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Practice Makes Perfect: Building Statutory Research Skills for Students

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Deans (CALD) defines statutory interpretation as referring to “the body of law governing the determination of the legal meaning and effect of legislation”.⁵ So, what role can law library professionals play in this space? At Monash University, the interpretation of statutory provisions is taught in law units such as Foundations of Law, Public Law and Statutory Interpretation, Criminal Law, Corporations Law, amongst others. Librarians and learning skills advisers teach research and writing skills, so are well placed to ensure that law students acquire and practice skills relevant to legislative research and writing. This works in tandem with the law units taught, so establishing a partnership with the relevant lecturers is a key to success.

This article is based on a poster² presented at the ALLA 2016 conference by Kay Tucker, Michelle de Aizpurua, Caroline Knaggs and Sandra Pyke, Law Library, Monash University.

Introduction

Statute law is of “huge and growing importance” to the study and practice of law, with very few areas of law that are not significantly regulated by statutes.³ This places statutory interpretation at the forefront of the law degree, prompting law schools in their curricula to lay a solid foundation and build ongoing skills around the interpretation of statutes.⁴ The Council of Australian Law

Regulatory Frameworks

Regulatory frameworks in place for teaching law provide the skeleton on which to grow the necessary skills. The Law Admissions Consultative Committee (LACC) provides guidelines on statutory interpretation, setting out its first statement Locating and Using Legislation: “A law graduate should be able to locate, and make appropriate use of, the text of a legislative provision relevant to a legal problem.”⁶ This is a skill taught early on in all law courses, and is essential in establishing the groundwork for subsequent law units.

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² Created by Michelle De Aizpurua using PiktoChart <https://piktochart.com/>

³ Council of Australian Law Deans, *The Council of Australian Law Deans Good Practice Guide to Teaching Statutory Interpretation* (June 2015) 6 <<http://www.cald.asn.au/assets/lists/Resources/GPGSI-June15.pdf>>.

⁴ Ibid 7.

⁵ Ibid.

⁶ Law Admissions Consultative Committee, *Statement on Statutory Interpretation* Law Council of Australia (February 2010) <<http://www.lawcouncil.asn.au/LACC/images/pdfs/StatementonStatutoryInterpretation.pdf>>.

In 2010, the then Australian Teaching and Learning Council (now the Office of Learning and Teaching), established Threshold Learning Outcomes (TLOs) for the various disciplines, including Law. The TLOs of most concern to library professionals are: TLO3 Thinking Skills, TLO4 Research Skills and TLO5 Communication and collaboration. The *Good Practice Guide to Statutory Interpretation*⁷ focuses on TLO1 (Knowledge) and TLO3 (Thinking) and makes a clear link to the research and writing skills necessary to perform statutory interpretation well. It sets the scene for the more recent CALD *Good Practice Guide*,⁸ which provides detailed guidance on best practice teaching in statutory interpretation.

“Students need to have comprehensive and efficient legal research skills for a number of reasons; primarily to ensure that the statutory material being considered is current and relevant, but also because all the relevant information needed to interpret a statute/area of law is not in one place (such as the legislation, case law and secondary source materials).”⁹

These documents make explicit the need for learning activities centred on the problem solving

required to identify relevant legislative provisions, the research involved to find and use those provisions, and clear communication of the outcome or advice related to the problem.

Establishing the Skills

At Monash University, the legislative research journey begins with the first assignment a law student encounters; involving research of the court procedures identified at a court visit. Using second-

ary sources helps students to identify any relevant legislation, e.g. Magistrates’ Court Act. Library research activities focus on the skills needed to locate an authorised, current version of an Act.

