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ABSTRACT

A discussion of the teaching and learning of English for special purposes focuses on the interrelationship of content and language, particularly in the case of education for the legal professions. It is noted that law students must both study a large corpus of case and statute law and legal principles and learn the language of the law, with its distinctive archaisms, jargon, and often complicated syntax. A study of students who failed the final examination in an introductory commercial law course conducted in English, which identified specific problems encountered by both native speakers and English learners, is reported. This genre of academic English is then examined, with special attention given to legal problem-style questions. Linguistic features of legal language that are discussed include schematic structure, cohesion, reference, conjunction, lexical cohesion, thematic progression, transitivity, nominal groups, and the mixture of both narrative and expository features. A program of supportive instruction for second-language learners in such courses, used in an Australian university, is described. Student survey results, the survey form, and notes on schematic structure are appended. (Contains 38 references.) (MSE)

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LANGUAGE AND CONTENT: THE CASE OF LAW
(will be read in English)

Teachers involved in providing language support for students using an L2 as a medium of learning are continually confronted with the interconnectedness of language and content. Probably no other subject illustrates this quite so clearly as law. Students have to not only grapple with a large body of case and statute law and legal principles (CONTENT) but also learn the LANGUAGE of the law with its distinctive archaisms, jargon, and often complicated syntax, so it is hardly surprising that both L1 and L2 students often experience considerable difficulty studying it. This paper explores the genre of academic legal English especially legal problem style questions and outlines a programme of support classes for L2 students studying an introductory university commercial law course in English.

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LANGUAGE & CONTENT: THE CASE OF LAW

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Introduction

What is perhaps most striking about learning a subject like Law is the obvious interconnectedness of language and content. Most people are very aware of the distinctiveness of legal language, both written and spoken, through their contact with legal documents of many kinds from insurance policies to parking tickets and their exposure to courtroom language through film and television. While most students would be expected to experience some difficulties adjusting to legal discourse in the learning of the content of an introductory law course, students from other languages and cultures may find the peculiarities of the language of the law to be a significant extra barrier to both understanding the course content and successfully completing the various tasks of the course.

This paper explores some of the difficulties that students, especially those from another language and cultural background, may experience with introductory tertiary legal study. After a brief discussion of some of the general characteristics of legal language, students' experiences with an introductory commercial law course will be examined in some detail. The paper then explores some of the linguistic features of academic legal discourse, and in particular the features of the legal problem question, which is an important new genre that students encounter in tutorials, assignments and examinations that comprises a large proportion of the assessment in law courses. Finally, a brief outline will be given of a programme of support classes conducted by the author for second language learners studying the first year Commerce course *Principles of Commercial Law (C165)* at Murdoch University. The classes aim to address some of the issues of the language and content demands in the C165 course to improve students' understanding and success.

Legal Language

Legal English may diverge in many respects from the language that many speakers (especially second language speakers) bring with them to university. This divergence may occur at all levels of the language system, lexical, syntactic, prosodic, and at the discourse level.

Crystal (1987) notes in his discussion of legal language that

There is no other variety where the users place such store on the nuances of meaning conveyed by language, where unstated intentions are so disregarded, and where the history of previous usage counts for so much (p.386).

Mellinkoff (1963) in his classic study *The Language of the Law* criticizes the law's "wordiness, lack of clarity, pomposity and dullness". He describes in detail the characteristics of legal language: the use of archaic words and phrases from Old and Middle English, French and Latin, the use of formal or ceremonial words and constructions in both written and spoken legal contexts, and the use of both precise technical legal terms and deliberately vague words and phrases. Gustafsson (1984) identifies binomials, i.e. sequences of two words belonging to the same word class and syntactically co-ordinated and semantically related, such as *by and with* and *advice and consent* as being a distinct stylistic marker of legal English being 4-5 times more common than in other prose texts. Quirk et. al. (1972) also identify a class of complex prepositions such as *in respect of*, *in accordance with*, etc., as being much more common in legal English than in other varieties of English.

Danet (1985) in her discussion of written legal English discourse similarly elaborates a number of distinctive lexical, syntactic, prosodic, and discourse-level features through the analysis of a British legal "Assignment" document. Lexical features cited include technical terms (or "terms of art" in legal parlance) such as *real property* and *fee simple*; common terms with uncommon meanings in a legal context such as *assignment* and *beneficial*; archaic expressions such as *hereinafter* and *wheresoever*; doublets such as *cease and desist*, and *will and bequeath*; high formality such as the preference for *shall* over *will*, and the use of the present emphatic *do(es) hereby convey*; unusual prepositional phrases such as *as to* (see Charrow et al, 1982; Quirk et. al., 1972); and the high frequency of the word *any*. Syntactic features noted include the prominence of nominalizations such as *make such provision for the payment* instead of *provide for the payment*; the prominence of passive constructions such as *it is hereby declared*; the frequency of whiz deletion (i.e. the omission of a *wh-* word and the verb *to be*) eg. *agreement ... herein (which is) contained or implied*; the frequent use of complex conditionals; the high incidence of strings of prepositional phrases; the unusual length and complexity of many sentences with frequent clausal embedding; the use of *said* and *such* as determiners eg. *The Creditors have agreed to accept such proposal*; the preference for the third person; the frequency of negatives especially multiple negatives; the prominence of binomials (see Gustafsson, 1984) and parallel structures.

Danet also explores "possibly distinctive prosodic features of the legal register" such as the occurrence of poetic features: "mainly in binomial expressions and in the critically performative parts of documents". She describes evidence of assonance, alliteration, phonemic contrast, rhyme, rhythm, metre, and end weight (i.e. where "there are more beats, or more phonetic

material, in the second half of a two-part expression”). Discourse-level features, such as cohesion and thematic progression, were also explored by Danet. Her analysis revealed that pronominal reference appears to be eschewed as a cohesive device “presumably to avoid ambiguity” and that there is consequently much lexical repetition and also, relatively little use of synonymy between sentences. She also comments on the extreme propositional density of these types of texts:

The maze of embedded clauses and prepositional phrases in the Assignment makes this evident. Propositional density, in turn, entails a striking lack of redundancy in information communicated- every word counts.(p. 286)

Kurzon (1984) studied the thematic progression of five British legal texts: a will, a deed, a contract, a court order, and a statute. His study revealed that these texts have an identifiable thematic structure which predominantly “involves the hypertheme of the particular text, which is derived from two sources: the set of expectations produced by the specific genre of text, and the title of the text, if there is one”.

The language of legislation and legal documents, then, possesses a distinctive style exhibiting an uneasy combination of precision, explicitness (the use of exhaustive, all-inclusive lists), flexibility (the use of vague words such as *reasonable*), and condensation (“to fit all the elements of the rule within the confines of one sentence [Maley, 1987]”). Both draftsmen and judges “have developed characteristic strategies of producing and interpreting the text so created that will promote the interests of both stability and flexibility (ibid,p.46)”.

The result , however, is that legal documents are often very complex syntactically and very difficult to read. Bhatia (1982) and Swales and Bhatia (1983) identify the many discontinuous qualifications, cross-references, provisions, complex prepositional structures, nominalizations and excessive length of legislative writing as causing processing difficulty, placing excessive strain on short term memory.

Comprehension problems are not confined to written legal language, however. Charrow et. al. (1982) in a study of the comprehensibility of standard jury instructions in U.S. courtrooms discuss a number of grammatical and discourse features, similar to those noted above for legal documents, that create comprehension problems for jurors, including truncated passives, misplaced phrases, nominalizations, prepositional phrases such as *as to* , repetition in discourse, subordinate clause embeddings, and multiple negatives.

While the most extensively studied area of legal language has undoubtedly been the language of legislation and legal documents (Bhatia,1987), there has been comparatively little work done in the area of academic legal discourse. Swales (1982) in a study of the role of cases in English for academic legal purposes, identified three different ways (parenthetical, locative, and “marked”) that cases were cited in academic legal texts and the discourse functions they

perform. In this study, he attempts to show that “a specific genre such as ‘case-rich’ legal discussion has specific patterns of organization which are expounded by lexical and syntactic features peculiar to it (ibid,p.140)”. Furthermore, an investigation of non-native English students’ use of cases in answering examination questions demonstrated a high correlation between the number of cases cited and the grade the student achieved illustrating the importance “for students to set out their authorities by including references to the principal relevant cases (p.146)”.

Bhatia (1987) discusses the unique and invariant discourse structure of legal cases and judgements: the facts of the case are outlined first, followed by the judge’s argument and a discussion of previous relevant cases and the rules of law which pertain to them, leading to the *ratio decidendi* (principle of law deducible from this particular case and the judge’s argument), followed finally by the judge’s decision in the case. Swales (1982) comments that a student’s problems in studying legal cases involve determining “whether a judicial decision is *relevant*, whether a fact is *material*, or whether a particular case is *distinguishable* from another one (p.140)”.

