

ETHICS, LAW AND JUSTICE: INDEX

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Introduction

Topics:

- **Intro to subject, to justice, to assessments**
- **What is reflective writing**
- **What is objective writing**
- **Self management for collaboration plan**

Points for clear writing:

- **Clarity of position**
- **Supporting evidence**
- **Grammar**
- **Choice of vocabulary**
- **Formality/tone**
- **Citation**
- **Conclusion**

What are some tips for good legal writing?

Catriona Cook, Robin Creyke, Robert Geddes, David Harmer 'Laying down the law' pp 405-414

- Legal writing covers: legislation, contracts, wills, letters of demand, pleadings, written submissions to court, judicial decisions (405)
- Vehicle for persuasion
- Interesting, clear and readable
- Develop your own legal style (406)
- Keep in mind one's audience, achieve the right tone
- Simplicity – current phrases. Less words (407)
- Precision, proof reading, clarity (408)
- Formality, avoid colloquialisms, third person
- Active voice
- Legal terminology – know what the word means in the context, but no unnecessary use (409)
- Avoid race of gender specific language
- Balance, authority v originality, supporting with authority (410)
- Acknowledgement of sources
- Footnotes, specific page references (411)
- Balance of quote v paraphrase
- Italics for case names, acts and book titles (412)
- Little emphasis used, but if you are using it, italicize the word
- Foreign words and phrases italicized
- Punctuation, apostrophes (413)
- Rhetorical style – art of constructing a legal argument – organization
- Introduction, methodical, separate headings, conclusion (414)

Nichola Cotbett-Jarvis and Brendan Grigg 'Effective legal writing: A practical guide' pp 92-96

- Relating to the authority and situation (93)
- Difference between problem and theoretical questions
- Problem: relate to event, IRAC, application of the law (94)
- Theoretical: detailed analysis in abstract setting, reach a determination (95)

Dave Powell and Emma Teare 'Writing for law' pp 13-21

- Need the 'why' – applying to facts – use the case to demonstrate the legal principle (13)
- Establishing authority (14)
- What is the point?
- Needs to help your line of argument (15)
- Relevance of statements (16)
- Demonstrated to be true? (17)
- Backed up with leading cases
- Journal articles referenced in footnotes (18)
- Authority: primary is acts, legislation – anything without other references, secondary: generally opinion (19)
- Use the writings of academics to support your opinion (20)
- Mixture of forms of reference

Michelle Sanson, Thalia Anthony, David Worswick 'Connecting with law' pp 37-39

- Difference between deliberate (dishonest) and inadvertent (negligent) plagiarism. Inadvertent is when it was an accident (37)
- Breach of ethical principles rather than legal rules
- Reference multiple times for same source- eg if use in two sentences in a row, and the second involves a quote, reference it. (38)
- Cases: *Re AJG* – during PLT, the student copied another student, and disclosed this to the Solicitor's Board in Queensland. The Queensland Court of Appeal did not consider stress to be an excusing factor for such behavior late in the degree, and was determined to not be fit for legal practitioner
- *Re Liveri*: was handing in assignments that were published articles, aside from a few amendments – two other instances had occurred before. She was rejected from admission in NSW and QLD.
- (39) *In the Matter of OG*: two students assignments were very similar and both received zero. When time for admission, one disclosed and was not admitted. The other did not disclose fully, and said it was minor and was found not to be plagiarism. He was admitted, but later the Supreme Court of Victoria struck him off the role

Jane Wangmann, "A note on referencing and acknowledging work of others' pp 1-6

- Evaluate authoritativeness of every source – are they an expert, do they have evidence (1)
- Past student essays need to be referenced as source (2) – considered an unpublished paper, or cite as internet material
- Quotation marks, pin point references – need to have the page specific (3)
- Need to always have quotations if using their phrases
- Students fail to put the article title in plain text, journal title in italics, start page of article and pinpoint (for journal) (5)
- If using an internet database, do not need to cite
- If you use the word 'many', show many examples (6)
- If referencing a source with a source, say 'as quoted in'

Patrick Stokes 'No you're not entitled to your opinion' – class handout

- *"You are not entitled to your opinion. You are only entitled to what you can argue for."*
- 'I'm entitled to my own opinion becomes the cover for 'I can say or think whatever I like', even if the belief should be 'abandoned'
- *"An opinion has a degree of subjectivity and uncertainty to it"*
- But opinion can range from taste – which you can't really argue with, to views about questions that most people are concerned with – but these can be argued with.
- *"But if 'entitled to an opinion' means 'entitled to have your views treated as serious candidates for the truth, then it's pretty clearly false'."*

Justice Theory and the law Asylum seekers and access to justice

Topics:

- **Defining justice – distributive, procedural and retributive**
- **Law and ‘obedience’**
- **Structural injustice**
- **Asylum seekers and access to justice**

Class notes:

Jane McAdam video – 13,750 places for refugees each year in Australia, 7,750 in the special humanitarian program – women at risk, refugees bringing families

Out of sight, out of mind – not in the news, censorship

Questions:

1. *Which theory of distributive justice would be appropriate for distribution of access to medicine and health services?* Egalitarianism because everyone needs equal access
2. *"" for internet within a community?* Desert theory, arguable that internet is not really necessary to life, so should be based on effort to get it
3. Our criminal justice system is **retributive**, because there is more focus on punishment than rehabilitation, and there is little contact with the victim. But should be more restorative, to reduce recidivism
4. *How should pressure and external stressors be dealt with in disciplinary proceedings? Who should be responsible for work pressure?* Currently, tribunals don't take into consideration work pressure when disciplining, expecting the solicitor to understand the profession. However, this is unreasonable, as lawyers are now pushed harder than ever to reach billable targets, and it would be extremely stressful and difficult to manage. There should be some examination on the firm
5. *Is the proposal to discipline the whole firm, instead of individual lawyers appropriate?* I think the firm certainly has to be examined, because this is where the pressure largely comes from. There should be an inquiry through other staff about the firm's culture and whether they are contributory.
6. *How is violence perceived in our legal system? How does injustice occur and how well does our legal system deal with structural injustice?* Violence is perceived as a physical act by an individual in our system, and does not address the different types of mental or psychological violence, or even physical ailment caused by poverty, caused by institutions. Does not deal well with structural injustice – the issue of indigenous people, culture, the law itself as an institution
7. *What are some laws that perpetuate, rather than alleviate, injustice or inequality?* Access to the legal system – difficulty in legal aid, Australia's Border Force act and treatment of asylum seekers, arguably drug offences, marriage inequality, IVF for homosexuals
8. *Are some injustices intentionally placed in the legal system to uphold interests of the powerful?* Critical legal theorists and Marx legal theorists would agree – all about economics, property laws. Eg all the laws with Indigenous people, the Native Title Ten Point Plan. Beneficiaries are those with wealth, property and status, the victims are the lower classes. Cannot blame the individuals with status, as it is often the institutions that got them there. Large corporations and NSW planning laws.
9. *Situations where justice may be served by breaking the law?* Allowing homeless to sleep rough and not ask to move on, saving a life if it requires breaking road rules, speaking out on Nauru against Border Force Act.

How to deal with structural injustices? Law reform, but by engaging with those who are affected and discovering the issues. More money into welfare and supporting those in need to get out of