In Semester 2, the Public Law and Statutory Interpretation unit emphasises statutory interpretation. Library teaching and learning aligns through three workshops on researching legislative amendments, extrinsic materials, judicial consider-

ation, and using these sources in effective writing. The skill of taking effective notes is interwoven through the first two workshops, culminating with a writing workshop where effective use is made of the primary sources researched in the previous sessions. Common law and statutes enjoy a symbiotic relationship, with common law rules of interpretation, supplemented by the

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⁷ Catherine Brown, Judith McNamara and Cheryl Treloar, *Good Practice Guide (Bachelor of Laws) Statutory Interpretation* (2011) Australian Learning and Teaching Council <<http://www.lawteachnetwork.org/resources/gpg-statutory-interpretation.pdf>>.

⁸ Council of Australian Law Deans, above n 3.

⁹ Catherine Brown, Judith McNamara and Cheryl Treloar, above n 7, 10.

statutory rules, governing the meaning and operation of statutes.¹⁰ So too, the skills involved in finding and identifying judicial consideration of legislative materials are taught.

Building on Foundation Skills

First year units have provided the opportunity and momentum for the introduction of skills. However, there must be an ongoing building of skills through iterative learning.¹¹ Traditionally, later year law units have focused on exams, and where students have opted for research papers, they have mostly forgotten the research skills learned earlier. By embedding and building on skills more systematically we give students the confidence to tackle more research tasks and therefore become more practiced and employable.

With the introduction of the Monash LLB (Hons) curriculum in 2015, Corporations Law was selected as a mid-point in the degree in which to build research skills. A suite of eLearning tutorials and quizzes was built and delivered within the LMS Moodle environment as a hurdle requirement linked to the compulsory research assignment. Focussing on the Corporations Act has enabled students to link their research skills with their substantive law unit and their immediate assessment.

An opportunity also arose in a later year unit, Criminal Law and Procedure. Workshops and eLearning activities were used to refresh first year learning, followed by a quiz applying learning to Victorian criminal procedure legislation. This

proved popular as the assigned 10% assessment encouraged students to take their learning seriously, as well as refresh skills needed to fully understand the legislation they were studying for use in their mid-semester class test.

The final building block will be delivered from 2017 in the compulsory research unit required of students at the end of the new LLB (Hons) degree. A Research Skills Moodle unit has been created to consolidate the planning, researching and writing of a major project, so drawing on skills and knowledge gained through the degree. It will depend on the project and topic as to the extent of statutory research required, but as the unit aims to bring a capstone experience to the degree, it is likely that there will be opportunity to bring in this type of research. At the very least students will refresh skills prior to graduation by working through the skills tutorials, further motivated by a 10% assessment consisting of a quiz and reflection.

In parallel to these building blocks, students participating in a Clerkship Masterclass organised by the Library, also have the opportunity to practice and refine skills related to identifying and applying legislative provisions to a problem. Feedback from law students and law firms indicates that legal research is a major component of many clerkship experiences, particularly related to the researching of legislation. Students in the Masterclass have welcomed the opportunity to practice these skills and improve their employability.

¹⁰ Anthony Mason, 'The Interaction of Statute Law and Common Law' (2015) 90 *Australian Law Journal* 324, 324.

¹¹ Council of Australian Law Deans, above n 3, 3.



IMPETUS

Law Admissions
Consultative
Committee (LACC)



"Use appropriate legal research techniques to locate, for the purposes of solving a problem, the text of a legislative provision in force at a particular time in a particular jurisdiction."

Practice Guide to
Teaching Statutory
Interpretation



"Students are to locate the legislation themselves. This way, students practise and, if necessary, develop their research skills. It also prepares them for practice."

"Of equal importance to establishing a solid foundation is what is taught throughout the degree by way of refreshing and deepening knowledge that is imparted in the first year of study."