Davie (1982) ranked nine types of problems that non-native students experience in the study of legal discourse ranging from inability to see the legal significance of a case down to unfamiliarity with archaisms, formal vocabulary, lexical collocations such as *impose a sentence, file a petition* etc., and other general vocabulary. He also claims that second-language students have problems with the discourse structure of legal cases which often follow what he terms ‘forensic argument’ and the typical pattern: “it is said that such-and-such BUT the court thinks otherwise.” These students, likewise, have difficulty identifying the *ratio decidendi* of cases which Davie maintains is almost invariably in mid-paragraph which “leads to interpretations which are diametrically opposed to what the law actually is (p.2)”. Davie also cites the need for non-native students to “spot discourse markers effectively (ibid)”.

Whilst the linguists and language teachers cited above have identified many distinctive features of legal discourse, what do students themselves (both native speakers of English and second language learners) identify as being problematic in learning the language of the law?

Students’ Perceptions of Problems

Students of the first year Commerce course *Principles of Commercial Law (C165)* who failed the examination component, i.e. scored less than 30 out of 60 marks in the final exam, were contacted by mail by the author late last year and invited to discuss their exam results and experiences with the course. Unfortunately a number of students could not be interviewed because it was university vacation, especially a number of overseas students who had returned home for the break. At the interview, students were asked to complete a questionnaire about

their experiences with C165 (See *Appendix 1*). Students were given an opportunity to examine their exam papers as well as to make further comments on any aspect of the C165 course.

Of the 26 students interviewed, only one¹ had any prior experience of legal study (Q.1). Sixteen of the students were native English speakers (L1) while the other ten were native speakers of an Asian language (Chinese, Indian, or Malay/Indonesian), i.e. they were bi- or multi-lingual and English was a second language (L2) for them (Q.2).

Whilst about a third of the native speakers felt that the C165 course was more difficult than their other subjects (Q.3), nearly all (80%) of the L2 speakers found it to be harder than their other subjects. Some L1 students expressed difficulty with the difference in "style" of Law particularly with regards to essay writing and exam answers:

- * The essay writing was different and made it hard to determine what was required.
- * I personally found it harder... my other subjects were quite similar in subject matter and style to my TEE² subjects...
- * ...difficult to express the factual-like information learnt throughout the semester into an appropriate exam answer.

The L2 students, on the other hand, commented on the difficulty of the language and concepts themselves as well as the demands of memorising a large number of cases and facts and the need to develop analytical skills:

- * Legal language - grammar (sic). Most importantly students should be warned that a *DICTIONARY* meaning does not explain the formal *legal* meaning.
- * difficult in understand the concept
- * I need to memorize cases and the legal concepts instead of just understanding them like in other subjects.
- * lots of facts to be memorised
- * ... a lot of cases to study
- * harder for me to understand concepts
- * ... more analytical (sic) skills compared to other introductory courses, but luckily it's more interesting as well.
- * ... a lot of words or terms that are very difficult for me to understand.

Not surprisingly perhaps, nearly all students interviewed expected to pass the unit (Q.4). Most students believed they had done enough work to pass. All, except one L2 student, failed the exam, however. When the other components of the course were included (assignment, tutorials, mid-semester test), ten of the L1 students managed a pass grade overall, while the remaining five failed the course. Of the ten L2 students, there were two passes, two conceded passes, and five fails with the student who passed the exam achieving a credit grade overall.

¹ A Malaysian ESL student who had studied Business Law in a Diploma course.

² TEE stands for Tertiary Entrance Examination in Western Australia, i.e. the matriculation or university entrance exam.

Regarding the difficulty of the lectures (Q.5), the responses of the two groups were in marked contrast. Most L1 students did not experience difficulty with the lecture situation (84.4%) whilst half the L2 students did. Some L2 students commented on the need to prepare beforehand for the lectures as well as having difficulty with legal language:

- * because you must read before the lecture, otherwise you will lose the interest.
- * the lecturer often just explained the concepts very briefly, expecting us to be prepared before the lecture. Even if we were prepared, I think it is a bit difficult.
- * Because some words or items are difficult to understand.
- * Yes and No. Just some legal vocabulary was new to me... and am not used to lateral thinking.

Responses to the tutorial situation (Q.6) were remarkably similar, however, with roughly 40% of L1 and L2 students expressing some difficulty there. A number of students expressed difficulty in following the course of the discussion while others (including native speakers) expressed difficulty in participating in tutorials:

- * ... the tutor went into great details about the concepts and I lost track of what was happening and where we were going (L1)
- * the actual answer plan to questions - applying legal principles. (L1)
- * Because you had to participate quite vocally and I'm not the most vocal sort of person. (L1)
- * as I never really was in the tutorial discussion and it too began to get hard to follow although I did gain more understand (sic) of the course through them. (L1)
- * Once again we have to be prepared... However, often the lecturer's attitude was 'intimidating' on the students. (L2)
- * wasn't sure how to answer questions. (L2)
- * because they teach too fast. (L2)
- * The lecturer ... used to "beat around the bush" in trying to explain a specific point of law.(L2)

The results on Question 7 showed considerable divergence between L1 and L2 students' experiences with the course textbooks. Whereas only about 20% of native speakers admitted having difficulty with the course texts, 80% of the L2 students found difficulty with them. Most students appeared to find the main textbook (Paul Latimer's *Australian Business Law*) to be well organized but many commented on the jargon, "lawyer phrases", and tedious language:

- * It was a law book which used very vage (sic) terms and 'lawyer phrases' which was hard to follow to a certain extent.(L1)
- * It was just a matter of sitting down reading and concentrating.(L1)
- * Latimer contained extended long sentences which used words that required some knowledge of law (L1)
- * The language used was very high...(L2)
- * Some cases are hard/difficult to understand and follow.(L2)
- * Often, jargons a lot, specific use of language tedious sometimes but overall textbook is well organised.(L2)

Not surprisingly, the majority of both groups found the exam to be difficult (Q.8). Most students reported difficulty in analysing and adequately answering the “tricky” or “not straight forward” legal problem questions in the exam with some commenting that there hadn’t been enough practice given in “answering exam type questions”:

- * I hadn't really been in a situation in which we had to apply the legal information we had learnt in the course.(L1)
- * Being only 3 questions there was no room for error. Understanding the progression of the cases which I was required to analyse was difficult.(L1)
- * Exam questions seemed to be very vague. Need more practice answering exam type questions, possible for assessment throughout the course so you have an idea what to write.(L1)

- * Because question is not straight forward.(L2)
- * I didn't find it hard. The only problem was it was very tricky. I realized this after the exam from a friend, then I came to discover that some of my answer was inaccurate.(L2)
- * It was a bit difficult from the past 2 or 3 years. It wasn't very straight forward cases...(L2)

In Question 9, students were presented with twelve aspects of legal study and asked to identify those areas that they experienced difficulty with in the C165 course. This question was based on a list of nine types of problems that Davie (1982) identified students as having when studying law. Students were also asked to rank the twelve problems in order of importance (from 1 to 12, most to least importance) The combined results for this question have been set out in *Table 1*.

Overall, three areas were identified as being problematic for **most** students: namely, (xi) organising answers to legal problem questions (L1=75%, L2=60%, Total=69.2%), (vi) identifying the area(s) of law at issue in a case or problem question (L1=68.75%, L2=40%, Total=57.7%), and (i) legal language at the lexical level (L1=50%, L2=70%, Total=57.7%). A further four were identified as problems for **about half** the students: (ii) the grammar and structure of legal language (L1=37.5%, L2=70%, Total=50%), (iii) the rhetoric and logic of the judge’s argument in cases (L1=21.9%, L2=100%, Total=51.9%), (xii) identifying when more information is needed to fully answer a problem question and the difference this would make to the answer (L1=50%, L2=50%, Total=50%), and (x) citing relevant cases when answering legal problem questions (L1=56.25%, L2=30%, Total=46.2%).

There was considerable divergence between L1 and L2 students, however, in their rankings and their Yes/ No responses (i.e. whether they identified it as a problem or not) with regard to items (ii), (iii), (vi), and (x). Examination of *Table 1* reveals that the development of more effective analytical and discourse organisational skills is the perceived priority for these L1 students in studying law whereas the lexical, syntactic, and discourse features of legal language assumed a far greater importance for L2 students. It is not that these L2 students do not need also to develop their analytical and organisational skills but that they are more focussed on the

problems they are having coming to grips with the language of the discipline itself. The language often acts as a barrier to understanding the concepts or principles (CONTENT) of the subject.

