

# RECONCEIVING AN APPROACH TO TEACHING LEGAL DISCOURSE: A COMMUNITY OF PRACTICE PROJECT

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## I. INTRODUCTION\*\*\*

The past decade has seen a marked increase in the diversity of the student profile in tertiary study in Australia. For example, up to one third of students at some institutions are international students. At the same time, alternative entry options and pathways linking Technical and Further Education (TAFE) and Higher Education (HE) courses have been increasingly utilised by students from a variety of backgrounds. Language and learning support is crucial for many of these students to enable them to achieve successful outcomes in their studies. This paper outlines the reconceptualisation of a collaborative approach between language and learning practitioners and law staff at Victoria University (VU) to develop and model appropriate teaching and learning pedagogies to meet the needs of an increasingly diverse cohort of students.

As a dual sector institution, VU has students studying law-based subjects in a variety of TAFE and HE contexts. In TAFE, for example, students may be undertaking the Advanced Diploma of Business (Legal Practice) or the Diploma of Business (which includes Business Law). They may be undertaking these onshore or offshore at one of an increasing number of offshore partnership institutions. Many of these students articulate (or 'pathway') into the second year of a Bachelor of Business degree. For a variety of reasons, diploma courses do not always cover the foundation concepts that are covered in the first-year bachelor degree subjects, nor the academic skills that are expected in second-year bachelor degree studies.<sup>1</sup> Law teachers struggle with ways to respond to increasing numbers of students who find legal language, related positioning, identity formation, and the rhetorical conventions through which these are realised, a serious challenge.

A variety of projects have been implemented to tackle these challenges at VU. In 2007, a group of language and learning practitioners applied for an internally funded grant to focus on a coordinated approach. The application comprised four linked projects, three focusing on support for students studying in separate law-based areas, and the fourth, a coordinating project that not only aimed to facilitate collaboration among the other three, but also to work towards the establishment of a VU-wide Community of Practice<sup>2</sup> (COP) in relation to law teaching at VU. While previously discrete pockets of language and learning assistance had been provided in law subjects within the institution, these had been conducted in isolation from each other. Further, the arrangements with subject staff had often been dependent on the strong personal commitment and availability of these staff rather than a coordinated team approach. In short, piecemeal efforts led to duplication of effort in some areas while other areas had been overlooked and opportunities had been lost to capitalise on available expertise.

The resulting COP project, which is the focus of this paper, aims to reconceptualise the development of language and learning support in law-based subjects at VU and, through this, provide a more systematic and coherent approach to assist pathwaying students in law subjects from all points of entry.

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1 Amanda Pearce, Helen Murphy and Paul Conroy, 'Smoother Pathways from TAFE to Higher Education' (Paper presented at the 23rd Annual HERDSA Conference, Toowoomba, 2-5 July 2000).

2 Etienne Wenger *Communities of Practice: Learning, Meaning, and Identity* (1998).

## II. SCOPE AND AIMS OF THE PROJECT

The aims of the COP project centre on improving the coordination and development of support for students at different points of entry across the entire institution. To achieve this, the focus is on working with teachers of law subjects to collaborate on: a) effective alignment of TAFE and HE curriculum pathways; b) integration of language and discipline-specific (law-specific) skills; and c) development of effective pedagogies for VU student needs.

Points of intervention the project has focused on include English for Academic Purposes (EAP) programs, diploma programs including the Diploma of Business, the Diploma of Business (Legal Service), the Advanced Diploma of Business (Legal Practice), and bachelor degree programs at VU. Approaches at each of these points have varied, and have included the development of additional online materials, the integration of language and skills material into curriculum and tutorial guides, the provision of parallel workshops, and development and teaching of adjunct courses concentrating on writing and academic skills.

Collaboration with law teachers has been an essential component of the COP project. The project's funding has allowed the project managers to offer funding for staff (both core and sessional) to attend meetings, as well as strategy and information sessions. Workshops have been organised to facilitate collaboration and increase understanding of the issues as identified by both language and learning practitioners and teachers of law subjects. Such interaction has significantly aided language and learning practitioners' 'induction' into legal discourse practices, while at the same time providing impetus for law teachers to reflect on their practice and to consciously articulate what they are looking for in students' work, and their reasons why. An additional benefit has been an improvement in communication between law staff operating in the dual sectors of the institution — sectors that have historically operated in isolation.

A key advantage of a network of practice is the establishment of a focal point for language learning issues in relation to law teaching. Part of the COP project brief has been to implement forums whereby staff from other institutions share experiences with both the language and learning practitioners and law teaching staff at VU. Another aim of the project is to develop a web-based pool of resources for both language and learning practitioners and law teachers.

