to use more than 5 or 10 minutes of a film or video during a lecture. Short segments which graphically illustrate a point promote more effective learning than longer screenings. The learning process can be enhanced by providing appropriate introductory/lead-up material and by giving the students some questions to think about while watching the clip. Often it will be necessary to have a technician to operate the relevant equipment, so these events have to be planned well in advance.

## Whiteboards/ blackboards

Material on the board must be of sufficiently high quality to enhance the learning process. This means it must, like overhead transparencies, be large enough and must be legible. It is a myth that all university lecturers have an innate ability to write well on boards! Most people need to practise this skill if they are going to do it well. You need to decide what you are going to use the board for, and make a plan on a piece of paper which you can include with your lecture notes. At first, it is best to find a board which you can use to help you make the plan. This gives you an idea of size, and of how to distribute material across the board. When lecturing, try to avoid speaking and writing on the board at the same time. Use colour carefully, avoiding light colours on white boards and vice versa.

## Handouts

There is some research evidence that students who are given handouts tend to have higher attainment than those who are not (Beard and Hartley, 1984). Handouts can be used for a number of different purposes :

- to list lecture aims and objectives
- to present information
- to act as an aide-memoire, with space for notes
- as a structure to guide note-taking
- as a guide to stimulate and direct subsequent reading.

(Cannon, 1988, p.23)

You need to decide which of these purposes you wish your handout to fulfil and then design it appropriately.

If you use diagrams in your lectures, you may find that they are often copied badly by students, because they are time-consuming to copy accurately. A copy of the diagram on the handout overcomes this problem, but there may be some concern that students will not take sufficient notice of a diagram, the purpose of which may often be to convey complex information. One way to encourage students to interact with the diagram, and remember more of it, is to leave it incomplete or partially labelled and then require students to complete it at the appropriate point in the lecture (Gibbs *et al*, 1988, p.47).

# Assessment

## The importance of assessment

Assessment is a crucial part of the learning process. It enables students to gauge their progress, tutors to judge the effectiveness of teaching, and can also be used as a teaching tool, to give individuals or groups feedback designed to enable them to improve their performance in the future. "Assessment provides much motivation to student learning..." (Nield, 1994, pp.145-6). In a university, assessment eventually contributes to the award of a degree which is a public document used by employers and others to evaluate an individual's skills.

Students place great emphasis on assessment, and some writers argue that it is the most powerful single influence on the quality of student learning. Assessments may encourage students to engage in effective or less effective learning strategies; whichever is the case, they will typically use strategies which reward them in terms of marks or grades (Chalmers and Fuller, 1996, p.41). Some students may be resistant to any learning experience which in their view is not relevant to an assessable event. "Assessment defines what students regard as important, how they spend their time and how they come to see themselves as students and then as graduates. Students take their cues from what is assessed rather than what lecturers assert is important." (Brown *et al*, 1997, p.1). The tendency of students to focus on assessment is regrettable, since it means they frequently fail to appreciate the true value of other learning experiences. It is unrealistic to think that tutors can totally eradicate students' assessment-led approach, although it is possible to discourage it by explaining its disadvantages, especially its short-term focus – today's non-assessed work may be the key to tomorrow's great discovery or unmissable job opportunity! However, despite students' short-term attitudes it is still possible for tutors to use assessment procedures to encourage their students to be creative, critical thinkers. If the assessment is designed so that creativity and critical thinking is what is needed for successful completion of the assessment task, it increases student motivation to develop those skills.

## Summative and Formative Assessment

Assessment is usually broadly divided into two types: summative and formative. Summative assessment is used to measure the extent of learning *at the end* of a particular stage, such as the end of a module or course. It is important that summative assessment should be consistent and fair, because it is often related to a licence to move on to the next stage.

Formative assessment is used *during* the learning experience to provide feedback to students so that they have the opportunity to improve. In its pure form, formative assessment would not contribute to the marks awarded for a course or module, but would just be used as a teaching and learning tool.

Sometimes formative and summative assessment is conflated; students submitting coursework may receive feedback, but also a mark which counts towards the final profile of marks. This approach is confusing and frustrating for students; although they get the benefit of feedback, they can do nothing to change that particular mark. The formative element of the assessment is most helpful if it genuinely can be used to help the student improve their performance and test it out in a future piece of assessment. (For discussion of the purposes of assessment see Tribe and Tribe, 1986.)

## Designing assessments

There are five basic questions which have been identified as the key issues which tutors should address when designing assessments. In the chapter which follows, each of these is addressed in turn, in the context of assessing legal system or legal method courses.

1. What are the outcomes/skills to be assessed?
2. Is the method of assessment consonant with those outcomes/skills?
3. What alternative methods are there?
4. Is the method relatively effective in terms of staff/student time?
5. Identify the marking criteria; are they appropriate?

(Adapted from Brown *et al*, 1997, p.49).

Here the differences between the various approaches to legal system or legal method courses will be important. There is no system of assessment which is 'right' for all courses. A course, for example, whose learning concentrates on discursive material but is assessed by methods which focus on factual detail is plainly unsatisfactory. Problem-based assessments can have their place on a black-letter course but will be more problematic in a socio-legal course. Assessment which is based on experiential methods is appropriate for a clinical course but not for a black-letter course and so forth. (On the particular difficulties of assessing clinical courses see Lundy, 1995.)

## Assessing outcomes by appropriate methods

Taking the first two questions identified by Brown *et al* first, it is crucial that in designing assessments, the assessment tool i.e. the exam, the assignment, the oral presentation, actually demands that the student needs to be proficient in the knowledge and/or skills which the tutor intends to test. No-one would use a traditional written examination to test oral skills; on the other hand, many people tend to use examinations without being clear what those exams actually test; do they merely test memory, or might they also test the ability to apply knowledge in a given situation? Different methods of assessment test different things. Tutors therefore need to be clear what it is they wish to test, and having established that, to look for the appropriate method of assessment.

Thinking about the assessment process should form part of any curriculum planning. The task set should not only require the students to perform tasks which fulfil the educational objectives which the tutor has in mind, but should be fully integrated with the subject-matter and approach of the course. Tribe and Tribe's 1988 survey showed that 73 per cent of all law lecturers rated the acquisition of knowledge of the basic law content of courses as being of very high importance whilst only 31 per cent thought understanding the social context was of high importance (Tribe and Tribe, 1988, p.69). Assessment should be integral to a course, not bolted on merely because it is an institutional requirement. These differences in what is seen as being of high importance should be reflected in the mechanism of assessment. The skills/knowledge which tutors will wish to test will reflect the course objectives, so a well-designed course will have assessment procedures which are fully integrated with the course objectives (Ramsden, 1992, p.189). Uniformity of assessment mechanisms between say the legal system course and, say, the contract course is only a good thing if there is uniformity of course objectives.

Set out below are a wide range of different methods of assessment, together with a discussion of the skills/knowledge which they are most effective in testing, any disadvantages from which they suffer and suggestions as to how they might be used in a legal system or methods course.

# Alternative means of assessment

## Examinations

In a written exam, all the students are given the same tasks and time allocation, the nature of the task is not always revealed beforehand and the work examined is solely that of the relevant student. Exams measure recalled knowledge, recalled understanding, problem-solving strategies and the ability to think, structure thoughts and write quickly and independently under pressure. They suffer from the defect of being a snapshot, taken on a particular day, of a candidate's abilities, and critics of examinations have argued that exams are stressful and promote rote-learning on the part of the students. It is possible to decrease the necessity for rote-learning in a number of ways: open book exams allow students to take their own notes and/or books into the exam; prior notice questions can be used, where the questions are revealed to the students a week before the examination (see Gibbs *et al*, 1988) or prior notice topics can be used, where the specific topics, but not the precise questions, are revealed to students at the beginning of the revision period. This approach is particularly useful where the syllabus is wide, but depth of understanding is being assessed.