Bachelor of Laws
Learning and Teaching
Academic Standards
Statement



Threshold Learning Outcomes - TLO4
Research

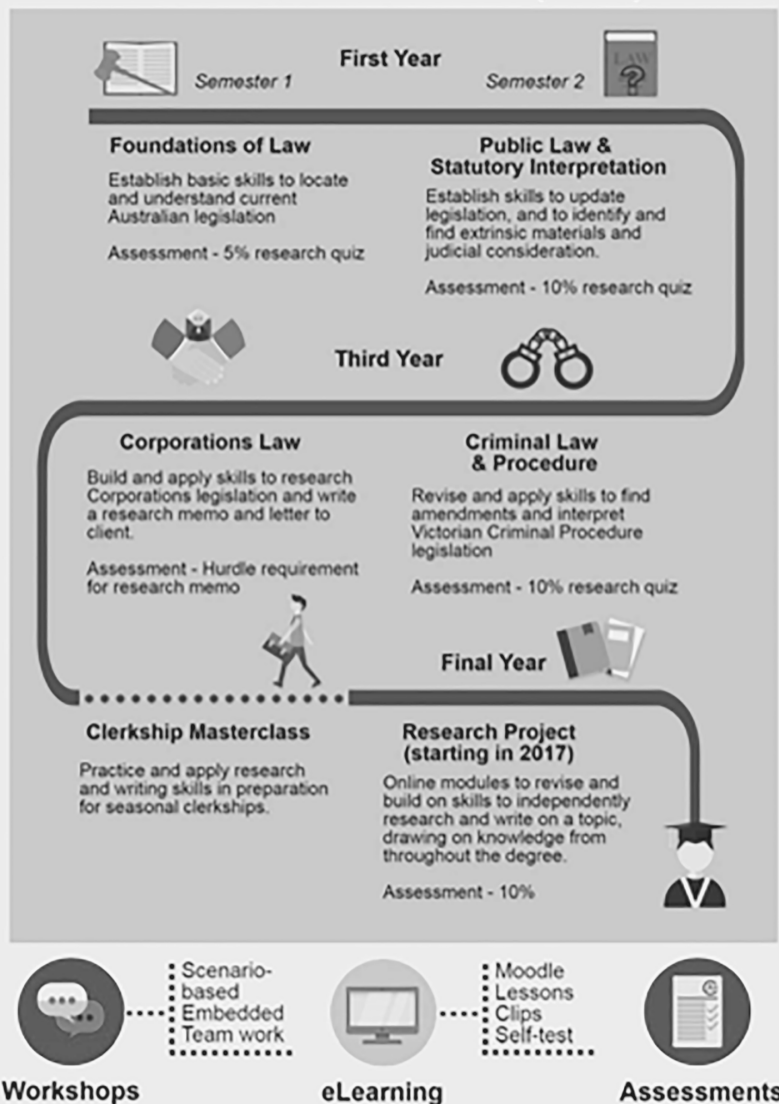
"Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues."

Law firms and courts

Feedback to law schools that students
need better Statutory Interpretation skills.

Practice Makes Perfect: Building Statutory Research Skills for Students

PEDAGOGY IN THE LL.B (HONS)



Kay Tucker
Sandra Pyke

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EVALUATION



It was very interesting to have the skills we learned in first year applied to something that we were studying; it really put it into context!

There are so many gaps in my research knowledge. Previously, I just went to AustLII or Google. Now I know how to use Lawlex!

I think it's very important that we are taught practical skills that will be useful in the future.

A well styled assessment, it made me pay attention to researching legislation, and especially amendments which were very relevant in Criminal Law this year due to recent changes in the law.

Great way to introduce the nitty gritty aspects of criminal procedure into the course.

Research skills are more important than memorising laws.



LESSONS

- ❖ Link skills to substantive law for meaning
- ❖ Reward the skills task with marks
- ❖ Provide optional workshops and online
- ❖ Small chunks in more units
- ❖ Revise earlier skills at each stage

The Importance of Assessment

Survey results from these initiatives have shown that students will take a learning activity much more seriously and embrace it more positively, if it is embedded into the unit, aligns with a learning outcome, and has marks attached to it. The broader teaching and learning direction at Monash has seen a reduced emphasis on exams and introduction of multiple types of formative assessment. This ties in well with the focus on skills and enables the research skills assessments to be integrated more seamlessly into units. Skills quizzes designed and run by Library staff are a formative assessment tool which benefit students and prepare them for their longer, written assignments. A mark of 10% has been determined as a good incentive for the work put in by students, and is appreciated by students as a way to gain marks if effort is put in. One surveyed student commented that “this type of activity should be a part of every unit.”