This paper concentrates on the conceptualisation of a collaborative approach in the discipline of law, rather than describing the results of the effectiveness of single interventions to enhance students' learning in law subjects. The project is still in its early stages and, consequently, a comprehensive evaluation has not yet been undertaken. An important aim of this initiative is to evaluate both the effectiveness of the model of collaboration and impact on student outcomes. To date, qualitative feedback from students involved in single intervention programs has been very positive.

## III. LAW TEACHING AND LANGUAGE — THEORETICAL UNDERPINNINGS

It is widely accepted by language and learning practitioners that language is central to student participation within specific disciplinary communities and, in this sense, the teaching of language ultimately cannot be separated from content. Whilst academic staff often operate from a view that their responsibility is disciplinary knowledge and that English language is the concern of someone else ('Fix the grammar. Don't touch the content'<sup>3</sup>), language practitioners increasingly view the development of discipline-specific language competencies as integral to the process of induction into a discipline.<sup>4</sup> Indeed, it

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3 Robyn Woodward-Kron 'Negotiating Meanings and Scaffolding Content' (2007) 26 *Higher Education Research and Development* 253, 255.

4 Naoko Morita, 'Negotiating Participation and Identity in Second Language Academic Communities' (2004) 38(4) *TESOL Quarterly* 573.

is increasingly recognised that discipline-specific language and learning skills are fundamental to the construction of meaning within particular institutional contexts as well as to the necessary acculturation into the academic discourse of particular disciplines, and that language and academic programs that teach these skills should be embedded in the content being learned.<sup>5</sup>

The integral relationship between language and content is foregrounded, for instance, when we consider the teaching of formal structure and logical development in a written response to a problem fact situation. This involves identifying the issue and specifying the relevant area of law and the elements, stating the relevant principles, discussing relevant cases and referring to established precedent, and applying tests to reach conclusions. The formal structure and logical sequencing of ideas in such analysis cannot be taught, for instance, without grasping key concepts which underpin the law, such as the relationship between common law and statute law. Issues and arguments are key points of focus in law, and appropriate meanings are realised in very specific ways, following certain conventions.<sup>6</sup> It is not sufficient for students to just construct legal sentences; they need 'to be aware of the place of such genres in the disciplinary community'.<sup>7</sup> Further, it is in disciplines such as law 'that teleology (development towards a conclusion), and more importantly, ideology ('political' perspective), are deeply inherent to the realisation of meaning in language'. In these cases 'appropriate "English" cannot be addressed without a thorough understanding of these "deep" characteristics of the target discourse'.<sup>8</sup>

By contrast, views focusing on language primarily as the conduit for content often treat language as invisible, and as something to be learnt separately in a way that fits with an older view of the transmission method of English language learning. The notion that language learning is ineluctably bound up with induction into communities of practice (in this case the legal community) that constitute varying disciplines has replaced this transmission model. From this perspective, teaching and learning needs to be reconceived as participation in social practice in which language and disciplinary knowledge play a significant role,<sup>9</sup> and the challenge is to initiate these students into the legal discourse community while they are still developing their language proficiency skills.<sup>10</sup> For this initiation, the provision of contextualised programs to assist students in their learning is likely to be more effective than generic provision of assistance.<sup>11</sup>

In the formulation of institutional responses to language and learning issues, such theoretical considerations play an increasingly central role, particularly when attention is paid to the diverse student profile of students pursuing law-based studies at institutions such as VU. Typical examples of student groups that the COP project group members are

5 See, eg, John Biggs, 'Approaches to the Enhancement of Tertiary Teaching', (1989) 8(1) *Higher Education Research and Development*; Patricia McLean et al, 'Models of Learning Support in Victorian Universities: Issues and Implications' (1995) 14(1) *Higher Education Research and Development* 75; Mark Garner, 'Some Questions About Integrated Communication Skills Programmes' in Zofia Golebiowski and Helen Borland (eds), *Policy and Practice of Tertiary Literacy: Selected Proceedings of the First National Conference on Tertiary Literacy: Research and Practice, Volume 1* (1996).

6 Rick A M Iedema 'Legal English: Subject Specific Literacy and Genre Theory' (1993) 16(2) *Australian Review of Applied Linguistics* 86, 88.

7 Christopher N Candlin, Vijay K Bhatia and Christian H Jensen, 'Developing Legal Writing Materials for English Second Language Learners: Problems and Perspectives' (2002) 21 *English for Specific Purposes*, 309.