## Coursework

Coursework has the potential to measure the capacity to retrieve and select material from external sources, to deepen understanding and to develop problem-solving skills, but it is more difficult to ensure that it is solely the work of the relevant student, and that the assessment task is the same for the whole group. The standard approaches to coursework are essays or problems.

## Essays

Essays have potential for measuring understanding, ability to synthesise and evaluative skills. It is relatively easy to set a wide variety of essay questions, but variations in grading decisions between different markers can be high. Essays can be varied by asking students to write a book review or a paper for a committee. The choice of topic and style for the essay can reflect the nature of the course. A doctrinal course might ask students to write a case-note, a socio-legal course might require a piece of policy advice and a clinical course advice for a client.

## Problem Questions

Problem questions are a form of assessment which is unique to law (other disciplines use problems, but not in the same way (Howe, 1990). They have the potential to measure understanding, as well as the ability to apply knowledge to a particular factual situation, a skill which has traditionally been highly valued by lawyers. Traditionally they have been used in black-letter courses but socio-legal courses sometimes contain an element of doctrinal work and they may then wish to use them with respect to that element.

## Multiple Choice Questions (MCQs)

Multiple choice questions can test a wide range of knowledge quickly, and can evaluate understanding, analysis, problem-solving skills and evaluative skills. They are reliable, but carry the danger of testing only trivial knowledge. More complex and searching questions require time and skill to set.

## Presentations

Student presentations test preparation, understanding, knowledge, capacity to structure information and oral communication skills. Students are likely to be less familiar with this type of assessment, and so need training in presentation skills if the experience is to be of genuine educational benefit.

## Projects

Projects can be carried out by individuals or groups. They have the potential to sample a wide range of practical, analytical and interpretative skills, and to measure time and project management. Group projects can also provide a measure of teamwork skills. This kind of assessment can be used on any type of legal method

or legal system course. However, the nature of the course will radically effect the nature of the project. Asking students to draft a section of a statute is clearly suitable for a black-letter course but may not be appropriate for a socio-legal course. Conversely, asking a group to observe and report on court behaviour can be central to the objectives of a socio-legal course but is unlikely to fit into a black-letter course.

### Peer Assessment

Peer assessment involves training students to assess the work of their peers and to submit their own work to such assessment. It is generally only recommended for formative assessment and is particularly apt for assessing oral skills. For a first year course peer assessment is likely to be expensive in terms of the staff time needed to provide the necessary guidance for students.

### Self-Assessment

Self-assessment encourages students to evaluate their own work; it is most effective when accompanied by training in techniques of self-assessment and is best used formatively.

### Learning Logs, Diaries and Journals

Learning logs, diaries and journals are a development of self-assessment. Students keep a record of their learning experiences from the learner's point of view. They can also be encouraged to reflect on how their learning relates to relevant theory. This form of assessment can be particularly valuable in the clinical context.

(See generally Brown *et al*, 1997, ch.2)

## Using Different Methods of Assessment

### Assessing Essays

Essays require students to integrate knowledge, skills and understanding. There is generally no one right answer to an essay question, so the student must create their own structure for the answer; they have to set the boundaries; in turn this means they must plan, select and structure their work. Essays are a flexible form of assessment. Different kinds of titles can fit different kinds of courses. In order to answer an essay question successfully, students will have to collect and organise information, present it appropriately, and manage their time to achieve this (see Freeman and Lewis, 1998, p.193). Answers which display insight and develop a coherent argument will be more highly valued, and in requiring deeper, rather than superficial answers to the questions set essays can be a demanding form of assessment which can be used to provide students with detailed individual feedback.

Whilst essays have the disadvantage that if a choice of titles is offered, an absolutely exact comparison between students writing different essays is impossible, nevertheless, if the tutor is looking for ability to organise arguments, the selection of relevant facts and creativity, essays are a good way of testing these high-level cognitive skills.

### Designing Essay Questions

The quality of a student's essay writing is not solely determined by their understanding of the subject and their writing skills. As Brown *et al* point out, the quality of students' essays is also affected by the quality of the question set. "Essay questions are deceptively easy to set and disturbingly hard to mark objectively." (Brown *et al*, 1997, p.60).

When setting essay questions, the tutor must identify the purposes of setting the question, be clear about the knowledge/skills which are being tested, and ensure that the question set actually fulfils the intended objectives. There are a number of different types of essay question which can be used, depending on the precise objectives which the tutor has in mind.

- Speculative questions

"What are the likely consequences for the legal profession if the Woolf Report is implemented?"

This type of question invites the student to construct alternative realities and tests his/her ability to provide rationales for different views.

- Quote to discuss

"Small claims courts are dangerous places for the litigant in person." Discuss.

This type of question invites students to challenge a view or examine a particular perspective.

- Assertions

"Suspects detained in police stations have very few rights." Discuss in relation to the Police and Criminal Evidence Act 1984.

The purpose of these questions is to get the student to examine the arguments for and against the proposition put forward.

- Explain

"Explain the powers given by section 1 of the Police and Criminal Evidence Act 1984 to a police constable to stop and search persons."

This invites the student to give an account of the relevant area and provide a rationale for it. It is more challenging than merely asking the student to describe something, but nevertheless this type of question inevitably involves a fair amount of description.

- Discuss

"Discuss the role of settlement in major civil claims."

This type of question is intended to stimulate the student to engage in a critical discussion of the topic concerned.

## Word Length

Thought should be given to the word length which is required so that the assessment task fits the course aims and objectives. The marking process can be speeded up if a tight word-limit is imposed, but care should be taken to ensure that students are given sufficient space to answer the question effectively and really demonstrate what they know. Since the course is likely to be a first year one a shorter word length than second or third year courses may be appropriate because students do not yet have either sufficient research or analytical skills to write at the length that they will be able to later.

## Marking Essays

A tutor should always be able to provide a reasoned explanation of the mark awarded, and having a simple set of marking criteria can be of assistance in ensuring that this is the case, as well as decreasing variability as between the treatment of different scripts. However, the key word here is 'simple'; detailed or complex marking schemes are often unhelpful and mechanistic, and can merely result in high marks being awarded to students who provide sets of facts rather than coherent arguments. Marking criteria need to be flexible enough to ensure consistency between students whilst retaining the flexibility to reward appropriately the innovative answer.

## Providing Feedback

Feedback is most effective when essays are used as formative assessments. Feedback can then enable students to develop their thinking, strengthen their understanding/knowledge and improve their writing skills. as well as an overview of the quality of the essay, it is helpful to point to specific points of strength and weakness. Comments need to be clear and to the point. Too many detailed criticisms overwhelm students, with the result that the criticisms are disregarded. If the comments are too imprecise, the student is unlikely to understand the point which is being made and so cannot use it as a basis for improvement.

Marking essays for feedback is more time-consuming than marking merely for grades, but it can be speeded up if students are required to word-process their essays, and by the use of checklists or standard forms on which to record the feedback.

The form below can be used as a set of criteria by which to judge the quality of an essay, and if handed back to the student could also be used for feedback purposes. It includes a section for providing a brief individual comment, but this could be omitted to save time.

**English Legal System**

**Essay Feedback Form**

**Relevance to question set :**

**Quality of argument :**

**Ability to include relevant evidence :**

**Style, grammar, spelling :**

**Grade and Comment :**

Cobley and White (1994) have argued that student's benefit from being given specimen answers although there is a tendency for a specimen answer to be taken as being the only 'right' answer.

## Managing Time – Marking Large Numbers of Essays

In order to deal effectively with a large marking load, it is important to plan well ahead. This particularly important because of the compulsory nature of most legal system and legal method courses. Classes are large. Organise the times when students have to hand in their work and set aside time for marking well in advance; allow time for slippage. Inevitably, each year some students will, for good reason, fail to adhere to the timetable. At the beginning of the day, be prepared to check a few essays from the previous day to refresh your memory about your marking practices; be prepared to re-mark if necessary.

