

Legal discourses:
Handling cases on law reading
lists efficiently and
appropriately



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General questions to ponder

What do students do when encountering cases?

What can they do?

How can this help the EALP teacher?

Aims

- To help you get a sense of reading on an LLM
- To raise awareness of what your students may be doing and can be doing when approaching law reading
- To get you thinking how you can prepare students better for their studies

May also help you read law more efficiently

1. Overview of sources of law and sources about law

1. Primary sources: sources OF law
2. Secondary sources: sources ABOUT law

Statutes/legislation

Lexis, Westlaw, legislation.gov.uk

Law reports/case reports

Lexis, Westlaw, BAILII

Books (textbooks,
monographs, edited
works)

Library catalogue;
Google scholar

**Governmental
and similar** e.g.

Consultations,
white papers, Gov. depts
Hansard

Journals

Lexis, Westlaw,
Google Scholar,
Heinonline

Reference e.g.
Halsbury's Laws of England

Lexis, Westlaw

Course material e.g.
seminar handouts,
lecture slides and notes

Study aid e.g.
dissertations and theses,
generalist websites e.g.
law firms, newspapers,
organisations e.g.
Amnesty, Wikipedia

2. Illustration of what our students are faced with: pre-sessional

Shogun Finance Ltd v Hudson [2003] UKHL 62

Law school guest seminar: commercial law

Pre-sessional, about 1 day to prepare

1. Source about law: 35 pages of a textbook introducing commercial law
2. Source of law: a 64-page case

Tasks specifically about the case:

- summarise the case “in your own words”,
- identify “who gave the leading judgment”,
- identify “the main differences between the views of the majority and the minority”.

Reflecting on the reading requirements for pre-sessional students

1. Did students need to read the chapter and the case?
 - If so, HOW did they need to read either/both of those?
2. Was it our job on the pre-sessional to practise this skill?

3. Why can students “get away with” not reading cases?

- A) Who are the students?
- B) What do they need to learn?
- C) What is their priority?
- D) What is realistic?

- A) international post-graduates and many/most of them will not practise law in a common law jurisdiction
- B) Depends on their role:
 - I. Advisory role
 - II. Policy role
 - III. Advocacy role
 - IV. The fourth role: as a student – understanding the law; academic reading skills; academic legal skills; **appropriate professional legal skills**

(from Stratman, cited by Christensen)

- C) Understanding the law
- D) See later

Understanding the law: Formal schema v Content schema

Formal schema – the structure and discourse of the text types

Content schema – background knowledge of the subject; the content domain

International masters' students need to prioritise the second item.

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Corporate Governance course

Seminar handout

The board and the shareholders

Required reading

D Kershaw *Company Law in Context* (2nd ed. OUP 2012) Chapters 5 and 6

Further reading

Davies and Worthington *Gower's Principles of Modern Company Law* (10th ed. Sweet and Maxwell 2016) Chapter 9 Chapter 11

R Kraakman et al (eds.) *The Anatomy of Corporate Law, A Comparative and Functional Approach* (2nd Edition OUP 2009) Chapter 2

Roach Card and James' *Business Law* (4th Edition OUP 2016) Chapters 18 and 19

Tricker *Corporate Governance: Principles, Policies, and Practices* (3rd Edition, OUP 2015). Chapter 1 and Chapter 7

Key Assesing Accountability of Boards Under the UK Corporate Governance Code [2015] JBL 551

FRC Guidance on Board Effectiveness (2018)

ICSA Boardroom Behaviours (ICSA 2009)

Legislation / rules

Companies Act 2006, ss 21, 168, 190, 303-305

UKLA, The Listing Rules, paras 10.2.1; 10.2.2; 10 Annex 1; 10.4; 10.5.1; 13.4.1-10.5 and 13.4-13.5

Case law

Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 35

Bushell v Faith [1970] A C 1099

Seminar Questions

1. Who make s the major corporate decisions?
2. How is power share d among various stake holders? Do share holders have much power?
3. How are share holders meetings calle d?
4. Is the balance between share holders' power and dire ctors' power appropriate ?
5. How do the rules of agency inform the above questions?

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The maths: is the reading list realistic?

- LLM at Glasgow: 6 courses, 3 in semester 1, 3 in semester 2.
- Each course = 20 credits
- SQAA (QAA in England) – Quality Assurance: notional 10 hours work for 1 credit => 200 hours per course
- Therefore, 600 hours a semester or around 46 hours a week expected of students
- Reading list shown is about 300 pages, so 3 courses of 300 pgs)

How much can someone read per week?