On the other hand, while native speakers did have some problems with the lexico-syntactic demands of the subject:

- * the legal jargon was difficult to fully comprehend.
- * language appeared old-fashioned which provided some difficulty.

they were more concerned about the difficulties at the discourse and analytical level with the course content, namely analysing situations and identifying the legal issues involved (and when more information is needed) and then organising “appropriate” answers to these legal problems by defining and applying relevant legal principles and citing relevant case authorities. Pertinent L1 student comments included:

- * It was hard to know where to begin.
- * I sometimes felt that my answers weren't structured correctly.
- * Sometimes it is confusing as to which are the most important points.
- * There were a lot of cases to know and they get confused together.
- * Unsure how to write the answers. What format to use.

In response to the final question as to whether they had any useful advice to offer future students in the course, most students responded with comments which highlighted the need to study hard and consistently and to fully make use of all learning opportunities by preparing for lectures and participating in tutorials. Additional comments often centred on the need for more guided practice with answering legal problem questions during tutorials so that students are more adequately prepared for the assignment and final exam:

- * Had some problems writing legal English. One or two practice sessions in the first 4 weeks structuring answers to legal problem questions rather than tests would have helped a lot.(L1)
- * In the exam, I didn't know where to start and how much detail to go into. Not enough practice in tutorials at doing problem questions especially writing out answers.(L1)
- * We were not told about structuring answers before the assignment. The assignment is completely different from essay question. (L2)
- * Would like more helpful handouts of more case analyses. Each tutorial only had time to answer 1 or 2 cases.(L2)

This survey, with all its limitations in terms of sample size and the sometimes large discrepancies in student perception as witnessed by some quite large standard deviations, strongly suggests that both native and non-native English speakers are aware of a number of the features of the language of the law as potential problems in comprehending or producing legal discourse. Non-native speakers are more aware of problems at the lexical level and clearly they do not have the degree of linguistic resources at their disposal per se as most native speakers and this is perhaps most obvious at the level of lexis. Native speakers, on the other hand, are

more cognisant of the differences and difficulties at the discourse level and the need for more practice at developing competence in the genre of the legal problem question.

Academic Legal English

The legal problem style question forms the basis of both the tutorials and the final examination in the C165 course and as the discussion above indicates is a new genre for all students to acquire. Enright (1986: 347) describes the legal problem question as follows:

By a problem or problem question is meant a question or exercise where a student is asked to discuss the legal consequences of a set of facts. Normally these consequences are expressed in terms of the availability of some remedy. Further, it is a common practice to construct a problem so that the legal consequences of the facts are not immediately clear. ...The areas where the legal consequences of the facts are not clear constitute "the issues", and are the very essence of the problem question.

In order to explore some of the features of this genre, a preliminary analysis¹ was performed on a C165 lecturer's "model" answer to a tutorial problem question from the C165 course (*see below*) using a systemic functional linguistic approach after the work of Halliday (1985), Martin (1985), Martin and Peters (1985), Drury and Gollin (1986), Jones et. al.(1989), Drury and Webb (1989, 1991). The systemic functional approach was adopted because of its ability to encompass all levels of the language system, from the lexical to the discourse, within a coherent framework and provides a "powerful tool for text analysis" (Drury and Gollin, 1986: 210).

Tutorial Problem Question:

An infant student took a lease of a flat for 12 months and undertook not to damage the flat in any way and to keep it in a tenable condition. During a party held in the second month of occupation, considerable damage was done to the flat and the student repudiated the lease. Is he liable for the damage done and/or for the rent due prior to repudiation? Can he recover the rent he has already paid prior to the date of repudiation?

The lecturer's suggested answer was analysed according to its **Schematic Structure, Cohesion** (including **Reference, Conjunction, Lexical Cohesion**), **Thematic Progression, Transitivity** and **Nominal Group Structure**.

The text was first divided into conjunctively related units, that is into "clauses which have or could have had an explicit conjunction between them" (Martin, 1985, p.90). These clauses were analysed in terms of Theme - "the point of departure of the message" (Halliday, 1985: 38) - and Rheme - "the remainder of the message, the part in which the Theme is developed" (ibid:

¹The author is pursuing on-going studies in this area and is interested in delineating this genre in detail and in exploring students' attempts to produce this type of discourse..

38). The full text appears in *Appendix 2* with the Theme in italics and the dotted lines indicating paragraph boundaries.

Schematic Structure

The schematic structure of the lecturer's text is represented to the left of the text in *Appendix 2*. The schematic structure refers to the characteristic stages or "beginning, middle, and end structure through which a text moves to achieve its purpose" in different genres (Jones et. al., 1989: 269).

The lecturer's text is a tightly organised piece of writing which is divided into four main sections:

- Section 1 a brief restatement of the problem question (1 paragraph),
- Section 2 a detailed discussion of the law relevant to the question (4 paragraphs),
- Section 3 an in-depth application of this law to the facts of the question (6 paragraphs),
- Section 4 a summary of conclusions in regard to the questions posed by the problem (1 paragraph).

The four paragraphs of the section on relevant law proceed from the general to the specific: the first paragraph elaborates the general area of law and the general rule or legal principle involved; this is followed by the first exception to the general rule and the rule or legal principle involved; the third paragraph introduces the second exception to the general rule and the rule or legal principle involved; followed by the fourth paragraph which explores the rule (and the exception to it) established by a leading case in this area.

The six paragraphs of the section on the application of this law to the facts of the question are somewhat shorter and, apart from the second, all draw conclusions as a result of systematically applying the legal rules and principles already discussed to the facts of this particular question. The second paragraph, on the other hand, discusses an assumption that needs to be made because insufficient information is given in the problem and the third paragraph makes conclusions based on that assumption. Most importantly also, alternative possibilities or positions are considered in this section: firstly, in connection with the issue of whether the "infant student" is in fact still a student when he repudiates the contract (the second paragraph); and secondly, with the issue of the student's liability for the unpaid rent and the damages to the flat (the last two paragraphs). Furthermore, two of the conclusions reached are backed up by explicit reference to case authority.

While later lecturers on the C165 course have disagreed with aspects of this “model” answer such as the inappropriacy of restating the question asked¹, and even to the concept of a “model” answer itself, they are all agreed on the need to organise answers in a systematic and logical way which addresses the issues raised by the problem by applying the relevant legal principles or propositions backed up appropriate case authorities. Farrar (1977: 48), discussing legal rhetoric, writes that:

The principal rhetorical device used in law is the appeal to authority. ...In order to reason like an English lawyer then one has to know the sources of authority, the content of the particular authority and the set of ground rules for using authorities.

Gaskell (1989: 79) in his advice on answering legal problems recommends that:

The form in which you should write is that adopted by the textbook writers. You should state a proposition of law; you should give the authority for that proposition; and you should then apply that proposition. ...A fuller way of presenting the argument would be (1) Problem/issue; (2) Proposition; (3) Authority; (4) Application.

Krever (1989: 52) stresses the need for students to remember “the dialectic nature of law and canvass all the arguments and counter-arguments raised by a problem”, and to not avoid making a conclusion:

It is not enough to recognise and articulate the legal arguments relevant to a case. The second element of legal reasoning is to recognise the relative strengths and weaknesses of the opposing arguments and suggest a likely outcome of a conflict. You are not evaluated on the basis of a ‘right’ answer, but rather, whatever your conclusion, you will receive marks for showing you know how to make decisions and suggest resolutions of a dispute through a reasoned evaluation of the merits of the arguments you discuss.

It is clear then that the schematic structure adopted by the lecturer in this “model” answer is appropriate to the genre following closely the model outlined by Gaskell above in that the first section states the problem or issues to be resolved; the second section systematically outlines the relevant legal propositions and cites authority for those propositions (at least the most relevant case on which this problem question essentially turns); the third section applies those propositions and incorporates “the second element of legal reasoning”, “the dialectic nature of law”, in discussing alternative viewpoints and makes conclusions backed up by reasons as to the likely outcome of the problem.

Cohesion

¹Krever (1989: 48) agrees: “Repeating the question is a common technique often used by students to gain a breathing moment as they begin an answer and to help organise their thoughts. There are no marks to be found in repeating the question. It can be a harmful practice. It often alerts the person marking the paper to an answer that is using filler instead of substance.”

We know that one of the ways in which texts achieve cohesion is by reference chaining. Could it be that particular forms of reference chaining characterize legal writing?