## Feedback from Essays

Marking essays for feedback purposes is more time-consuming than marking merely for grades. Standard forms can speed up the marking process, being used to provide a checklist of criteria and also the basis for feedback. The fastest form of feedback is the global report, which identifies the key strengths and weaknesses of different grades of essays in an entire class; the tutor then conveys these to the group as a whole. Some tutors have developed an automated personal response system, which is a menu of responses coded using a computer package; the tutor selects an appropriate set of responses for the work they are marking and prints them out in the form of a personalised letter (see Brown *et al*, 1997, p.74). This system also enables the tutor to store marks, and can even be extended to keep track of students' progress in tutorials or to help provide appropriate follow-up work for weaker students.

## Using Problem Questions

Problem questions require students to deal with a given set of facts (the 'scenario'), identify the legal issues raised, identify the relevant legal rules and then apply those rules to the facts given. The conventions of answering problem questions all derive from the doctrinal tradition. The relevant legal rules are all contained in statutory material or caselaw; there is no place for discussion of any social, political or economic issues which may also be raised by the problem; such discussion is irrelevant in this context. Problem questions are therefore used to test students' doctrinal legal skills and knowledge. Answers which analyse the question thoroughly but concisely and which apply the relevant legal rules effectively, will be highly valued.

It is generally thought that legal problem questions are easier for students to answer well than essay questions, because the issues raised in the 'scenario' give the student a framework on which to base their answer, whereas with essay questions, each student must create their own structure for the answer.

### Designing Problem Questions

Problem questions generally include several legal issues, designed to test the students' knowledge of the relevant area of law. Exceptions to general rules within statutes, or points raised by decisions of the House of Lords or Court of Appeal provide useful material which can be used as part of a problem. A well-designed problem question should include sufficient issues to test the students' skill and knowledge, but not so many that it is impossible to answer the question within the time allocated. Excessively complex, detailed points of law are generally unsuitable for inclusion in problem questions designed for undergraduates.

### Working with Problem Questions

As with essays, when using problem questions for assessment purposes, tutors should be able to provide a reasoned explanation of the mark awarded; marking criteria, including key cases and statutory material, can be helpful, but tutors need to guard against merely looking for the correct casenames or statutory provisions, without ensuring that the correct principles of law are also being identified and applied, otherwise the marker may merely reward those students whose sole achievement is to have identified the correct area of law. Issues relating to feedback, and marking large quantities of problem questions arise in the same way as with essays, as discussed above.

## Using Examinations

Once it has been decided to use an examination as one of the forms of assessment, the key issue is to design questions which actually test the skills and/or knowledge which the tutor wishes to assess, remembering that essay questions and problem questions do not necessarily test the same things (see the previous sections). Different types of question will be appropriate for different teaching approaches; tutors teaching a black letter course whose aim is to teach doctrinal skills and knowledge are likely to consider problem questions most appropriate, while students' socio-legal skills and knowledge can best be tested by essay questions.

The main consideration in actually administering examinations relate to marking practices, and in particular to ensuring that they are as fair as possible to all candidates. There are a number of strategies which can be adopted to maximise fairness and consistency, particularly when dealing with large numbers of scripts (see Brown, S. *et al,* 1996, ch.31). One basic strategy is to mark all the answers to the same *question* together, rather than marking whole *scripts* at a time. This reduces the 'halo effect' of other answers in a paper. However, it is also important to retain sufficient flexibility to be able to consider the script as a whole.

Planning the actual marking process well in advance, setting aside sufficient time (including time for slippage) and ensuring that you take periodic breaks during marking can all help to ensure that all scripts are treated fairly. Consideration should also be given to marking criteria; impressionistic marking based on implicit criteria may be fast, but not necessarily fair or linked to the course objectives; criteria which are too rigid result in a mechanistic (and potentially unfair) process. (There is further discussion of marking criteria below.)

## Multiple Choice Questions (MCQs)

MCQs are, in some people's view, an under-rated mechanism of assessment in law schools. "The use of...[MCQs] as an assessment mechanism has been used elsewhere for a long time. It is well worth considering its introduction more fully into the undergraduate curriculum." (Alldridge, 1997, p.179). MCQs are attractive for those tutors looking for faster ways to assess student learning, since MCQs can generally be designed to be marked by computer. However, time and effort has to be invested in the design of the questions, especially if MCQs are going to be used to assess deep, as opposed to surface, learning. (More information about designing and using MCQs can be found in the TLTP Project ALTER, a PC-based training package on the design of MCQs; see also Bull, 1993). A common criticism of MCQs is that they encourage guessing. However, the effects of guessing can be greatly decreased, and often seem to be greatly exaggerated; it may also be the case that intelligent guessing is a quality which some tutors might like to encourage (see Brown *et al*, 1997, p.93). MCQs are not only useful for summative purposes, but the print-out of results can be given to the students to draw their attention to those questions which were poorly answered, and to give references to additional reading etc. in the relevant areas.

### Designing MCQs

There are several different types of MCQs to choose from. Three types which are applicable in a legal system or legal method course are:

- Standard MCQ

Here the student is presented with a statement about the content of the course and is asked to indicate which of several alternatives is the correct answer:

The Codes of Practice issued by the Home Secretary under the Police and Criminal Evidence Act 1984:

A have the force of statute

B do not render a constable liable to disciplinary proceedings for a failure to comply with any of their provisions

C are admissible in evidence in all criminal and civil proceedings

D create statutory torts

- True/false based on legal problems

Here the student is asked to apply knowledge of the law to a particular situation, in a similar way to that demanded by a traditional problem question:

Compton has been lawfully arrested by a constable for possession of a knife. Compton was asked to account for his possession of the knife, but refused to offer any explanation. At his trial he maintains that the knife was for use at work (a defence to the charge against him).

A His failure to answer the constable's questions is irrelevant at his trial

B His failure to answer the constable's questions precludes his subsequently claiming to have the knife for use at work.

C The court may draw such inferences from the refusal to answer questions as appears proper.

D The court will draw adverse inferences from the refusal to answer questions.

- Items based on exceptions

Here the student is told that all of the following statements are true *except* one, and asked to indicate that one:

> All of the following statements about what Baldwin and McConville argue in their book *Negotiated Justice* are true, EXCEPT :
>
> A Baldwin & McConville show that plea bargaining puts the defendant under a lot of pressure
>
> B Baldwin & McConville argue that everyone benefits from a system of plea bargaining
>
> C Baldwin & McConville show that plea bargaining involving the judge is a common feature of the Crown Court

Since much of the difficulty in using MCQs lies in designing the questions, a lot of attention has to be paid to this process. Pooling MCQs with other colleagues teaching the same subject, perhaps in another institution, can be very helpful. Brown *et al* recommend that in order to develop challenging MCQs it is best to think of the problem first and then translate them into MCQs. They also suggest keeping a notebook to jot down possible items and to be careful to revise the questions once drafted. It is important to be clear about what the question is testing, to provide plausible alternatives and to be precise about the wording which is used. The distractors (wrong answers) also need to be plausible, both to reduce the possibility of guesswork and to make students think, thus testing understanding rather than simple factual recall. MCQs are tiring, so the test time should not exceed 90 minutes. Brown *et al* recommend that a maximum of 40 items should be provided if standard MCQs are being used, fewer questions if more complex questions, perhaps involving mini-problems or scenarios are being used (see Brown *et al*, 1997, ch.6).

### MCQs or Essays?

MCQs and essays do not necessarily test the same things. If large classes are involved, MCQs are worth considering as *one* part of the assessment process. To be fair and to be perceived by students as being fair, it is best to use a mixture of essays and MCQs.

