Initial Exercise: Writing a Case Note

1. The Challenge of the Primary Sources

The key to studying law successfully is learning how to deal with the primary sources – that is, statutes and case law. The challenge which this poses for students can be summarised in the following propositions:

- **It is vital that your understanding of the law be based on first-hand knowledge of the primary sources.**

  A secondary source (e.g. a textbook or lecture notes) is merely *someone else's interpretation*. It is written for a particular *purpose* (e.g. providing a general overview), and the interpretation will be directed towards achieving that purpose. It will skim over many points which may matter for the particular purpose of a question which *you* are called upon to answer.

- **The volume of material comprising the primary sources is enormous.**

  In particular, propositions of *case law* must be established by sythesising the effect of reported decisions. To establish a proposition thoroughly and accurately, it will often be necessary to take into account many individual decisions, each of which may run to many pages in length. The reasoning is often peppered with complex legal terminology, making it difficult to understand.

2. How (Not) to Respond

The challenge is clear. When faced with it, students typically respond in one of three ways, only one of which is a recipe for success:

1. **Give up**: "It's impossible to make sense of the cases. I just *cannot* do it. The textbook provides a neat summary and I can just rely upon that – besides, it's hard enough to read the textbook anyway."

   This type of student will never be a first-rate lawyer. In law exams, they will always be outshone by the students who have not shied away from the primary sources. The latter will be able to offer more insightful, more nuanced, more accurate and more interesting answers.

2. **Attempt to read *everything***: "I will make careful notes on everything I have been referred to, and then I will have missed nothing … it may mean that I have to give up sleeping and have no friends, but at least I will know that I could not have done more."

   This approach may seem more laudable, in the sense that the student concerned has tried to get to grips with the primary sources. But – and this seems sadly unjust – it is equally doomed to failure. This is because the volume of material

is so large that it is simply not possible to read everything and at the same time *make a sensible synthesis* of the information contained therein. Whilst there is no denying that studying law is hard work, sheer hard work alone will not suffice for success.

3. **Develop sound *judgement* about *what* read and *how* to read it**. This means not trying to read everything, but rather reading *what is important* and, within a particular source, focusing upon the parts which are the *most significant*. With good judgement about where to look, it is possible to produce detailed and accurate statements of the law without spending an inordinate amount of time in doing so.

3. Developing Sound Judgement

The foregoing will have clearly established the importance of judgement. How, then, does one go about developing it? The simple answer is that it cannot be formally taught in the same way as 'knowledge'. Rather, judgement is a skill which must be learned, either by trial and error, or through imitating others. Imitation can only ever make you as good (or bad) as the person you imitate. Trial and error, on the other hand, can take a long time. Most students, sensibly, rely upon a combination of both.

Trial and error

The first year is spent doing a lot of 'finding your way in the dark' – that is, using trial and error as to what is important and what is not.

- Adopt a critical and reflective approach to your study patterns. Ask yourself:

    (a) For sources which you read: what are the *significant* aspects of this source? Which parts are irrelevant? How, if at all, does it fit with everything else which I have read? How could I have read it more efficiently?

    (b) For the notes which you make: how are these notes helping me to sift the relevant from the irrelevant, to order and structure the material and to add my own insights to what I have read? How could I order my notes more efficiently and effectively?

    (c) For each tutorial which you attend: what did you read that turned out to be irrelevant? Why? What did you not read that you should have done? Why? How could you improve upon your selection in future?

- Your tutor will seek to correct the substantive errors which you have made during tutorial preparation, but how you learn from the *process* which you follow leading up to and following each tutorial is something for which *you* must take responsibility. This is because only you know how you have prepared, how much work you have done, and how useful that has all been in aiding and developing your understanding of the material.

Imitation

At the same time, there are many sources of inspiration if you would like to imitate others:

1. Your fellow students: who has read what? Why? What did they get out of it? Learn to discuss issues in groups: this may feel difficult at first, but it can be one of the most productive approaches for many people.

2. Second and third year (and graduate) students: they have more experience of legal study and can provide you with pointers about what (not) to do when reading primary sources.

3. Your lecturers and tutors: look at the way in which they select particular cases for extensive discussion – why do you think they do that? What is it about those cases which makes them important?

4. Academic writing: how do academic authors develop arguments? How do they select what to emphasise and what to skim over? *Case notes* written by academics are a particularly useful pointer in learning what is, and what is not, important about particular decisions. They can be found in law journals, such as the *Cambridge Law Journal* and the *Law Quarterly Review* by looking in the consolidated index under the name of the case, or by looking in the relevant volume(s) shortly after the case was decided. But you can learn the style and structure of such selection by reading longer articles from legal journals too, again paying attention to how the argument is constructed and how the primary legal materials are used.

4. Exercise: Case note on *Miller* v. *Jackson* [1977] 1 Q.B. 966

To get you started, I would like you to begin with an exercise in understanding case law. I want you to write a short 'case note' on a famous decision, *Miller* v. *Jackson* (which is one which you will study later in Tort Law). A case note is a short piece of writing which summarises the impact of a case. A copy of the reported case was enclosed in the materials we sent you over the summer – that case is the relevant primary source. You should now prepare a short 'case note' on that judgment.

It should include the following:

1. A summary of the *facts* of the case. This should be as short as possible. Only include those facts relevant to the point of law decided. You will need to exercise *judgement* as to what is, and what is not, relevant.

2. An indication of the party in whose favour the case was decided.[1]

3. A statement of the proposition of law upon which the decision was made. This is often referred to as the '*ratio*' or, more fully, the '*ratio decidendi*' of a case. Simply put, this is the 'legal principle' that led the court to decide the way it did. The court's decision thereby becomes *authority* in support of the proposition that this principle is a binding legal rule for similar cases.

4. A discussion of any other interesting features of the case:

    (a) So-called *obiter dicta* (or simply '*dicta*' or even '*obiter*') are statements made by the judges in passing, which do not constitute binding legal rules because they were not essential to the court's reasoning in reaching its conclusion, but they may nevertheless constitute persuasive statements which may be taken into account in future decisions;

[1] In a civil case, the 'claimant' [previously known as the 'plaintiff'] brings a case, which the 'defendant' must answer; in a criminal case, the respective terms are 'prosecution' and 'defendant'. If the case has been appealed, then the more confusing terminology of 'appellant' and 'respondent' is often used – the appellant being the party who was unsuccessful in the lower court. For simplicity, it is preferable simply to stick to 'claimant' (or 'prosecution') and 'defendant' as the parties were in the original action.

(b) Any *dissenting* judgments, which may weaken the force of the rule established by the case or which may provide alternative analysis of the issues involved.

5. A brief *assessment* of the implications of the case. Does it clarify this area of the law? Is the result desirable?

Further guidance about reading cases, which may be of assistance, can be found in:

S.I. Strong, *How to Write Law Essays and Exams* (Oxford University Press, 6th edn., 2022);

A.T.H. Smith, *Glanville Williams: Learning the Law* (Thomson Sweet & Maxwell, 17th edn., 2020).

Your case note should be **no longer than 1000 words** (if typed, use the 'word count' function) or 3 sides of A4 if hand-written. We will discuss the exercise together in a later seminar, at a time and venue to be confirmed when you have arrived in Oxford.

Angus Johnston
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