Reference

An analysis (not shown here) was done of the reference chains (after Halliday & Hasan, 1976; Halliday, 1985; Martin and Peters, 1985; etc) that contribute to the cohesion of the lecturer's text. There is extensive use of pronominal or personal reference in this text. This is a feature which has been cited as more characteristic of narrative than exposition in which shorter non-human chains tend to predominate (Martin and Peters, 1985). The chains which link the people in the text are usually very long, running most of the length of the text. For example, the author of the text appears in the first (Problem/Issue), third (Application of Law) and fourth (Summary/Conclusions) sections of the text, i.e. in the units 1, 29, 32, (all as *I*) and at the end of the text in units 44a, and 46 (as *my*). Similarly, the infant student of the problem question appears in these three sections except for one appearance as the first unit of the second (Relevant Law) section, unit 3 as *the infant*. The student in question is usually in the third person as *he* or *his* or *the infant*, but changes to the second person *you* in the final section (Summary/Conclusions), so that the advice to the infant is in the form of the actual words the solicitor might speak to his client in giving his professional advice. These changes of person are certainly one of the distinctive features of this text where the orientation changes from speaking to the reader/examiner when stating the assumptions necessary (units 29, 32), and conclusions reached (units 44a, 46), in "mock advice" to the client.

Other long and noteworthy chains appear mostly in the second section (Relevant Law) which involves legal propositions with reference to the contractual capacity of infants in general. These references are all in the third person but include both singular and plural: *he* (units 18, 19, 20a, 21, 24a, 39), *his* (units 18, 18a, 20), and *them, they* (unit 6a) in the case of personal reference; *an infant* (unit 15), *the infant* (units 5, 8, 11, 11a, 12a, 17, 20, 21, 24a, 39), and *the parties* (unit 16a) in the case of demonstrative reference. This changing from singular to plural and the use of the so-called generic or universal "the" (for infants in general) as opposed to the anaphoric "the" (for the infant in the question) could pose comprehension problems to some readers especially second language learners. A short chain referring to the infant in the *Steinberg v Scala* case (*the infant, she*) in units 25 and 26 contributes to the potential confusion.

There are a number of shorter chains referring to contracts in the second section (Relevant Law): any infant contract (units 6a, 7, 8, 9), contracts of necessary goods and services (units 10, 11, 11a, 12), the second class of voidable contracts (units 12a, 13, 14, 15, 16, 16a, 17, 18, 18a, 19), and the contract in the *Steinberg v Scala* case (units 21, 22a, 22b, 23, 24a). Noteworthy is the use of *any* and *such* in these sections. Danet (1985) and Charrow et. al.

(1982) point to their more frequent occurrence in legal contexts as a style marker of legal discourse. There are three occurrences of *such* as a cohesive device (a comparative referent according to Halliday, 1985: 295) in the whole text while *any* (though not deictic) occurs five times.

In the Application of Law section and the Summary, there are a number of reference chains of varying lengths to do with, for example, this particular case (units 27, 28, 37a, 44, 46), the contract in this case (units 27a, 30a, 33, 41a, 42), the unpaid rent, and the cost of repairs.

The demonstrative *this* is a significant cohesive device in the whole text being utilised a total of ten times (units 13, 15, 22, 24, 27, 28, 32, 37a, 40, 46). There are also two uses of *these* (units 12, 17a) and one of *that* (unit 41a). These demonstratives are frequently in thematic position in the clause and play an important role in achieving cohesion both within and between paragraphs as well as between larger sections of the text, i.e. in the schematic structure.

For example, in unit 12 the marked theme *In addition to these contracts* links to the preceding discussion of the paragraph while realising a point of departure for the final sentence which forms a bridge to the following paragraph. The theme of unit 13 *This second class of contracts* links back to the rheme of unit 12 by way of both lexical repetition (See discussion of lexical cohesion below) and the referent *this*. It is also the point of departure for the next two paragraphs of the text.

Likewise, the marked thematic adjunct *In this case* (unit 27) begins the third section in the schematic structure of the text and links back to the first section, the problem/issue to be resolved, in contradistinction to the general discussion of the relevant law and cases of the previous section. It is an extremely important signal but as Drury and Gollin (1986: 217) note, ESL students “are often unaware of the summarizing function of reference items such as ‘this’ and how they can begin and end stages in the schematic structure”.

Conjunction

Conjunction is the type of cohesion that expresses the logical connections between propositions in discourse and occurs when “a clause or clause complex, or some longer stretch of text” is “related to what follows it by one or other of a specific set of semantic relations” (Halliday, 1985:289).

As stated earlier, the lecturer’s text was divided into conjunctively related units, that is into “clauses which have or could have had an explicit conjunction between them” (Martin, 1985:90). The network of conjunctive relations that pertain either explicitly or implicitly between the conjunctively related units makes up the right hand column accompanying the text (See *Appendix 2*). I have attempted to sub-classify conjunction into external or internal

conjunction, i.e. according to whether it “relates propositions about the real world to each other” or whether it “relates speech acts to each other, making connections in what might be termed the rhetorical world of discourse” respectively (Martin, 1985: 90). The distinction, however, is not always clear-cut in a number of cases and while the sub-classification presented here is sometimes arguable, the criteria advocated by Martin (1992: 226-230) such as the paraphrase test¹ have been utilised in borderline cases. Note that relative, projected, and embedded clauses and clauses functioning as complement are not considered as separate units in this analysis.

The classification of conjunction adopted here is derived from the Martin (1983) system as outlined by Martin (1985: 91) and (1992: 197) which divides the conjunction network into four groups of logical semantic relationships: Additive (which includes addition, and alternation), Comparative (which includes contrast and similarity), Temporal (which includes simultaneous and successive), and Consequential (which includes manner, consequence, condition, and purpose with concession crossclassifying these four). Martin’s notational conventions have been adopted in my analyses whereby relations are marked as either implicit (**imp**) or explicit (**exp**) and classified using the following abbreviations:

temporal:	simultaneous	simul
	successive	succ
consequential	manner	mann
	consequence	consq
	condition	cond
	purpose	purp
(consequentials involving counter-expectation)	concessive	conc
comparative	similarity	simil
	contrast	contr
(common internal reformulation comparatives further distinguished)	exhaustive	i.e.
	exemplifying	e.g.
additive	addition	add
	alternation	alt
locative		loc

(after Martin, 1992: 243-4)

Furthermore, the conjunctive expressions in the text realising the logico-semantic relations appear in italics to the right of the reticulum with implicit conjunction indicated by brackets.

¹ Martin (ibid: 226) claims that “The best test for determining the appropriate reading is to change the dependency relationship between the messages in question (from hypotactic to paratactic or “cohesive” or vice versa); with internal relations this will commonly involve projecting one of the related messages with a verbal process”.

Appendix 2 reveals that six implicit conjunctive links have been incorporated into the conjunction analysis out of a total of 45. Although Halliday (1985: 308) warns that including implicit conjunction may lead “to a great deal of indeterminacy, both as regards whether a conjunctive relation is present or not and as regards which particular kind of relationship it is”, Martin argues that it is difficult to interpret some texts “unless implicitly realised connections are made” (Martin, 1992: 183). Following Martin, because implicit additive and implicit internal relations (“with the exception of internal comparison ...which is often unmarked but crucial to an interpretation of the generic organisation of text”, *ibid*:184) are problematic in that it is possible to insert them very freely in a great many texts, these types of links have generally not been considered.

My analysis reveals a roughly equal mixture of both internal and external conjunction (23 classified as internal and 22 as external). A variety of types of conjunction is also evident but the Consequential category of logicosemantic relations is clearly dominant (a total of 23 out of 45), especially consequence (a total of 12), condition (a total of 5), and concession (a total of 4). The Comparative category is next in importance (a total of 11), mostly realised as contrast conjunction (a total of 7), followed by the Additive (2 internal and 5 external), and Temporal conjunctive categories (3 simultaneous and 1 successive).

According to Martin and Peters (1985: 62), expository prose typically contains a mixture of both internal and external conjunction in a variety of logico-semantic categories including Consequential and Comparative. In contrast, narrative tends to have external conjunctive relations which are dominated by Temporal conjunction, especially succession. This text then clearly exhibits patterns of conjunctive relation described as typical of expository prose.

Another feature of expository texts is the use of internal conjunction to organise the rhetorical structure of the argument or “to scaffold the schematic structure of the text”(Martin, 1992: 181). In this text, internal conjunction is apparent particularly at paragraph boundaries and forms a fairly strong scaffolding for the development of the discourse.

For example after a brief restatement of the problem question (units 1&2), the internal purposive conjunction *in order to* (unit 3) leads on (and is linked back to the first section by lexical cohesion) to open the second section of the text, discussion of the relevant law to the problem. Throughout the second section of the text, we are concerned with general rules or statements of law and their exceptions or modifications. In this section, there are five examples of contrast conjunctions which follow on from a preceding statement (or set of statements) regarding the law (i.e. units 7, 10, 15, 18, 21).