## Assessing Oral Communication Skills

The assessment of oral skills is something for which students need specific preparation if they are going to benefit educationally from the process. Just as with any other skill taught in law schools (intellectual or practical) which tutors seek to assess, it must first be established that the students have been given the opportunity to *develop* the skill. This means they must receive a certain amount of training – in seminar/presentation techniques, how to deal with questions from the audience, how to decide whether visual aids are appropriate, if so how to design and use them. The students then need an opportunity to practise their oral skills, and to receive feedback (formative assessment) before their work is assessed for summative purposes.

Oral presentations can be assessed in a number of ways – by the tutor alone, by the tutor and peers, using video or relying on immediate impressions. It is generally thought that if presentations are being assessed for summative purposes, assessment carried out by peers and tutor based on agreed criteria is likely to be more reliable than a single tutor's assessment. Whichever approach is used, it is important to have clear criteria and to give these to the students before they prepare the assignment; the criteria will provide objectives for the students when preparing their work, as well as a rationale for evaluating the presentation. Students must be able to understand why they have received the marks they have been given. If peers are to be involved in the assessment process, they should

receive some training in the use of the criteria for assessment purposes and the marks awarded should be moderated by the tutor.

A simple rating schedule could be used; this one is adapted from Brown *et al* (1997).

**English Legal System**

**Student Presentation Assessment Form**

Opening (establishing rapport, gaining attention, explaining purpose of session)

Content (accuracy and clarity of factual information and argument, proportion of time spent on description and on analysis)

Quality of Evidence (cases, statutory materials, references to academic articles / monographs)

Presentation Skills (fluency, audibility, use of audio-visual aids and handouts, body language)

Discussion Skills (listening, responding to questions, managing the group and individuals)

Comment

Strengths:

Weaknesses:

Overall Mark :

## Peer Assessment

Peer assessment involves the assessment of students' work by other students. It is generally used for formative, rather than summative purposes. Brown *et al* note that resistance to informal peer feedback is rare, but resistance to any kind of formal peer assessment is high; students dislike judging their peers in ways that 'count', distrust the process and resent the time involved. Many students prefer to trust the judgement of the 'expert' as well as being sensitive to the conflicts of loyalty to the peer group and the process of making balanced objective assessments (see Brown and Knight, 1994, p.60). However, if used for summative, more informal assessment, peer assessment can promote critical thinking, and it can therefore form a valuable educational activity.

Peer assessment is a process with which students may well be unfamiliar. If it is to be effective, students should be clear about the assessment procedure itself, as well as the learning task which is being assessed. Brown *et al* (1997, p.181) suggest that if peer assessment is going to be used, it is preferable to introduce it in the early stages of the course, when students are more open to new approaches. Careful thought must be given here, as with other forms of assessment, to the educational goals involved; if the primary purpose of using peer assessment is to develop reflective learning, the assessment process should require students to justify the marks awarded; merely ticking a box to award 70% will not achieve that goal. The task itself should be concrete and precise and the criteria for assessment should be brief and to the point. The students should receive relevant training, in which they should be encouraged to reflect upon the process both of giving and of receiving feedback. They should also be encouraged to reflect upon the criteria they are using; the criteria may be developed by the group of students involved, which develops their

understanding, as well as giving a sense of ownership. Alternatively, students can be presented with a list of criteria and asked to assign weightings to them. The more informed students are about the process of assessment as well as the substantive course content, the higher the quality of feedback they will be able to give to each other. In addition to exploring the criteria themselves, there must be opportunities for students to explore the nature of appropriate evidence on which to use the assessment criteria. Below is a standard for use with a tutorial or seminar group; it would also be possible to use the oral presentation form above for peer assessment.

**Seminar Assessment**

**(Peer Assessment Form)**

Circle the number below which you think best reflects the presenter's performance. Note that 5 is high and 1 is low.

| | | |
|---|---|---|
| The content was clear | 5 4 3 2 1 | I was very confused about the content |
| X understood our questions & responded appropriately | 5 4 3 2 1 | X did not understand our questions |
| X was well-informed about relevant legal provisions | 5 4 3 2 1 | X did not know about the the relevant law |
| X encouraged discussion | 5 4 3 2 1 | X did not allow any group participation |
| I learnt a lot from the seminar | 5 4 3 2 1 | I did not learn anything |

Overall Comment

Overall Mark

When using peer assessment with a group of students, the role of the tutor changes, and becomes more like that of an external examiner or moderator. Once the criteria have been agreed, it is the students who have to operate them; the tutor's role is to monitor the process, protect students from unfair marking and safeguard standards.

(For an experiment in the use of peer assessment on a first year course, albeit a contract course, see Rule, 1995.)

## Self Assessment

All learning activities can be subjected to self-assessment; it is central to the development of real competence in any field. The notion of the 'reflective practitioner', for instance, has long been familiar in the context of academics gaining greater competence as teachers (see Maughan and Webb, 1996). Self-assessment is something which some tudents will already carry out informally; they will revise drafts of essays, check what they know and have learnt, revise their notes and fill in gaps.

The primary educational reason for encouraging students to develop their self-assessment skills is that self-assessment is something which has life-long application; self-awareness, and the ability to learn from experience, is crucial to an individual's self-development. In the context of higher education, self-assessment can be used by students to develop good learning practices, to consolidate learning over a range of contexts (e.g. different modules), to diagnose and remediate learning difficulties and to promote self-knowledge, as well as understanding of their subject.

### Examples of self-assessment tasks

Self-assessment is more effective if students are trained to use it. They should be encouraged to identify what they have learnt, how well they think they have performed, and how they could improve their approach in the future. In order to do this effectively, they also need the opportunity to discuss the criteria which they will use to evaluate their performance, how they will be operated, and the nature of the evidence on which to operate the criteria (see Boud and Brew, 1995).

Since self-assessment can be applied to any learning experience, students could be encouraged to apply it to parts of the course which are not normally assessed – in some institutions this would apply to performance in seminars or tutorials, for instance. Students could be encouraged to work on the following questions: what were your major strengths and weaknesses in your contribution to the last tutorial? Identify one aspect of your performance and suggest how it might be improved.

An interesting self-assessment exercise is to ask the students to mark their own essays before handing them in for marking by the tutor; the two marks can later be compared, and the tutor can use the experience to assist the student not only in developing self-awareness, but also in improving the skills and knowledge which were being tested "Do you think that this argument was relevant? Why did you award yourself so many marks for this part of the essay?" It may be helpful to provide a proforma which sets out the assessment criteria, so that students are working to the same criteria as the tutor.

## Learning Logs, Diaries and Journals

These approaches develop the idea of self-assessment. Students record their learning experiences, reflect upon and record the processes of learning, and express their feelings about learning. They are also encouraged to integrate theory with practice, and to demonstrate how their learning experiences fit into the theoretical framework of the course. Learning logs not only provide material which the tutor can use to provide feedback to the student, they also provide the tutor with insights into the students' perceptions of the different teaching methods and learning experiences with which they have been presented.

The main problems with using learning logs or journals for assessment purposes is to decide who will see them and for what purposes. Open journals require a large amount of trust, and knowledge on the part of the student that in being honest and open, they are not putting themselves at risk in terms of assessment. If journals become part of the formal assessment procedures, students will censor their entries and the process will not be testing actual experience. Brown *et al* (1997) suggest that if learning logs are to be used for formal assessment purposes, students should be invited to submit an edited sample of their journal for feedback purposes and assessment.

## Staff/Student Resources

### Staff Load

The time, energy and expertise which staff have to invest are also an important consideration when designing assessments; sometimes the ideal form of assessment may be impossible to implement because it would create excessive demands on staff time.

