

What is the legal limit?

To what extent can EAP tutors advise on the content of legal studies assignments?

Siân Lund Kingston University

Writing is...

“To create and communicate thinking and knowledge.

*It is **more than just a tool** for showing you can apply knowledge or what you have learnt.*

doing that discipline, being part of a disciplinary discourse community.

... thinking, writing, being, knowing, communicating; inextricable from one another, part of practice.”

Thinking Writing: Queen Mary University of London

Kingston context and issues to address

- Context of this course
- Planning an approach – choosing and justifying
- Pedagogic applications
- Is this authentic?
- Is this feasible?
- What is the legal limit?
- What questions still remain?

Kingston University Context

University-wide in-session support includes:

- general academic support classes
- tutorials
- **In faculty discipline specific classes – embedded and as voluntary support classes**

Areas to develop

Academic Writing for PG Law (LLM and PG Dip)

- Once a week on timetable, voluntary
- TB1 – general essay/paragraph structure; general academic style and structure; Problem scenario. Generic features and general rhetorical functions of these genres.
- **TB2 – more specific to Law assignments: case notes; literature review; dissertations**

Previous PG Writing for Law

- General 'how to...' advice
- Overview of what was needed in each assignment type
- Little in-depth analysis of genres
- L2 language work – for NSs and NNSs?
- Difficulty for tutors to 'pick up and go'
- Specificity in comparison with other discipline-specific genres?

Action for change – stage 1

- Liaison with research methods tutor - genres
- Liaison with general English Legal System tutor
- Liaison with Course administrator - assignments
- Feedback and needs analysis from students
- Consideration of NSs and NNSs
- Which approach?

Action for change – stage 2

To what extent can the following be developed?

- **Closer analysis of assignment types**
- **Better understanding of assignment types – available for other tutors if necessary**
- **Draw on our strengths? scaffold**
- **Element of integrated language analysis and production**

Choosing an approach

Genre Analysis – text and context

‘should not be separated from the discourse community that gives rise to those texts.’ Badger (2003)

Elaborate needs analysis - specific knowledge and understanding of : Skills / Texts types / Tasks expected / Target situations. Bhatia (1993)

Genres are essentially defined in terms of the use of language in conventionalized communicative settings. Bhatia (1997)

Systemic Functional Linguistics – tutor/student in learning cycle/ SFL approach: ‘Need to make explicit the relationship between text and context’ Coffin and Donohue (2012) p66.

Academic Literacies – institutional context / ‘socio-political context’ / social identities

Writing Across the Disciplines (Mitchell, Deane)

Wingate (2012):

Agreed:

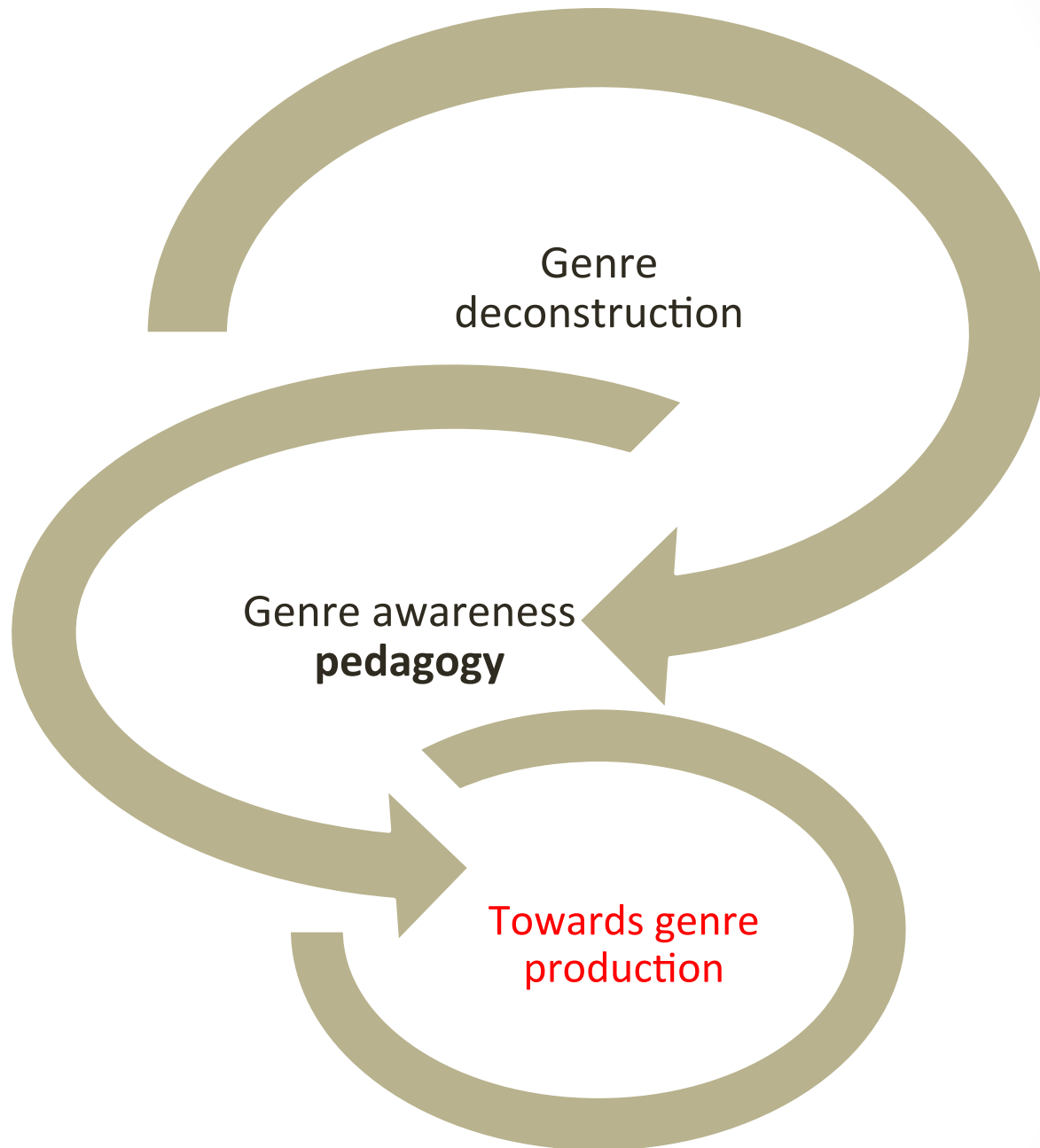
- Should be in the discipline

Controversial:

- Who should teach it?

Writing instructor – EAP and SFL / genre analysts

Subject specialist – writing in the Disciplines/academic literacies



Genre
deconstruction

Genre awareness
pedagogy

Towards genre
production

Justification for (EAP)genre approach

Explicit

Systematic

Needs-based

Supportive

Empowering

Critical

Consciousness-raising

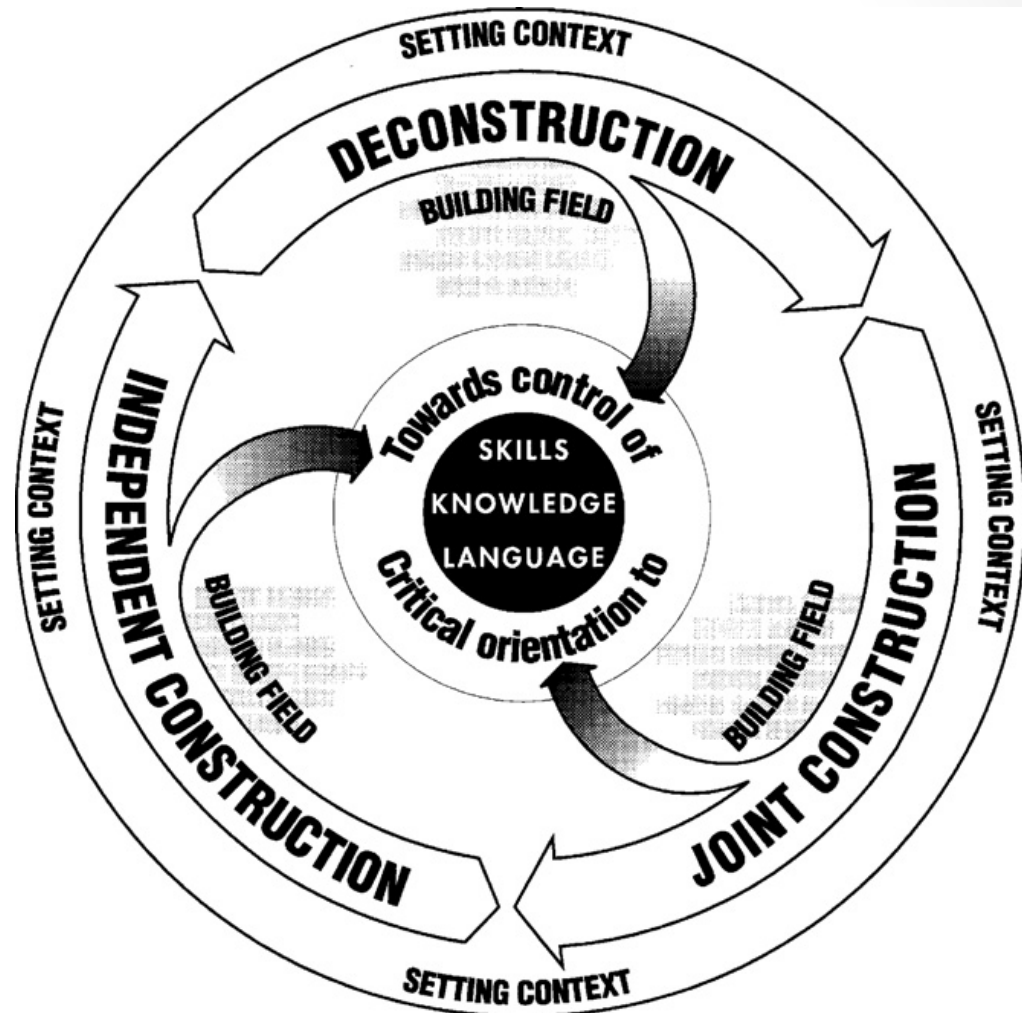
Law Studies rationale

genre approach - pedagogy

- We use legal genre from course content to draw out patterns and variations within a coherent framework of analysis in order to provide resources for students to explicitly recognise what is to be learnt.
- Scaffold support – we provide awareness-raising of discreet organisational features and language structures to extract and use for production, replicating authentic models.
- **Confidently advise students on writing – in context? Authentic?**

Hyland (2008)

Pedagogic possibilities




Rothery (1996), cited
in *J.R. Martin (2009)*

‘setting context and building up field (shared knowledge about content) and a critical orientation to the genre (with respect to its function in the culture).’