Another fundamental feature of this text is the consideration of the consequences of legal rules and the making of conclusions based on consideration of the rules and the facts of the problem.

Thus, a recurring conjunctive pattern particularly in the third section - the application of the law to the facts of the problem - is a statement of fact or opinion followed by a conclusion realised through an internal consequence conjunction, typically *thus* . Examples include units 9 and 23 in the second section, units 28, 32, 34, 37a, 43 in the third section, and unit 46 in the last section.

Other internal conjunctives (contrast, concession, addition) are important in the organisation of the discussion in the third section of the text. The rhetorical questions which restate the issues to be resolved in units 35 and 36 utilise internal contrast and addition respectively. Contrast is significant in the third section which attempts to answer the three separate questions posed as per section one. Alternative perspectives and outcomes for the most difficult question are examined in the last two paragraphs of this section, each being introduced by the internal contrast conjunction *on the other hand* (units 38 & 42). Concessives (units 39 & 44) relate to the acknowledgment of the uncertainty of the outcome.

The successive conjunctive expression *in summary* begins the final section of the text, which of course is a summary of the conclusions arrived at. Although there is little use throughout the text of the “logical development by exemplification” pattern that is described as “particularly typical of prestigious expository writing” (Martin and Peters, 1985: 81), it is clear from the preceding discussion that internal conjunction in general has been used extensively to realize the schematic structure of the text..

There are, however, a number of cases where various grammatical metaphors or incongruent realisations (as per Halliday, 1985: 321) of conjunctives have been preferred in the text and cohesion has been effected by referential and lexical means. These will be not be further discussed here.

The dominance of consequential relations, it would seem, is a distinctive feature of this genre because of the nature of legal reasoning. In answering legal problem questions, one has to have authorities for propositions that are applied to the facts of the question and to present “a reasoned evaluation of the merits of the arguments” (Krever, 1989: 52). Most of these relations are to be found in the third and fourth sections of the text, that is in applying the law to the facts and in the concluding summary. Consequence conjunctions are thus used in giving reasons for or consequences of a legal rule or proposition and in justifying the conclusions reached in respect of the problem at hand.

Danet (1985) suggested that a high incidence of complex conditionals was a feature of some legal documents. It is notable that in this text there are 5 conditionals which would suggest that this may be a typical feature of this genre also because conditionals of the “if... then ...” variety (which nearly all the ones in this text are) are clearly an important feature of logical reasoning.

The reasonably high incidence of both contrast and concessive conjunction, similarly, does not seem surprising given the nature of legal reasoning and the “dialectic nature of law” such that students are expected to “recognise the relative strengths and weaknesses of the opposing arguments” (Krever, 1989: 52) and argue a particular interpretation in the light of all the competing alternatives.

Contrast, condition, and concessive conjunctions, then, would also appear to be typical of legal reasoning in that they relate to the dialectics of the legal process. Different cases or points of view are compared and the differences highlighted; alternative arguments and possibilities, and contrastive perspectives necessarily have to be considered and evaluated in the process of reaching a final judgment.

Lexical Cohesion

There is a great deal of lexical repetition apparent in this text. An analysis of the lexical strings (not shown here) was conducted in terms of the following categories: Legal Judgments; Legal Documents; Legal Obligation/Rights; Certainty/Uncertainty; People; Goods, Property, Services; Money; Time; Legal Status; Legal Action; Legal Opinion. While there are some examples of synonymy, and collocation, the predominant device of lexical cohesion is clearly repetition, probably because of the technical nature of the discussion and the requirement in the law for precision in terms of legal classification and definition. For example, *contract* appears 27 times, *infant* occurs 29 times, *rent* is found 12 times, while *repudiation*, *total failure of consideration*, and *reasonable* occur 9, 5, and 4 times respectively. Clearly there are no adequate synonyms for many of the legal terms under discussion.

Lexical repetition is evident in creating cohesion within and between many paragraphs in this text. Repetition of the phrase *to advise the student* occurs in units 1 and 3 in the first and the second paragraphs (which also comprise the first and beginning of the second section of the text), repetition of *the general rule* helps create texture between the first two paragraphs of section two (in units 5 and 10), repetition of *second class of contracts* between the next two paragraphs (units 12 and 13), and repetition of the whole of unit 18 in the positive in unit 20 links the last two paragraphs of the second section. Similarly, repetition of *repudiates* (in units 20a and 27a) and *total failure of consideration* (in units 24 and 25 and 28) contributes cohesively between the second and third sections of the text. The restatement of the second and third issues of the problem question in units 35 and 36 leads on to the next two paragraphs of the third section achieving cohesion via repetition of *recover back the rent already paid* in unit 37 and *rent due but unpaid* in unit 38, respectively.

Thematic Progression

This analysis explores the progression or development of the text with regard to Theme, the “point of departure of the message ... the ‘as for’, ‘as far as ... is concerned’ function” (Halliday, 1985: 56). Thematic progression or Theme/Rheme analysis is distinct from the given/new information structure according to Halliday “making different contributions to the shape of the clause, including the order of the elements in it”(ibid: 56). The Theme comprises the components that begin each sentence or clause complex up to and including the Topical Theme (the first ideational component), and may be marked (an Adjunct, or Complement) or unmarked (grammatical Subject). Other types of Theme that may also be present are Textual (realized by conjunctives) or Interpersonal (realized by adverbials that express attitude). Martin (1985: 93) writes that “the ‘point of departure’ of English clauses reflects discourse patterns relevant to the structure of paragraphs and essays as a whole”.

In the analysis presented in *Appendix 2*, theme has been italicised and subordinate adverbial clauses (e.g. units 1, 6a, 11a, 12a, 22a, 22b, 24a, 27a, 29a, 37a, 41a) have been ignored except where they are thematic (e. g. units 9, 17,18, 20, 30, 42, 44). Independent clauses with subject ellipsis (e.g. unit 16a) and projected, relative and embedded clauses have also been excluded. The discussion below will largely ignore Textual Theme which has been dealt with already in the discussion on Conjunction. (See Martin, 1985: 94-95).

There are four types of Topical Theme apparent in this text. The first type is the group of 8 Themes that deal with contracts (units 7, 8, 9, 11, 12, 13, 16, and 23). It is significant that these Themes are all unmarked (except for the subordinate clause theme in unit 9) and occur only in the second section of the text, the Relevant Law, the section that discusses in depth the law relating to infant contracts. In fact, the first Theme of this group is *contracts with infants* at unit 7. So there is thus a close connection between Topical Theme and Schematic Structure in the second section.

The second type of Topical Theme deals with people. These Themes occur throughout the entire four sections of the text, (See also the discussion above on personal reference chains and lexical strings), and are all unmarked except for the Theme in unit 3 *In order to advise the infant* which marks the beginning of the second section. Marked Theme is being used here to highlight the Schematic Structure, to mark the progress from section one to section two. The extensive human Themes (19 units including first(3 *I* s, and 1 *my*), second (3 *you* s), and third persons) are not a normal feature of expository texts but more characteristic of narratives:

Casual conversation and narrative for example, both favour the selection of human Themes, with first and second person Themes predominating in many contexts. (Martin & Peters,1985: 80)

This similarity with narrative in the use of human Themes would appear to be another distinctive feature of the legal problem genre.

The third group of Themes concerns legal rules/propositions and authoritative cases, and not surprisingly occurs almost entirely in the second section of the text, the Relevant Law. There are 7 Themes (units 5, 6, 14, 21, 24, 25, 37) in this group and the most notable feature is that the three Themes that refer to the authoritative case of Steinberg v. Scala are all marked Themes (units 21, 25, and 37), i.e. they are not the grammatical Subjects. Thus, Thematic progression is reinforcing the Schematic Structure of the text in this section also and drawing our attention in particular to the leading case of Steinberg v. Scala.

The final group of Themes relates to the legal position in the present case and similarly, occurs in the corresponding part of the text, the third section Application of Law to the Facts of the Problem. There are 8 Themes in this group (units 27, 33, 38, 39, 40, 42, 44, 45), with all except 38, 39 and 45 being marked. The first Theme *In this case* (unit 27) marks the commencement of the third section of the text and text structure and cohesiveness is achieved by a combination of reference (see discussion above) and parallelism with the marked Theme in unit 25 *In Steinberg v. Scala*. The 8 themes in this group include the following noun phrases: *this case, the right to repudiate, the position, the better view, this view, the effect of ...repudiation, the matter, any other result*. Five of these also mark paragraph boundaries in this seven paragraph section confirming Martin's observation (1985: 97):

In principle, in exposition paragraphs tend to reflect the schematic structure of a text. Boundaries between paragraphs are thus realised through an interaction of conjunction, lexical cohesion, and theme.