> "Lecturers and universities are faced with the difficult problem of assessing more students [but with less resources]. One can either keep using one's existing approaches and overload staff, or look for alternative solutions and be prepared to invest some time in implementing them for longer-term savings in time."
> (Brown *et al*, 1997, p.55)

Brown *et al* (above) refer to work by Hounsell (1997), who has summarised the major strategies which can be adopted to decrease the workload generated by assessment. The strategies which Hounsell identifies are :

- *reduce assessments* (in number, scope or formal status); e.g. set fewer but more challenging assignments, do not formally assess some coursework, or reduce the overall volume of assessments.
- *delegate assignments*; e.g. devolve marking and / or feedback to part-time tutors or use peer assessment.
- *reschedule demands*; e.g. space assessments more evenly or sample only some scripts.
- *refocus effort*; e.g. use proformas for feedback, feedback to groups rather than individuals.
- *capitalise on IT and other technologies*; mechanise assessments; use MCQs.
- *review approaches to assessment*; undertake a fundamental reappraisal of the assessment ways and means in relation to a particular course, module or degree.

Clearly, all these suggestions need to be carefully considered in the light of the educational objectives which inform a tutor's work. Compromises may have to be made, but care needs to be taken to ensure that assessment remains sufficiently fair and rigorous.

The workload can be decreased by using a standard form, with simple criteria to be ticked as appropriate and a space for a brief personal comment. Another strategy is to communicate only the mark achieved to individual students, but to give global feedback, designed to be formative, to the whole group: (the best assignments had these characteristics, good assignments tended to be those which ...weaker assignments displayed the following characteristics.....).

**Student Load**

This should also be considered when designing assessments; the ideal is to have a relatively uniform workload across the modules offered by the department. A check on the total amount of assessment, and especially of coursework, may be revealing. One way to decrease the load is to set tests or assignments designed to be completed during class time.

## Designing and Using Marking Criteria

The final stage in designing assessment procedures is to consider the criteria which will be used to evaluate the students' work. It is important that these criteria should be made explicit to the students, at least in broad terms, so that they can work towards satisfying the criteria when they carry out the assessment task. Having some criteria in mind also enables the tutor to consider whether the assessment task reflects the course objectives.

**Example Criteria**

Course Title: English Legal System

Course Objectives: To introduce students to the formal legal rules which relate to the civil and criminal systems of justice, and to the operation of the police and the legal profession; to place those rules in context, using socio-legal research, and thus to explore the difference between 'the law in the books' and 'the law in action'. Also to assist students in developing their legal research skills and their skills of critical analysis.

Method of Assessment: at the end of Module 1 a 2,500 word essay, based on research carried out by individual students; at the end of module 2, a three-hour examination based on 8 prior-notice topics; candidates must answer questions on three different topics.

Assessment Criteria: credit will be given for answers which are relevant to the question set, use evidence based on research to substantiate the points made, provide critical analysis of the issues raised by the question and are clearly expressed, with correct grammar and spelling.

The use of criteria needs to be carefully considered by the course tutor. Establishing clear criteria means that marking decisions should be rational, in that they can be related to the criteria and thus amenable to reasoned explanation. However, if the criteria which are developed are too detailed or too complex, it is likely that marking will become too mechanistic, and a detailed marking scheme can easily result in high scores being given to those who provide comprehensive sets of facts rather than ideas, analysis and arguments. The ideal is to have reasonably simple criteria which can be used as the basis for allocating marks, but can also be used as the basis for providing feedback – either to individual students, or globally, to a whole group of students. This was the approach taken when designing the criteria which have been used as examples in this chapter.

# Independent Learning, IT and CAL

## Introduction

No theory of higher education sees the factual acquisition of knowledge as being the final aim of a course. Whether one approaches a legal system or legal method course from the socio-legal, clinical or black-letter perspective the aim of the course is to provide the student with something more than the information that is within it. Students are expected to leave the course with the ability to analyse, argue and research. All legal system or legal method tutors would accept the widely held belief that learning higher education involves the active participation of the student (Laurillard, 1993, p.15). What distinguishes the different methods is how this is achieved and what specific knowledge the student is also expected to acquire. Given this agreement between the different approaches to legal system and legal method courses the idea of independent learning, the resources available to the student through IT and, to a lesser extent, the use of CAL (Computer Assisted Learning) programmes arguably provide paradigmatic examples of what legal system and legal method courses should be about. In different ways they can all encourage student autonomy leading to learning rather than teaching. Because of this they can be said to be particularly effective in making students "life-long learners" (Cuthbert, 1995, p.267; Dick *et al*, 1996, p.30).

The concept of independent learning encompasses a variety of techniques, all of which involve students in sustained work on their own. Independent learning typically involves the student taking part in the decision as to what it is that is learnt and how that learning is to be achieved. Independent learning addresses students individually rather than as a mass. It recognises the fact that law students, particularly where law students come from a wide range of backgrounds, are "a range of diverse learners" and the argument that thus "we as teachers ought to check our teaching methods and techniques constantly so that we are not catering to any one particular group at the expense of others." (Bee Chen Goh, 1994, p.158).

The use of IT or CAL programmes can also involve students as individuals. All three allow students to develop at a different rate and along different lines according to the student's own interests and abilities. They give perhaps the best opportunity for students to develop a sense of ownership in their own course. They can be relatively cost-effective in both financial terms and in the sense of the use of academic staff time. More controversially, they can be said to allow the student to connect their academic studies with the "real world" (Cuthbert, 1995, p.268).

Despite their potential advantages independent learning, the use of IT and the use of CAL programmes bring with them dangers. All three of these educational resources can result in students becoming detached and isolated. If the essence of higher education is giving the student the ability to take part in a conversation (the various methods of teaching legal system and legal method courses differing in what that conversation is about) the danger in these three resources is that the student loses contact with those (other students, practising lawyers and academic staff) who are or may be part of that conversation. Even where learning takes place it can be unstructured and unrelated to anything the student has done or will do elsewhere. Precisely because it responds to the student's perception of their needs it may be idiosyncratic. The successful legal method or legal system course has to combine the advantages above whilst at the same time avoiding the dangers.

## Independent Learning

Independent study has long been at the heart of university legal education. In law, as in most of the other subjects in the social sciences and the humanities, most students spend most of their academic time studying on their own (Bligh *et al*, 1981, pp.132-133). They are, in many senses, largely self-taught. In even the most traditional legal system or legal method course students spend much of their time in independent research, thinking about matters that will never be discussed in tutorials though they may well be assessed in examinations. Indeed, the age and centrality of the concept of independent learning to the university is such that Percy and Ramsden find a source for the arguments for its importance in Cardinal Newman's seminal lectures on the idea of the university given in the mid-nineteenth century (Percy and Ramsden, 1980, p.3). However, this traditional form of independent study takes place in the context of regular attendance at a series of lectures and tutorials. The independent study is related to a series of short-term tasks explicitly or implicitly set out in these lectures or tutorials. It is frequently supported by copious handouts and tutorial sheets provided by academic staff. The study is broken by regular and relatively frequent contact with staff and students in seminars or tutorials. The student studies most of the course on their own but the structure of the study is dictated for them by the pattern of lectures and tutorials which are designed to break up the course into small manageable pieces. The student is alone for the majority of their time but is not truly independent. As we have suggested in previous chapters this form of learning has many advantages. However, independent learning takes the concept of student autonomy over what they do much further than in traditional methods. In independent learning the choice as to what the student studies and the manner of how they manage that study is given to them. Most law schools have long had a form of independent study in their curriculum in the form of the student dissertation; typically a piece of research on a topic of the student's choosing written up as an extended essay. In this section of this chapter we want to look at how the idea of independent study can be adapted to the particular circumstances of legal system or legal method courses.