8 Iedema, above n 6.

9 Etienne Wenger *Communities of Practice: Learning, Meaning, and Identity* (1998).

10 See eg, Candlin, Bhatia and Jensen, above n 7.

11 As James Paul Gee has argued, 'we should realize that teaching and learning are connected with the development of meta-level cognitive and linguistic skills. They will work better if we explicitly realize this and build this realization into our curricula': James Paul Gee, *Social Linguistics and Literacies: Ideology in Discourses* (1st ed, 1990). See also Richard Baldauf Jr, 'Tertiary Language, Literacy and Communication Policies: Needs and Practice' in Golebiowski and Borland, above n 5, 1; Hilary Tait and Noel Entwistle, 'Identifying Students at Risk Through Ineffective Strategies' (1996) 31 *Higher Education* 97; Mark Garner, above n 5; Jan Hoffman, 'Learning Support Services: Do We Practice What We Preach?' in *Proceedings of Third Pacific Rim Conference, First Year in Higher Education* (1998); Kate Chanock (ed), *Integrating the Teaching of Academic Discourse into Courses in the Disciplines, Conference Proceedings* (1994); Marcia Devlin, 'Metacognition and the Cognitive Apprenticeship Model in Tertiary Learning Support', in Mark Garner, Kate Chanock and Rosemary Clerehan (eds), *Academic Skills Advising: Towards a Discipline* (1995) 6.

currently working with include: 1) recent immigrants from Sudan who wish to gain better understanding of Australian law to assist their immigrant communities in Australia and/or who hope to return to their country of origin to implement 'western' legal approaches and models; 2) international students from mainland China studying accounting (onshore or offshore) often with the aim of (re)entering China's burgeoning economy armed both with a qualification that will give him or her some competitive standing and with discipline knowledge that will allow him or her to contribute to its continued growth; 3) local students from non-English speaking backgrounds who are the first in their family to attend a higher education institution, and who are pursuing a paralegal qualification, often with the aspiration to continue on and become a lawyer.

With little or no exposure to local notions of Australian law and its epistemological foundations (the adversarial system, for example), these students, by and large, expect the institution to guide them explicitly in the relevant processes of discourse acquisition and appropriate identity construction<sup>12</sup> for them to succeed in their studies and future professions.

#### IV. COLLABORATION

An implication of the notion of centrality of language to content is that collaboration between language and learning practitioners and law teachers is essential. This issue is intensified further at institutions that place a premium on inclusion and are operating across multiple sectors. Difficulties experienced in this area may be mainly attributed to institutional constraints that often work to impede willingness to establish collaborative relationships with relevant language and learning staff. At the same time, however, law teachers routinely identify English language as an issue and also report that they do not know how to go about addressing it.<sup>13</sup> If English language skills are viewed as the role of the language and learning practitioner exclusively, it can make it difficult to establish the nature of the joint collaboration and how it might function effectively.

In part, the role of the COP group has been to encourage reflection on current and past experiences of collaboration as well as on current needs and challenges. Questions that have been raised for discussion include: How can language teachers teach legal writing without assuming legal expertise? Do we need to rethink embedding? Does it mean phasing out the language teacher? Projects like COP generate a new expertise and knowledge base and the question is: How might these be institutionalised? Do we need to create special structures within the institution to achieve this?

As literature in the area attests, there is no shortage of models for the integration of language and learning support into almost any module of academic study<sup>14</sup>. Approaches that have been utilised by the language and learning practitioners in the COP project include:

- the design and teaching of adjunct writing and academic skills subjects;
- the embedding of language and skills material into subject readers;
- the embedding of material into tutorial guides;
- the running of parallel workshops;
- team teaching;
- guest lectures within a subject;
- the development of online materials that are either stand-alone or embedded within subject specific WebCT/Blackboard type environments;

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12 Steve Price, 'Construction of Student Identity' (Paper presented at the Changing Identity Conference, Wollongong University, 30 Nov 2001).

13 See, eg, Janette Ryan, 'Improving Teaching and Learning Practices for International Students: Implications for Curriculum, Pedagogy and Assessment' in Jude Carroll & Janette Ryan (eds), *Teaching International Students: Improving Learning for All* (2005).

14 See McLean et al, above n 8; Chanock (ed), *Integrating the Teaching of Academic Discourse*, above n 15; Devlin above n 15; Helen Murphy and Brendon Stewart 'The integration of a Language and Learning Program into a Business Law Subject' (2001) (7)2 *The Current Commercial Law Journal*.

- collaboration with content lecturers on the development of materials in the English language program that address content issues; and
- collaboration with content lecturers to suggest approaches to language and learning issues, including:
  - implementation of research and student tracking initiatives,
  - examination of the curriculum with an eye to language as well as conceptual scaffolding, and
  - the design and implementation of ‘at risk’ detection tasks.