Clearly, the progression of the Theme in this section is also closely connected with and helps to realise the Schematic Structure of the text.

Transitivity

An analysis of the transitivity patterns in the text was carried out (not shown here). Transitivity, according to Halliday (1985: 101), "is the reflective, experiential aspect of meaning" and "specifies the different types of process that are recognised in the language, and the structures by which they are expressed". Six processes are recognised in the system: Material processes (doing), Mental processes (sensing), Relational processes (being), Verbal processes (saying), Behavioural (behaving), and Existential processes (existing).

The analysis revealed that the text was dominated by Relational and Material processes. There were a total of 33 Relational processes (17 attributive and 16 identifying), and 19 Material processes in the text with only 5 Existential, 4 Mental, and 3 Verbal processes. These results are consistent with those claimed for expository texts in contrast to narratives which are dominated by Material processes (Martin and Peters, 1985: 71).

Nominal Groups

The nominal groups that consisted of more than one element were analysed in the lecturer's text using Halliday's taxonomy (1985: 159). This analysis (not shown here) revealed a striking number of Qualifiers, i.e. modifying elements that come after the noun-head which are either finite or non-finite embedded clauses or embedded phrases (ibid: 166-167). There were a total of 34 embedded clauses in the text, 11 finite and 23 non-finite. Ten non-finite embedded clauses were to do with money or rent, e.g. *money paid under it* (unit 23), or *rent already paid* (unit 36). Six embedded clauses concerned contracts (4 finite, and 2 non-finite), e.g. *contract under which an infant joins a partnership ...etc.* (unit 15); five qualifiers concerned obligations (2 finite, and 3 non-finite), e.g. *obligation accrued but unsatisfied as at the date of repudiation* (unit 39); and four qualifiers involved time (1 finite, 3 non-finite), e.g. *time of his attaining 18 years*. This propensity for embedding and often multiple embedding especially in statutes and formal documents is certainly a characteristic feature of legal language as the literature cited earlier attests, and contributes to comprehension difficulties.

A feature of expository writing noted by Martin and Peters (1985: 83) is the "classificatory function of exposition" and is also apparent in this text to some degree in the frequency of Classifier Thing structures such as *infant student* (units 1,29), *reasonable time* (units 18, 20, 31), and *voidable contract* (unit 20).

Other Features

While there are no examples in this text of the kind of complex prepositions as noted above by a number of authors in statutes and legal documents, there are a number of specific legal collocations involving everyday prepositions worthy of mention. These include *contracts ... unenforceable against the infant* (unit 5), *liability under a contract* (unit 6a), the binomial expression *contracts ... enforceable by and against the infant* (unit 11), *voidable at the election of the infant* (unit 17), *liable for any obligations* (unit 20a), *a contract on which the infant would be sued* (unit 42b).

The binomial is a feature of statutes and legal documents as discussed above and a prepositional one such as *by and against* in my experience does prove far more difficult for students than the more common noun binomial *goods and services* (unit 10), or even the doublet *null and void* (unit 7).

Charrow et. al.(1982) and Danet (1985) both commented on the use of *as to* as a distinctive feature of legal discourse. The former authors cited *as to* as one of a number of grammatical and discourse features that caused comprehension problems for jurors in U.S. courtrooms. The example they give is as follows:

As to any question to which an objection was sustained, you must not speculate *as to* what the answer might have been or *as to* the reason for the objection (Charrow et. al., 1982: 177).

In the present text, there were two incidences of *as to*, both in connection with projected *whether* clauses (in units 1, and 30). The examples listed above and the two that appear in the lecturer's text all have the meaning "regarding" and appear to be redundant in all instances (except for the initial position in the Charrow et. al. example above) in terms of the total meaning conveyed. That is, both sentences in the lecturer's text function perfectly adequately with the *as to* omitted. It would appear then to be an example of a stylistic turn of phrase, or piece of courtroom "legalese" that the lecturer has unconsciously incorporated into his answer which is appropriate to the legal register in general.

Another feature cited in the literature on legal language that contributes to processing difficulties is the high frequency of negatives, and in particular double negatives. The lecturer's text contains 19 negatives with six being double negatives (units 7, 12, 25, 28, 37, 46), so this feature of legal language has been borne out by the lecturer's text and contributes no doubt to its difficulties for some students..

Overall Features of the Genre

Academic legal problems appear to possess some of the features of both narrative and exposition. For example, the extensive use of long human reference chains and some use of the first person are more characteristic of narrative than exposition, as is the use of human themes in the thematic progression of the text. On the other hand, the texts's mixture of concrete, abstract and technical lexis is much more typical of exposition, as is its predominant use of relational processes and more modest use of material ones. Likewise, the legal text's use of conjunction is more typical of expository texts with its mixture of external and internal conjunction, and its heavier use of consequential, especially causal, and comparative types of semantic relations. However, unlike many expository texts, conjunction has not been widely used to realise the schematic structure of the text. The structuring of the text relies rather on lexical cohesion, reference, and thematic progression and follows the pattern described by Gaskell (1989) as (1) Problem/Issue; (2) Proposition; (3) Authority (4) Application.

This mixture of the features of the narrative and expository genres is probably not too surprising considering the fact that the legal problem that students have to analyse and provide legal opinion on is a narrative. It is the client's story, the facts and events that have led to the client's present predicament about which the student is being asked to give legal advice. The legal advice, however, has to be technical and interpretive, ideally looking at issues from differing perspectives and ultimately evaluating the relative merits of the competing alternatives.

Much more work needs to be done examining texts of this type by a number of authors before we can adequately and confidently describe the features of this genre. The last section will briefly review the language support classes that I provide for students enrolled in C165, Principles of Commercial Law at Murdoch University before addressing the pedagogical implications of the results and discussion above.

Language Support Classes (C165)

English for Academic Purposes (E.A.P.) courses for students wishing to pursue higher academic studies in English are an important branch of the English for Specific Purposes (E.S.P.) movement. The focus in E.S.P. courses is clearly on the learner and meeting the learner's language needs and interests in his/her specialist area of work or study. The assumption behind the approach is that because the courses are clearly relevant to the learner's needs, learners will be motivated and learn better and faster. Hutchison and Waters (1987) maintain that while E.S.P. may differ in content, it is no different from any other form of language teaching in the processes of learning. E.A.P. courses are often general academic "bridging" programmes designed to prepare students for the demands of later tertiary level study (e.g. Engineering, Nursing) in English.

E.A.P. and E.S.P. bridging courses designed to prepare ESL/EFL students for later specialist study in English have been criticized, however, as being only "...marginally effective, as the language skills are divorced from the specialized content and intellectual strategies which can only arise in the context of the actual course of studies (Ballard, 1987)".

Another model, labelled the "adjunct" model in the United States, has its roots in the language across the curriculum movement. Adjunct courses are English (ESL) courses which are linked to particular University content courses and provide integrated language instruction (reading, writing and study skills) using the content course materials. As Widdowson (1978) argues, this integration "... not only helps ensure the link with reality and pupils' own experience, but also provides us with the certain means of teaching language as communication, as use rather than simply usage". A number of American authors have also advocated the linking of ESL and content in higher education (Snow and Brinton, 1988 a, 1988 b; Brooks, 1988; Benesch, 1988; Hirsch, 1988; Guyer and Peterson, 1988), sharing the assumption that "ESL instruction in higher education should mediate between students' previous experiences with English and formal learning and the new linguistic, cognitive, social and cultural demands of studying content in an American college in the target language (Benesch, 1988)".

Snow and Brinton (1988b) describe an adjunct programme, the Freshman Summer Program (FSP) at U.C.L.A., in which students enrol concurrently in a content course such as "Introduction to Psychology" and a language course, the activities of which are centered around

the content area's lectures and readings. The courses are both for credit, the language class being 12-14 hours contact per week and the content course 8 hours of lectures and tutorials. Proponents of the 'adjunct' model claim that student motivation is increased because of the clear relevance of the language activities to the demands of the content course (Snow and Brinton, 1988 b).

The Learning Skills Programme at Murdoch University, W.A. also follows the philosophy of integrating language and study skills instruction with course content. As Marshall (1989) argues, this "... increases student motivation in developing appropriate skills and also reduces problems of transferring skills to required learning tasks". Language and study skills assistance to students from non-English speaking backgrounds studying commercial law, hence, closely follows the "adjunct" model approach.