The law lecturer who is contemplating the use of independent learning methods in their legal system or legal method course has a rich resource in the history of independent learning. From this history examples of how independent learning can be integrated into courses can be taken and illustrations of both the potentiality and the problems of independent learning can be seen. The concept of independent learning began to develop in the United Kingdom in the early 1970s. The School for Independent Study was first established at the North East London Polytechnic in 1974, initially with students taking a two year Diploma in Independent Study though by 1976 a three year Degree by Independent Study had been approved by the CNAA. At the same time Lancaster University established a School of Independent Studies which gave students the opportunity to take a unit of Independent Learning as either a Major or Minor part of their degree studies (Robbins, 1988, p.4 and p.9). Notwithstanding the similarities in their titles "contacts between NELP and Lancaster were minimal throughout the 1970s and, apart from occasional forays, both sets of practitioners remained behind binary barricades" (ibid. p.5). Nevertheless there was a certain unity to the work of the two centres. Percy and Ramsden noted that in both there was "an emphasis on individuality and spontaneity. The philosophy of independent study emphasises the need for the student to develop his own sense of direction, to follow a growing awareness of self that might lead to any point of the intellectual or emotional compass" (Percy and Ramsden, 1980, p.57).

Inherent in the early work on independent learning is a distrust of an educational approach that concentrated solely on the knowledge gained by the student, particularly if that knowledge was to be judged solely in academic terms. To differing degrees exponents of independent learning saw the goal as being a mixture of personal and intellectual achievement (Robbins, 1988, Part 3). In this

there is an obvious comparison to be drawn with both those working in the clinical legal education movement and those using experiential learning in legal studies (Brayne *et al*, 1998, p.266; Webb, 1996, pp.38-39).

The idea of independent study quickly achieved a degree of prominence. By 1980 Percy and Ramsden's study of Lancaster and the North East London Polytechnic was arguing that "all students should have the opportunity and experience of becoming independent learners during part of their course of undergraduate study" (Percy and Ramsden, 1980, pp.65-6). Robbins has argued that these early days of independent study have been followed by the development of contradictory approaches to student learning. In his view the result has been "the impression of a conceptual orgy in which thinking becomes fuddled" (Robbins, 1988, p.11). A text which is specifically concerned with teaching one particular course cannot do full justice to the differences between theories of experiential learning, self-managed learning and contract learning to name just three of the approaches to independent learning. In saying this, we do not wish to ignore the importance of the differences in the approaches. For each there is a specialist literature with, in many cases, discussion of the use of the method in relation to law courses. There are, however, important points of agreement about these various approaches which makes it possible to make some general observations about successful independent learning in the context of a legal system or legal method course.

## Suitability of Independent Learning for a Legal System/ Legal Method course

Independent learning does not involve total student autonomy: that is, independent learning does not simply involve the student being left to learn by themselves. They are not wholly isolated from the lecturer nor necessarily isolated from all of their fellow students. It is, rather, a structured mechanism in which the student can learn because of the system which has been established by those responsible for the course. The carrying out of the learning will involve a higher degree of student autonomy than is to be found in traditional educational methods but is still carried on in the context of a system set out before-hand. If the learning is to be successful this structure has to be explicit and clear to the student. One aim of independent learning is to enable a student to become self-sufficient (Percy and Ramsden, 1980, p.35). However, the student cannot be expected to be self-sufficient at the beginning of the course. Percy and Ramsden argue that no student should enter into a course of independent study without a period of preparation and note that Lancaster students had a greater chance of success in their studies than NELP students because the Lancaster students commenced their independent learning in their second rather than their first year of higher education studies (ibid. pp.59-60).

The need for structure and preparation in independent learning is of particular importance for legal system and legal method courses. First, as we noted in chapter one, such courses are of varying length and, in some instances, are of no more than a few weeks duration. The shorter the course the less there is the possibility of including anything that can properly be called independent learning. The time available may not allow for the preparation, student work and subsequent debriefing that is an inherent part of independent learning. Secondly, such courses are typically first year courses. Equally important is the fact that almost all students come to the course with little prior knowledge of law. Arguably, the need for preparation before independent learning is therefore enhanced. Whilst independent learning techniques have been and are used in first year courses (the NELP Diploma was entirely by independent learning) one might want to consider whether it would be better to use the techniques in the second module of a legal system or method course if the course is a two module course or offer the course in the second semester if the course is only one module long.

Legal system or legal method courses are usually compulsory. Percy and Ramsden argue that independent learning does not suit all students. On the basis of the experience of Lancaster and NELP they suggest that for some students there will be no benefit in such techniques and others will only be assisted by such methods if they pursue them for a relatively short period of time (ibid. p.58). Such a view is not wholly uncontroversial. If independent learning is central to the mission of the

university, as has been widely argued, to suggest that there are students in universities who cannot cope with such techniques could be seen as suggesting that there are students in university who simply are not suitable for university. Nevertheless, using independent learning methods in a legal system or legal method course must either be seen as having a consequence for the admissions policy of the law school (all students accepted must be seen as having the capacity to pursue independent learning) or the course tutors must be satisfied that they can adapt the methods to meet the needs of individual students. If neither of these things are done the result will be at best dissatisfied students; at worst failing students. Percy and Ramsden observe that Lancaster recognised the fact that independent learning would be suitable for only some students by having a "stringent screening-out and admissions procedure". NELP had a more open admissions policy and also a high rate of student drop-out (ibid.).

There will always be a limitation to the degree of independent learning that can go on in a legal system or legal method course. Full independent learning involves the student in deciding what they think it is important for them to learn. However, legal system or legal method courses are in part service courses. Colleagues teaching other courses have expectations about what students will learn in the legal system or legal method course. Some of these expectations may be negotiable but there will always be a minimum that all students have to learn if the course is to be successful. Students may be given a degree of independence in how they learn that minimum and may have more freedom in choosing what to learn in addition to the minimum but the core must be protected.

Finally, in assessing the suitability of independent learning for a legal system or legal method course, it is necessary to remember the whole spirit that lies behind the particular form of independent learning that is being considered. Independent learning is not necessarily simply another way of students acquiring information. It can have implications both for course content and for what students are expected to take from the course. Thus, for example, Maughan has argued that in experiential learning the aim is

> "to affect the learner in three interconnected ways...
>
> 1. developing the learner's personal conceptual framework;
>
> 2. allowing the learner to articulate and modify her attitudes and values;
>
> 3. expanding the learner's repertoire of behavioural skills.
>
> Clearly, the emphasis is not on any one aspect of human functioning such as cognition or perception. This learning process involves the whole being by integrating thinking, feeling, perceiving and behaving..."
> (Maughan, 1996, p.69).

It is clear that an experiential method would be ill-suited to a course which was otherwise conceived as a traditional black-letter legal system or method course with an emphasis on the articulation of legal rules and principles. This is not to say that black-letter courses cannot use independent learning methods. Independent learning is, as we have noted above, not confined to experiential learning. However, it is necessary to match the particular method of independent learning to the course objectives of both the degree as a whole and the legal system or legal method course that is being taught.

## Structuring Independent Learning

The form that independent learning can take is extremely diverse. It can involve, amongst other things, the production of either single or inter-related essays, case-studies, placements and surveys. In relation to legal system or legal method courses independent learning might involve anything including matters as diverse as drafting sections for a statute, analysis of behaviour in a court that the student visited or work done in a clinical situation (whether real-life or simulated). Because of its diversity socio-legal, clinical or black-letter courses can all, in principle, make use of independent learning methods. However, whatever the form that

independent learning takes structuring of that learning is vital. Thus for example, in Cuthbert's description of project work, the projects begin with staff providing detailed handouts on the nature of project work and the way in which it is done, students then provide a series of ever more elaborate outlines of the project they intend to undertake and staff provide feedback on those outlines and finally on the project using pro-formas (Cuthbert, 1995, p.270).