In collaborating with law staff, members of the COP have found that the most beneficial interactions occur when there is an openness on both sides. Such interaction reveals the invisible assumptions contained in their different practices; for example, the law teacher pausing to reflect for a moment on who actually is the ‘audience’ that they expect the student to be writing for when giving legal advice on a case problem. Then there is the realisation that the question is quite problematic. Or, likewise, the language and learning practitioner suddenly realises that the common law exists in case judgements alone; that the case judgements *are* the law, and that this understanding needs to be implicit in any appropriately written response dealing with case law. Often, effective collaboration also stems from a shared concern with student learning, which serves to highlight that pedagogy is a focus common to law teachers and language and learning practitioners alike, and can also serve to remind that emphasis should not be on language alone.

Furthermore, central to collaborating effectively is sensitivity to boundaries between expert discipline knowledge and the language and learning domain. While the accumulation of a certain amount of legal knowledge is necessary to ‘be able to challenge ... students intellectually on matters of disciplinary interpretation and articulation’,<sup>15</sup> it is important for the language and learning practitioner to refer matters to the law teacher when appropriate. It is essential, when developing an adjunct subject, to strike an effective balance between utilising the students’ desire for content and ensuring the focus is on ‘improving students’ ability to apply the appropriate rhetorical-legal reasoning and argumentative skills to their disciplinary assignments’.<sup>16</sup>

## V. CURRENT SUPPORT INITIATIVES

Support initiatives currently being ‘coordinated’ by the COP project include the development of a 10-week case-analysis skills module that has recently been added to the English for Academic Purposes (EAP) program at Liaoning University in Shenyang, mainland China. This module was developed on the basis of feedback from lecturers in the bachelor degree subject Corporate Law. In this subject, students struggle profoundly with the ‘application’ of the law in their problem case responses, and often simply describe the law. Many students are not familiar with the procedure of applying a theory or principle to a fact situation. To address this issue, the module introduces simple case analysis tasks on generic subjects and then scaffolds into some basic contract law. For example, topics such as *intention to create a legal agreement* are focused on and used to guide students explicitly through the process of identifying the issue, stating the relevant law, applying the law to the case, and stating a conclusion. In doing this, the linguistic structures suitable for carrying out the legal reasoning moves can be highlighted.<sup>17</sup>

Another initiative currently being undertaken is the development of an adjunct writing skills subject in the Diploma of Business (Legal Practice). This subject develops the students’ awareness of the requirements of legal writing and the rhetorical conventions that legal discourse employs when legal reasoning is demonstrated, particularly in relation to problem fact situations. Specifically, the positioning of the writer as a legal advisor is

<sup>15</sup> Nigel Bruce, ‘Dovetailing Language and Content: Teaching Balanced Argument in Legal Problem Answer Writing’ (2002) 21 *English for Specific Purposes* 321, 322.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*: for a detailed example of this.

highlighted, and the types of structures and typical metacommentary employed to signal relevant legal moves are demonstrated and practised. Collaboration between law teachers and language and learning practitioners has been central to determining the learning requirements in the subject. Another important aspect is to align the writing focus with the legal content and assessment tasks. A similar embedded writing skills subject for second-year students in this course is currently being developed as an online subject.

Another writing skills subject has been embedded into the Diploma of Business (Legal Service). This course is tailored to Horn of Africa students in the western suburbs of Melbourne who are interested in gaining better understanding of the Australian legal system to support community development, both locally and in their countries of origin. Again, emphasis is on familiarisation with common legal writing structures through a set of scaffolded writing tasks, and on regular writing practice.

In HE, various initiatives are currently in place, including a focus on language and learning support for students undertaking the subject Corporate Law. Many Corporate Law students bypass the first-year HE subject Business Law on the basis of having completed the Diploma of Business in TAFE. They often struggle with the more challenging requirements of this subject; for example, the extended major research assignment, analysis of a judgement from a case and key conceptual understandings. To address these difficulties, an online transition module has been developed. This module includes materials on the relationship between common law and statute law, and extensive materials on the skills required to complete the major research assignment, with a focus on rhetorical conventions and strategies used in legal writing.

In addition, members of the group are closely involved in rewriting the Diploma of Business at VU. This diploma is being redesigned to explicitly include English language and academic skills as an integral part of the content in the diploma.

## VII. CONCLUSION

The Community of Practice initiative described in this paper can be seen as a response to two developments. The first is the move over the past two decades towards more socially inclusive institutions, with an increase in the diversity of the student profile. The second is a reconceptualisation of language as central in the teaching of content. In response to these developments, the COP project at VU is formulating new pedagogies which are institutionally recognised and are being embedded cross-sectorally, to enable students to succeed in their chosen studies. These pedagogies have emerged through the integrated work of the members of the Community of Practice in collaboration with subject staff.

The next step is to extend our COP work by collaborating with language and learning practitioners cross-institutionally to develop models of practice and shared institutional understandings, to construct a formally recognised collaborative, interdisciplinary (community of) practice.