Because of the peculiarities of legal language in general and written assignments and examinations in law in particular (as evidenced in the foregoing discussion) not surprisingly, the course - Principles of Commercial Law - has proved problematic for many students and especially non-native speakers of English. The failure rate during the first year it was offered was reportedly as high as one in every three students (Sinden, 1987). Students from non-English speaking backgrounds have thus been targeted for language assistance through the E.S.L. component of Murdoch's Learning Skills Programme.

The E.S.L. classes for commercial law students which are run from the second week of the semester to the end of semester teaching (Week 13), are voluntary, and usually involve the language specialist (the author) in a team teaching tutorial situation with a law specialist (the course co-ordinator or another lecturer in the content course). The E.S.L. "adjunct" classes are limited to one hour per week per group (two tutorial groups are usually conducted per week), largely because of the teaching commitments of content staff as well as time-tabling constraints. Extensive liaison between the language specialist and the law specialists is and has been necessary to plan and develop the materials and activities of these E.S.L. classes which closely follow the schedule of topics and assignment requirements of the content course. Assessment in the content course, which has 2 hours of formal lectures plus a one hourly content tutorial per week, is largely by final written examination consisting of essay and legal problem style questions.

The early topics of the content course - history and background of the law, Sources of Australian law and the Australian law and the Australian Courts System - involve quite large amounts of culture - specific background information on the law, which is only very superficially treated in the first few lectures of the content course (Lectures 2-4). This important background information is often quite difficult and unknown to students from non-English speaking backgrounds and is the focus of the first session of the E.S.L. "adjunct"

classes Reading and Understanding Statutes (Lectures 5 & 6) involves coming firmly to grips with the conventions and peculiar characteristics of legal documents and how to make sense of them. Students are given examples and practical strategies for analysing statutes in the next ESL support class.

The bulk of the Principles of Commercial Law course centres on the Law of Contract (Lectures 7 - 18; Weeks 4-9) which is an extensive body of law encompassing legal principles derived almost entirely from case law (precedents established by judges' decisions over hundreds of years). The major assignment due in Week 6 represents the students' first attempt at applying the background body of knowledge of the legal system (for example, hierarchy of courts, statutory interpretation) and the essentials of the law of contract to a legal problem question. Knowledge of a number of key concepts and principles, and basic legal jargon and terminology is expected together with an ability to analyse a problem situation and apply relevant legal principles and precedents in a coherent written argument.

The basic concepts and principles of contract law (e.g. offer and acceptance, consideration) and key legal jargon (e.g. ratio decidendi and obiter dicta) are progressively reviewed following the course outline and lecture schedule using specially written exercises and other hand-out material in the support classes. The involvement of the content staff is vital to help clarify concepts and to answer the many technical questions that arise in these sessions.

Practice is also progressively given in how to analyse, structure and answer legal problem questions starting from simple problems and developing to actual exam questions. "Model" answers, such as the one analysed in this paper are presented and workshopped with students as much as possible. This, of course, is dependent on the course lecturers providing appropriate problems and suggested answers but gradually a bank of useful material has been developed for the programme in this way, i.e. by a combination of language teacher developed worksheets and hand-outs based on the course materials, and model answers etc. developed by the content staff.

Implications of the present study

The data provided by students regarding the difficulties they experienced studying the content of the C165 course confirm the basic soundness of the assistance as presently offered. ESL students perceived a need for developing their legal vocabulary, and it would appear most useful to concentrate on key terms and concepts in this regard as outlined above. There is also a perceived need for more help and practice at the discourse level in regard to the legal problem question. As this is a new type of discourse for students, genre-specific studies such as the analysis of the lecturer's answer provided in this paper can yield important insights into the salient components and characteristics of "good" academic writing in this genre.

Students can gain deeper appreciation of not only the overall organisation (or schematic structuring) typical of texts in this genre but also the contribution played by discourse features such as thematic progression, lexical cohesion, reference and conjunction. Clearly, much more work is needed in analysing a variety of texts in this genre but as one of the ESL students wrote about studying law:

(It requires) ...more analytical (sic) skills compared to other introductory courses, but luckily it's more interesting as well.

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TABLE 1: Question 9 (in terms of student rankings)

*Did you experience problems * with any of the following in C165?*

RANKING	L1	L2	TOTAL
(1=most important) (12=least important) 1.	(xi) organising answers X=4.4 (S.D.=3.4)	(ii)**grammar & structure legal language X=3.8 (S.D.=3.4)	(xi) organising answers X=4.9 (S.D.=3.4)
2.	(x)**citing relevant cases X=4.9 (S.D.=3.6)	(iii)**rhetoric & logic judge's argument X=4.8 (S.D.=3.6)	(x)**citing relevant cases X=5.2 (S.D.=3.2)
3.	(vi)**identifying areas of law X=4.9 (S.D.=3.5)	(viii) applying legal principles X=5.5 (S.D.=2.3)	(vi)**identifying areas of law X=5.5 (S.D.=3.5)
4.	(xii) identifying more info needed X=6.1 (S.D.=3.6)	(i)**legal language (jargon etc) X=5.6 (S.D.=4.6)	(ii)**grammar & structure legal language X=6.1 (S.D.=3.8)
5.	(viii) applying legal principles X=6.4 (S.D.=3.3)	(xi) organising answers X=5.75 (S.D.=3.2)	(viii) applying legal principles X=6.1 (S.D.=3.0)
6.	(ix) giving relevant definitions etc. X=6.7 (S.D.=2.4)	(x)**citing relevant cases X=5.75 (S.D.=1.9)	(xii) identifying more info needed X=6.1 (S.D.=3.6)
7.	(vii) understanding significance of case X=7.0 (S.D.=2.9)	(vi)**identifying areas of law X=6.1 (S.D.=3.3)	(i)**legal language (jargon etc.) X=6.5 (S.D.=4.2)
8.	(ii)**Grammar & structure legal language X=7.0 (S.D.=3.6)	(xii) identifying more information needed X=6.25 (S.D.=3.8)	(ix) giving relevant definitions etc. X=6.6 (S.D.=2.4)
9.	(i)**legal language (jargon etc) X=7.1 (S.D.=3.9)	(ix) giving relevant definitions etc. X=6.4 (S.D.=2.6)	(iii)**rhetoric & logic judge's argument X=6.75 (S.D.=3.3)
10.	(iv) identifying ratio decidendi X=7.3 (S.D.=3.4)	(iv) identifying ratio decidendi X=7.3 (S.D.=3.8)	(iv) identifying ratio decidendi X=7.3 (S.D.=3.5)
11.	(iii) **rhetoric & logic of judge's argument X=7.6 (S.D.=2.8)	(vii) understanding significance of case X=8.75 (S.D.=2.8)	(vii) understanding significance of case X=7.6 (S.D.=2.95)
12.	(v) differentiating material from non-material facts X=8.9 (S.D.=3.2)	(v) differentiating material from non-material facts X=9.1 (S.D.=3.0)	(v) differentiating material from non-material facts X=9.0 (S.D.=3.1)

* (xi), (vi), (i) identified as problems for most students.
(ii), (iii), (xii), (x) identified as problems for about half the students.

** considerable divergence between L1 & L2 students in their rankings and Yes/No responses (i.e. whether a problem or not).

APPENDIX 1

QUESTIONNAIRE
C165 Students, Semester 2, 1991

Please answer the following questions about yourself and your experiences with C165:

1. Have you studied any law subjects before? Yes/No

If yes, give details...

2. Is English your first language? Yes/No

If no, what is your first language and your nationality?

3. Have you found C165 to be harder than other subjects? Yes/No

If yes, please explain how and why it is harder than other subjects...

4. Did you expect to pass C165? Yes/No

Why? (Please justify your answer...)