The need to provide a structure to independent learning is not just a pedagogic issue; it is also a resource issue. Whilst independent learning may involve a reduction of in the overall use of staff time in teaching it is also likely to involve a more intensive use of staff time at particular points in the programme. The implications of this for a large compulsory course need to be taken into account. If all the students are to begin their project at the same time are there sufficient staff hours to provide for the necessary preparation? If staff are going to be heavily involved in their legal system teaching at particular times during the academic year what are the implications for their other teaching commitments? Indeed, what are the implications for their research and administrative commitments? Some preparation can be done in large lecture classes but if the course is going to gain the advantages of individualising study and involving students more closely in their own learning some of the preparation will have to involve staff looking at the individual projects of single students or small groups of students. If independent learning is used as only part of the legal system or legal method course this problem may to some extent be avoided if students start their projects at different times. However, given the fact that it is will be difficult to use independent learning techniques at the very beginning of a course, the scope for varying the starting time of projects is likely to be very limited.

Linked to the issue of the amount of staff time used in independent learning is the question of staff competence. Feeney and Riley in their essay on contract learning argue that

> "A contractual system of education requires a broader range of faculty competence that a more traditional curriculum. In such a system a professor's responsibility extends beyond research, publication, and classroom instruction into areas of program design, new forms of academic counselling, and the evaluation of non-classroom learning (e.g., field internships and cross-cultural experiences). For many faculty members these activities will represent novel demands for which they have received little or no training."
> (Feeney and Gresham, 1975, p.59).

Whilst even new academic staff might be expected to have some experience of, and some competence in, traditional forms of teaching and learning few staff of any age will have any wide experience of independent learning. Most will have some experience of student dissertations but in law schools these have traditionally been final year projects with relatively knowledgeable students. The skills necessary for involving first year students are arguably very different. A lack of competence is not an irremovable impediment to taking on independent learning as part of the legal system or legal method course. As we have noted above there is a wide literature on the subject available. Skills can be learnt; the necessary knowledge assimilated. But again in this learning and this assimilation there is a resource issue. What is the member of staff going to stop doing in order to allow themselves the time to prepare themselves to be able to prepare, support and assess students taking part in independent learning? As in many other instances in previous chapters the advantages to the legal system or legal method course of taking on a particular form of learning have to be balanced against the personal needs of academic staff and the wider needs of the law school.

## Information Technology

Arguably this section of this book should have precedence over virtually everything else that we have written about. For some the transformative possibilities of IT in all areas of legal education cannot be overstated.

> "The changes effected by computers are not trivial, and they are not merely technical. They are substantial and demand our consideration. Developments in technology have made available many techniques (word processing/document assembly, electronic mail, legal databases, whether CD or Internet access, Internet more broadly, teaching programmes) which radically alter the ways in which people try to learn about law. On some accounts, C&IT [Communications and Information Technology] will transform the very nature of narrative, of criticism, and of text-based education in general."
> (Alldridge and Mumford, 1998, p.117).

Equally, this section of this book will be the one that dates most quickly. It is easy to forget the pace of change in this area. In the 1998 paperback edition to his book *The Future of Law* Susskind notes when he completed the manuscript for the hardback edition in 1995 "barely a lawyer in the UK had even heard the term 'Intranet', only a few could claim to have seen the World Wide Web, and the government of the day was more or less silent on the question of IT and its impact on society" (Susskind, 1998, p.viii). Now many government departments have their own home pages, most law schools have access to the Web and an ever-increasing range of legal materials are available either via the Web or CD-ROMs.

The impact of IT on legal system and legal method courses broadly lies in two different directions; in the information resources that can be made available to individual students and in the ways that individual students can communicate both with other students and with tutors. IT is thus both a knowledge resource and a teaching resource. The use of IT in a legal system or method course can both result in the student learning more about the content of the course they are studying and also learning a range of ways of gathering and communicating information. Its use is not limited to particular types of legal system or legal method courses. Black-letter courses, socio-legal courses and clinical courses can all make use of both aspects of IT although some IT uses may be more suited to one approach rather than another.

Integrating IT into a legal system or legal method course involves attending not just to the needs of the course but also to the way in which the course will be expected to help the students in their use of IT. In the Second BILETA Report into Information Technology and Legal Education three IT course models are suggested:

> "Course Type 1: 'Pedagogic' (usually applied in LL.B. courses)
> ...the primary objective is to enhance basic teaching of traditional Law School subjects, through the most effective (including cost-effective) ways of teaching legal rules and principles.
> Course Type 2 - 'Research-Based/Independent Learning' (usually applied in Postgraduate and some undergraduate course.) ...
> Course Type 3 - 'Profession-Based Learning' (usually applied in Professional courses and some undergraduate clinical based courses.)... "
> (Information Technology 1996, p.26)

The Report argues that selecting the course type will affect both the type of IT the student will be expected to become familiar with and the level of competence that they will have to develop (ibid. pp. 26-30). Legal system or legal method tutors might quarrel with the assumptions contained in some of the results that the BILETA Report thinks follow from the selection of course type. For example, selection of "the Profession-Based approach" (associated in the Report with clinical legal education) is equated with teaching students the clerical details of

legal practice (ibid. pp.29-30). This is not the view taken in most legal system or legal method tutors approach to clinical legal education (Brayne *et al*, 1998). Nonetheless, the basic premise of the Report is undoubtedly correct. When using IT, legal system or legal method tutors need to ask themselves to what extent does the IT use just expand the student's knowledge of the course and to what extent does the IT have a value in itself. Equally they need to remember that a first year course will comprise students with varying levels of knowledge about and skill in IT. The use of IT will involve assessing what IT training the law school or the university is giving the students and what training, if any, needs to be made a part of the course.

## IT as a Knowledge Resource

Black-letter courses in legal system or legal method are based on the student's use of statutes and cases as a primary source. Traditionally this has meant teaching the students how to find, up-date and read the paper-based versions of these materials. (See, for example, Bradney *et al*, 1995, ch. 4 and 5 for an introductory example.) These paper-based products now have their electronic counter-parts. Statutes are now available on the Web (http://www.hmso.gov.uk/acts.htm) as are Bills, which are updated as they are amended during their passage through parliament (http://www.parliament.the-stationery-office.co.uk/pa/pabills.htm).Law reports are available as CD-Roms. House of Lords judgements are available on-line on the same day that they are delivered. (http://www.parliament.the-stationery-office.co.uk/pa/ld/ldjudinf.htm) These new resources do not necessarily replace more traditional material. "It remains as true as ever that reading lengthy portions of text on a screen is less attractive than reading the printed page" (Collins, 1994, p.9). However, materials available through the Web or on CD-ROM may either prove to be more cost-effective, be more up-to-date or be more easily searchable than paper-based products.

IT resources are for legal system or legal method courses are not confined to material suitable for black-letter courses. Socio-legal courses will look to the policy behind the legal rule as much as to the rule itself. An ever-increasing amount of government material is now available via the Web. Thus, for example, the Lord Chancellor's Department now has a home page (http://www.open.gov.uk/lcd/lcdhome.htm) which will lead the reader to a range of material from reports on legal aid to the texts of speeches given by leading members of the judiciary. Parliament has its own home page (http://www.Parliament.uk/) with links to both the House of Commons and the House of Lords. Nor is this kind of material limited to official sources. The Law Society, for example, also has its own home page giving access to a wide range of Law Society documentation (http://www.lawsociety.org.uk/home.html). Many of the leading newspapers are available either via the Web or as CD-ROMs. Hansard is available as a CD-ROM.

IT can be viewed simply as another knowledge resource. The computer is seen as standing alongside the law report, the monograph or the journal; a new addition to the library. Even viewed in this way IT can subtly change the nature of a legal system or legal method course. The materials available to students will be more up-to-date and richer than traditional material. Studies have shown that students are, in the main, enthusiastic about IT (Laurillard, 1994, p.46). Thus students may be willing to work harder on a legal system or legal method course simply because they are given access to IT.