5. Problems students face with reading lists

- **Purpose not clear:** students start with the case and waste time as they aren't sure what they want from the case
- **Insufficient content schema:** when students read a case, they don't understand the background/that area of law
- **Insufficient content schema:** they don't understand the context of that particular case – history of appeal; court; treatment
- **Insufficient formal schema (genre knowledge):** problems with structure, style of language; what's important
- **Cultural expectations:** they start with legislation because they are from civil traditions that place this as primary law – so they don't get what they expect and need (much of the content schema)
- **Work linearly:** they work through the reading list in order, trying to read everything
- **Shortcuts, easy options, avoidance:** they don't engage with the literature in English e.g. they translate it or they use translated guides on these topics e.g. Chinese language resources – long-term damaging to their ability to communicate on the topic in English, though it may be fast; they use Google. Risk of error.

6. What can (or should) students do

1. Essential reading! Obviously
2. Skim the secondary sources in additional/further reading
3. Where do the cases fit within the essential reading? Read “around” the cases
pay attention to when (or if) and to what extent they are covered in the reading at stage 1 and 2

The process they can follow

See separate document

7. Summary: practical tips

A. The easy option and avoidance approach – what students do

- a. Secondary texts in students' own language on the legal topic
- b. Wikipedia and generalist websites - read in English or translated
- c. Textbook
- d. Journal article
- e. Primary sources

B. What students can/should do

1. Core text from the course – locate the case while reading that
2. Look for the case on suitable database e.g. Westlaw
3. Look at an expanded commentary on the case through the most appropriate looking text
4. Use generalist sources to compare your understanding
5. Use translated texts – by this time, student should have a pretty good idea about the background and the relevance of the case, so they'll really just be confirming understanding, and less likely to be misled by errors in the translation
6. If necessary, consider articles under commentary

References and suggested reading

Reading cases:

Hanson, Sharon. Learning legal skills and reasoning. Routledge, 2015. Finch legal skills

<https://www.lawnerds.com/guide/reading.htm>

<https://lawbore.net/articles/letterstoalawstudent.pdf>

Legal reading and reading skills more generally

Allison, N. (2023) From semantic weight to legal ontology via classification of concepts in legal texts. Law Teacher

Christensen, L. M. (2006). Legal reading and success in law school: An empirical study. Seattle UL Rev., 30, 603.

Christensen, L. M. (2008). The paradox of legal expertise: a study of experts and novices reading the law. BYU Educ. & LJ, 53.

Some additional explanation and justification for avoiding cases

The next two slides may be useful to understand more about why with international masters students we can skirt around cases:

1. An overview of some of the skills they need as students and as professionals in a common law system
2. The focus of masters' courses versus undergraduate courses (their ILOs)

Reading skills, study skills - legal skills and legal reading skills

Student: reading skills and study skills

- Understand law (concepts, rules, principles etc)
- Analyse and synthesise ideas on law

Professional: advisory, policy, advocacy

- Understanding facts
- Distinguishing between important and unimportant facts
- Understand legal rules and legal concepts
- Understand how legal experts apply rules and concepts to facts
- Understand how legal experts use primary sources to analyse rules and concepts
- Understand how legal experts use inductive principles to derive rules (e.g. using previous cases)
- Understand how legal experts use principles to inform reasoning
- Understand the development of a legal argument
- Distinguish between obiter dicta and ratio decidendi

Are the aims for international PG students different from UG domestic students?

Intended Learning Outcomes of Course

By the end of this course students will:

- Be able to demonstrate a critical knowledge of the law related to the Sale and Supply of Goods, Consumer Credit, Insurance and other discrete areas of Commercial Law;
- Be able to apply their knowledge of Commercial law to hypothetical problems and fact scenarios.
- Be able to write critically about the law and how it has developed in the context of the subject matter of the course.
- Have developed a sound ability to research both primary and secondary sources of Commercial Law.
- Be able to identify issues of professional ethics in the legal profession in typical commercial law settings

operates.

2. be able to demonstrate critical awareness of the role of different stakeholders in companies.

3. have a comprehensive understanding of the structure and powers of the decision-making organs of companies.

4. be able to evaluate the role of 'soft-law' and market discipline in the development of corporate governance.

5. be able to engage with current debates and reform proposals in the field.