The importance of working with the academics teaching the unit cannot be emphasised enough. In Criminal Procedure, the legislative provisions studied were identified by the lecturer so that the librarians could devise questions testing students on recent amendments. These provisions were used in the class test where students were asked to apply them to a fact scenario. Questions focussing on the interpretation of statutory provisions were also supplied by the lecturer, further integrating the various skills required by LACC.¹² For Corporations Law, a past legal memo assignment was provided by the lecturer to Library staff, to use as a basis for creating an eLearning activity

¹² Law Admissions Consultative Committee, above n 6.

highlighting where and how improvements could be made.

Evaluation

Surveys using Google Forms were developed and sent to students in Criminal Law and Procedure (Crim) and Corporations Law (Corps). As with most student surveys, the response rate was fairly low (ranging from 10-20%), although as unit enrolments ranged from 200 to 300 students, responses provided useful feedback and it was pleasing to see a majority of positive comments. For example, in response to whether the assessment should continue in Crim:

“Yes, definitely. No one remembers what they did in first-year Research and Writing. I was still trying to understand what uni is. There are so many gaps in my research knowledge. Previously, I just went to austlii or google. Now I know how to use Lawlex!”

“Yes. Making it assessable is important, because otherwise students probably wouldn’t engage with the material with the same amount of focus. I think it’s very important that we are taught practical skills like this that will be useful in the future.”

“A well styled assessment to start of the semester, made me pay attention to researching legislation, and especially amendments which were very relevant in Criminal Law this year due to recent changes in the law, so yes I recommend it.”

“Yes because research skills are more important than memorising laws in my opinion”

“Yes – it actually did test your research skills and researching the legislation that we would eventually use as part of the course was a really smart thing to do.”

“Before doing the quiz I forgot how to search current and past legislation, and how to see what changes were awaiting assent etc.”

The goal was to build confidence in understanding and researching legislative amendments; 65% agreed or strongly agreed that the quiz had improved their understanding of how legislation is amended. Applying a 10% assessment was overwhelmingly supported, with 89% of respondents for Crim agreeing that the online quiz should be assessed. In Corps, where the requirement was a hurdle for the assignment, some students didn’t like the extra work, although others said it helped them prepare for the assignment.

Lessons learned

The surveys, along with the experience of having run the Crim activity over three years, provide some valuable lessons and encourage continuous improvement. It is essential to work closely with the Chief Examiner and lecturers to create meaningful activities and assessments, aligning with the content of the lectures and assignments. With changing CEs this can sometimes be a challenge and requires some perseverance. A small percentage grade (ideally 10%) provides encouragement and reward for students, as well as providing a safeguard for when CEs change. Linking research skills with the substantive content of units helps to ensure relevance and encourages academic input.

Providing eLearning materials in small chunks rather than long lessons is more sustainable as well as more likely to engage students. It is important to accommodate the variety of devices owned by students, and to provide alternative, accessible versions. Availability of new eLearning technologies mean that we are continually updating and improving. The law changes, so we will always need to make changes to our examples and questions – and so, learning reflects practice.

References

Articles/Books/Reports

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Mason, Anthony, 'The Interaction of Statute Law and Common Law' (2015) 90 *Australian Law Journal* 324

Q1 What percentage of Australian cases cite other jurisdictions?

Q2 How many unreported cases negatively cite reported cases?

A1, 22% based on a sample of 250,000 cases available on Justis.
A2, Find out using Justis' intelligent research tools. Start your free trial today.

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