J.R. Martin (2009)

Legal Studies – can I be authentic?

- authentic materials analysis – check 
- authentic task and communicative function - **perform the tasks required in an authentic functional use of the text.**

Swales: 'I belatedly came to realise that the reading strategy required in legal education was not to understand and retain the gist of a narrative, but to spot the crucial facts on which the decision ... rested' Bhatia (1993) pp194-5

What is the legal context? What is the relation with professional practice?

What purpose does the text serve?

- Complexity and purpose for reading is different for a lay person and those with legal training (e.g. Finding ratio decidendi)
- Understand how the ' non-textual situation and the text structure of law reports are interrelated' (Badger 2003).

Reaching the legal limit: what **is** feasible?

TB2 dissertation preparation: case notes; lit review; dissertation

- Explicit: each genre maps assignments based on needs
- Systematic framework for raising awareness: form and function AND appropriate reading technique to discover function in context
- Scaffolding: explicit from teacher to support awareness

Hyland (2008)

Legal limit: What production is possible?

Case Notes - assessment criteria

- **Presentation:** Compliance with the format set out in the module guide, clarity of expression, use of academically appropriate language and style, grammar/syntax, use of footnotes where appropriate, use of graphs and tables where appropriate.
- **Structure:** The case note should be in a properly structured format, with appropriate use of headings to assist understanding.
- **Clarity: Cogency and clarity of exposition, analysis and argument. Accuracy of legal argument.**
- **Insights: Originality of thought and identification of novel ideas or insights deriving from the discussion of the case. Persuasiveness of analysis, argument and conclusions.**

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Guidelines from subject tutors:

*The Case Note is to be an extended casenote, presented in a form **suitable for publication**. The casenote should not only deal with the particular case, but should place it **in the context** of the relevant area in general. This may well involve **discussion of other cognate cases** and/or legislation and policy developments. It should contain the **author's analysis of the judgment(s) and critique** by way of conclusion.*

- From assessment notes in module guide

Case Notes examples: introductions

Mary Synge, **Independent Schools Council v Charity**

Commission for England and Wales [2011] UKUT 421 (TCC)

(2012) 75(4) MLR 606–654

Jackie Lane, '**Woodcock v Cumbria Primary Care Trust: The**

Objective Justification Test for Age Discrimination' (2013)

76 MLR 13

Examples on handouts

Case notes intros: functions

- Reference the case which courts/where? – in context,
- What was decision? On what grounds/basis?
- What were the implications of the decision?
How was it received?
- What was the question to be considered?
- Sources: any specific cognate cases and their implications?
- Sources: any relevant published discussions?
Providing definition of terms? Issues?
- More details of the case – basis of arguments

Identifying functions – fill in

Parties	Court
Grounds/basis	Decision
Cases/directives etc. questioned	
Context	Reception/impact of decision
Question for the case note	
Cognate cases	Implications
Sources: published discussions	Further details of case

Sentence construction

- This note discusses the limits to the defence of objective justification when applied to direct age discrimination, **specifically with regard to** situations where the employer attempts to rely on cost-saving as a legitimate aim. The author examines the jurisprudence of the Court of Justice of the European Union (formerly the European Court of Justice, ECJ) on which this case relies, and considers **whether** the defence has been interpreted too widely, **opening** up the possibility of cost-saving as a defence to discrimination on the grounds of this particular protected characteristic. The note concludes that, **while** cost-saving cannot be the sole justification for less favourable treatment by employers, **it may nevertheless** form part of an overall legitimate aim when coupled with additional factors.

Case notes intros: language

Hedging

- appeared to permit ; seem to suggest; It is arguable that ; it cannot be considered to be...

Adverbs

- famously challenged ; extensively examined

Action verbs

- xxx was challenged; he questions; it was argued ...; xxx seek clarification; xxx ruled that; xxx sought to explain; it declared; it sought judicial review; xxx had not agreed; xxxx claimed victory; principals were claimed

Case notes summary:

- This case was brought because....
- The outcome was....
- The case notes are concerned with whether.....
- Other cases and publications relating to this discuss/question etc.
- In this case X sought clarification/argued that/declared that...

Legal limit

- So far: Raise awareness and deconstruct
- **Next step:** authentic function within the discipline discourse:
'do the discipline'

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Questions still existing (TB2focus)

- What can be **produced** in class without extensive preparation by students?
- How far along the writing process?
- How far can a non-specialist **evaluate structure** of legal argument as authentic function?
- How far can a tutor **comment on students' writing** in specialised genres?