Merely to use IT alongside the monograph is to fail to make full use of its potentiality. The full use of IT in a course can make it easier to involve individual students in research during their course even though they are in their first year of their studies. It is easy to underestimate on the one hand the complexity of the usual library materials for the first year student and on the other hand the comparative ease of access in the case of IT. Cope, a law librarian, has written that

> "[u]ntil the advent of CD-ROMs, researchers using bibliographic indexes were reliant on paper-based or dial-up services. The skills required to use the often complex command language and the costs involved in searching dial-up on-line databases resulted in only trained experts – librarians and frequent researchers – using the databases. Librarians acted as intermediaries between the occasional user and the database.
>
> CD-ROMs for the first time offered the untrained 'end-users' of the information the chance to search databases for themselves."
> (Cope, 1995, p.25).

Traditionally legal system courses, like other first year courses, have been vehicles for students acquiring the skills of library use. So long as paper-based resources dominate the library this will continue to be the case in black-letter or socio-legal courses. Students will have to learn how to use the Citator, how Hansard works, how to find journal articles on particular topics and so forth. Nonetheless, although this is a necessary and valuable process, one should not forget that the time spent learning to use this kind of material does not, of itself, lead to greater knowledge of the content of the course. Nor is learning how to find material intrinsically interesting. The learning required to acquire these skills is of a surface nature. One does not analyse how to use a Current Law Yearbook; one simply learns how to do it in an almost mechanical fashion. Yet, at the same time, the learning is difficult because the information, whilst intellectually unsophisticated, is complex and intricate. For example, Official Publications catalogues, the Citator and social science abstract systems all have their own sets of abbreviations. Before they can be used the abbreviations have to be learnt. All of this makes the kind of learning involved in becoming familiar with the library some of the least satisfying for the student. This, inevitably, will affect their view of the legal system or legal method course. IT by contrast offers a way of accessing information which can be both more flexible and less arcane than traditional methods.

> "Hypertext is controllable by the user, and this is the medium's real strength. The indexing, referencing, searching and editing tasks are very well supported by the options and iconic forms used in these systems. The use of mouse clicks and pull-down menus to move around a large data-base makes accessing and displaying an item of information very convenient, and the flexibility of the system for the user makes it easily customisable. The other principal virtue of hypertext is that it makes the structure of its topic completely explicit and highly accessible. What there is is easily available, usually in a variety of ways, and if the structure does not suit the user's way of thinking about the topic, then they may change it to suit their purposes better."
> (Laurillard, 1993, p.122).

Not every IT resource makes best use of the medium. Nevertheless, IT offers both tutor and students the possibility of doing original research, using primary materials that can provide the most up-to-date information.

## IT as a Teaching Resource

IT has three main uses as a teaching medium. First, through e-mail, it provides a way of students and tutors contacting each other. This is of general use on all courses but is particularly valuable where independent learning methods are being used and there is thus less face to face contact with students. This means that students undertaking a clinical legal education course can contact their tutors as easily as other students who are undertaking a black-letter course even though the clinical students may be geographically removed from the university. Given the fact that legal system and legal method students are usually first year students the reassurance provided by this possibility of contact may be of particular importance.

The second use of IT as a teaching resource is in providing course information. Anything that is provided to students on paper can be provided electronically. Providing material electronically involves a cost-saving for the law school which can be quite considerable because of the compulsory nature of the course. However, the fact that material can be provided electronically does not mean that it should be provided electronically. We have already noted the fact that it is easier to read things on paper than it is on a screen. Large passages of text are unlikely to be useful if provided electronically. In addition electronic provision is not suitable for matters that are for constant reference. In most instances students will be able to down-load material that has been provided electronically. However, if students have to do this to obtain things that previously they would have had via paper provision this is, effectively, a cost rise for students.

The first two uses of IT as a teaching resource are comparatively widespread. The third is in its infancy. There have been some experiments in providing electronic tutorials for students. This has typically involved the use of e-mail discussion groups. Many of the experiments in electronic tutorials have involved the use of self-selecting groups of students who have a particular interest in IT. As such these are of little relevance in considering the possibility of using electronic tutorials in compulsory legal system or legal method courses. However, Durham have experimented with the use of electronic tutorials on a first year contract course. This involved starting the course with normal face-to-face tutorials and substituting an electronic tutorial for a face-to-face tutorial at a later stage in the course (Widdison and Pritchard, 1995; Widdison and Schulte, 1998). Students were given a problem to consider and required to submit arguments first for the defence, later for the plaintiff and finally to indicate who they thought would win and why. Structuring when the students had to make submissions and what they had to make submissions about was seen as being important. As a consequence it is easier to see how such tutorials could be used in the a black-letter course as compared with a socio-legal course. Indeed Widdison and Schulte note that, in their opinion, electronic tutorials are not suitable for "'free-form' tutorials".

Student response to the Durham experiment was mixed: 41 per cent thought that it was either less or much less enjoyable than a normal tutorial and 32 per cent thought it was less useful. However, 55 per cent of students thought they had contributed more or much more to the tutorial than they normally did (Widdison and Pritchard, 1995, p.9).

Widdison and Schulte note the potential advantages of electronic tutorials as being that e-mail is cheap, flexible, free of geographical constraints, has no temporal constraints, offers improved access to tutors and other students, allows for individualised instruction, can be less intimidating, entails practice of written skills, gives a record of conversation, provides for a ready monitoring of performance, is easier to manage than paper, and gives students added value through learning IT. On the other hand they note as disadvantages the lack of physical contact, the fact that there is no face-to-face interaction, student's need to be highly motivated, tutorials have to be highly structured and thus it is not suitable for 'free-form' tutorials, there is no practice of oral skills, it encourages a cut and paste approach to writing and there is a technology threshold that law schools and students have to pass (Widdison and Schulte, 1998).

Electronic tutorials are still very much in an experimental stage and a decision to use them in a legal system or legal method course would be a decision to engage in that experiment with the cost implications in terms of time that experiment implies.

## CAL Programmes

Computer assisted learning packages are intended to provide an interactive medium which will allow a student to pursue a course at their own pace and in their own time. They usually comprise a series of exercises which both gives students information and asks them questions designed to test their understanding of that information. In principle CAL programmes could mean that less staff time was spent on teaching, students had more flexibility and there was less pressure on library resources because the programmes could contain all the material necessary for learning. In practice CAL programmes have been the slowest developing area in IT. Most commentators see them as being of relatively limited use in teaching law. Widdison and Schulte comment that "[a]t best existing courseware may just manage to substitute for the introductory, 'building block' phase of a tutorial" (ibid.). However, it is worth noting that Wolverhampton University's law school has produced a CD-ROM on negligence which entirely replaces all paper-based provision on its distance-learning undergraduate LLB degree (Migdal and Cartwright, 1997).

The problem with CAL programmes has been the difficulty of mimicking the open-ended nature of face-to-face tutorial discussion in the programme. Early programmes tended to ask students questions on a 'right/wrong' basis. This leads to a very formalistic view of the law. CAL programmes seem to most easily fit in with black-letter legal system or legal method courses but even here most courses would want to emphasise the areas of debate and try to inculcate the skills necessary to engage in that debate rather than allow students to concentrate on areas of apparent certainty.

The latest generation of CAL programmes do provide students with a greater intellectual challenge than was so in the case of early programmes. The IOLIS disk, published by the Law Courseware Consortium, has an Introduction to Law package which includes material on the history of the courts, the division between criminal and civil courts, personnel in the legal system and the European Community. Many law schools subscribe to IOLIS. A full list of subscribers can be found at http://www.law.warwick.ac.uk/html/subscribers.html. For those working in law schools which do subscribe to IOLIS the Introduction to Law package may be regarded as an addition to the material provided for students but, for the reasons given above, it is unlikely to be seen as a substitute for any part of a course. The alternative is to write one's own CAL programme but, unless an individual has a particular interest in this form of learning, most tutors would find that the time and intellectual effort invested would more than outweigh the education advantages that were produced. (On writing a CAL tutorial see Young, 1992.)

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