5. Did you find C165 lectures difficult? Yes/No

Why? (Please explain)

6. Did you find C165 tutorials difficult? Yes/No

Why? (Please explain)

7. Did you find the C165 textbooks difficult? Yes/No

Why? (Please explain)

8. Did you find C165 exams difficult? Yes/No

Why? (Please explain)

9. Did you experience problems with any of the following in C165?

(If yes, please elaborate)

- | | |
|--|--------|
| i) legal language (archaisms, jargon, formal vocabulary) | Yes/No |
| <hr/> | |
| ii) the grammar and structure of legal language (textbook explanations, sections of statutes, case excerpts) | Yes/No |
| <hr/> | |
| iii) the rhetoric and logic of the judge's argument in cases | Yes/No |
| <hr/> | |
| iv) identifying the ratio decidendi of a case | Yes/No |
| <hr/> | |
| v) differentiating material facts from non-material (irrelevant) facts in a case | Yes/No |
| <hr/> | |
| vi) identifying the area(s) of law at issue in a case or problem question | Yes/No |
| <hr/> | |
| vii) understanding the significance or importance of a particular case | Yes/No |
| <hr/> | |
| viii) applying legal principles to the facts of a problem question | Yes/No |
| <hr/> | |
| ix) giving relevant legal definitions and principles when answering problem questions | Yes/No |
| <hr/> | |
| x) citing relevant cases when answering legal problem questions | Yes/No |
| <hr/> | |
| xi) organising answers (knowing where to start etc.) to legal problem questions | Yes/No |
| <hr/> | |
| xii) identifying when more information is needed to fully answer a problem question and the difference this information would make to the answer | Yes/No |
| <hr/> | |

Please rank the above problems in order of significance (1-12) according to your experiences in C165. (Place 1 against the most important problem for you down to 12 for the least important)

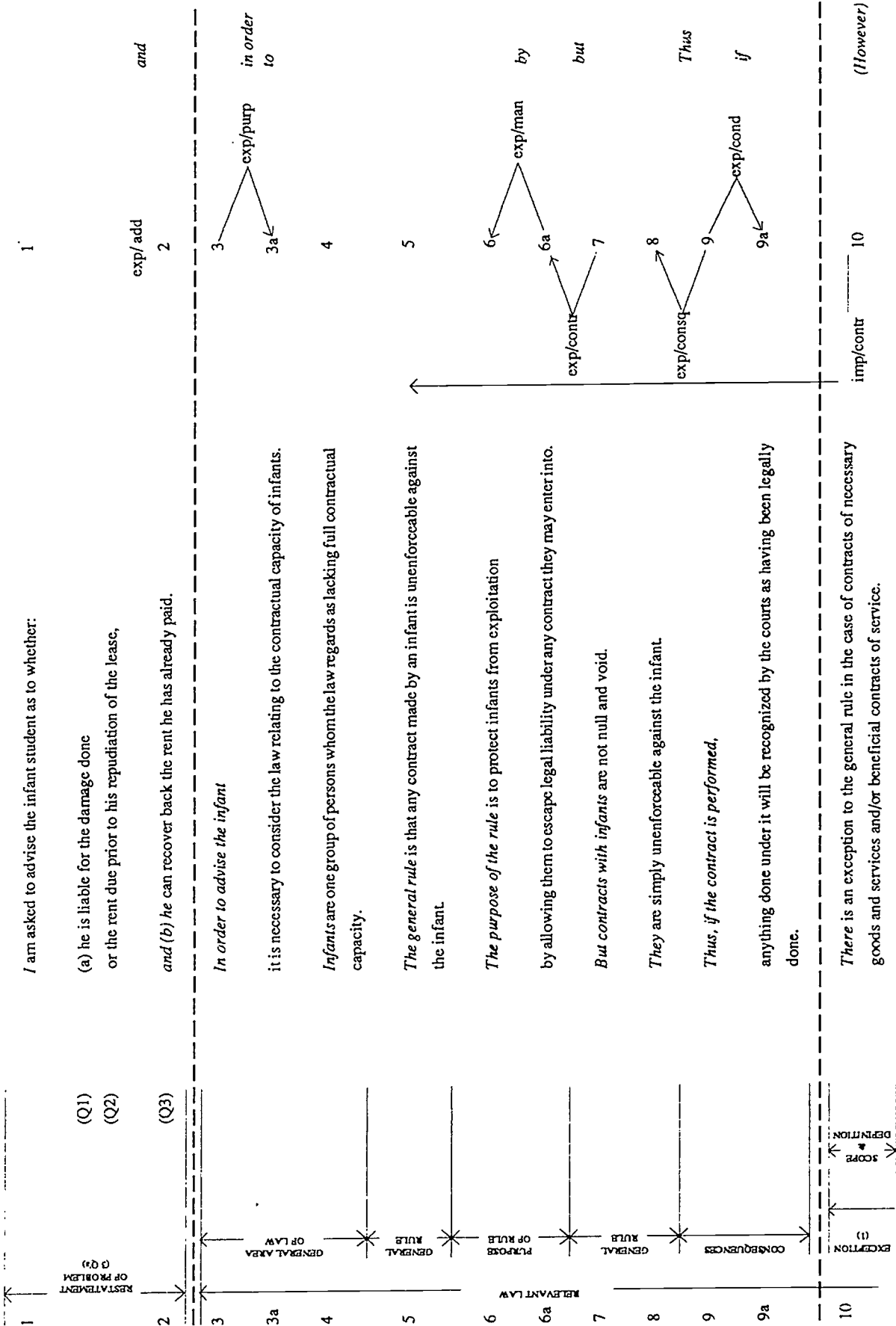
Do you have any useful advice for future students of C165? Yes/No

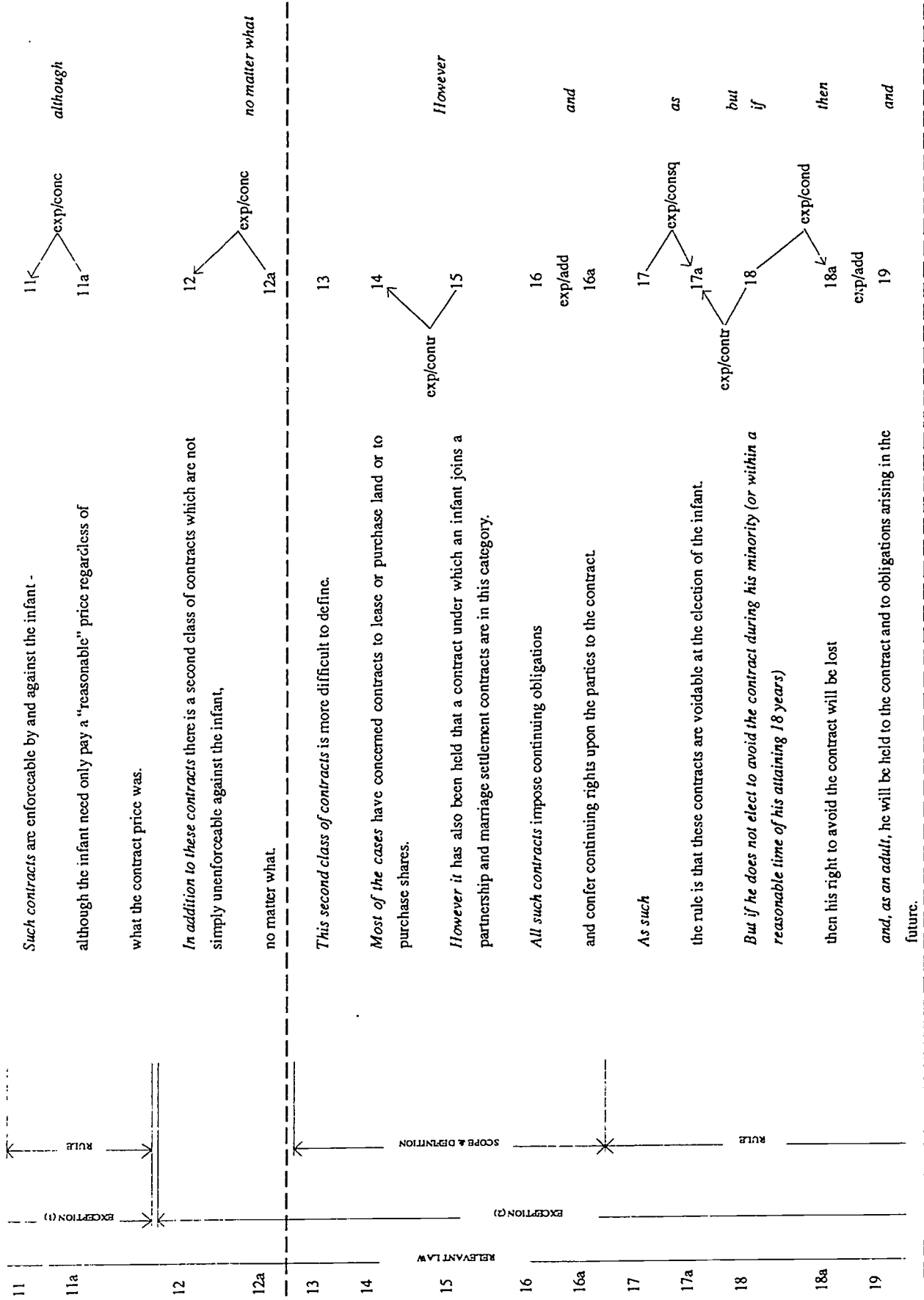
I agree to my C165 data being used for this study on the condition that strict confidentiality is maintained Signed _____

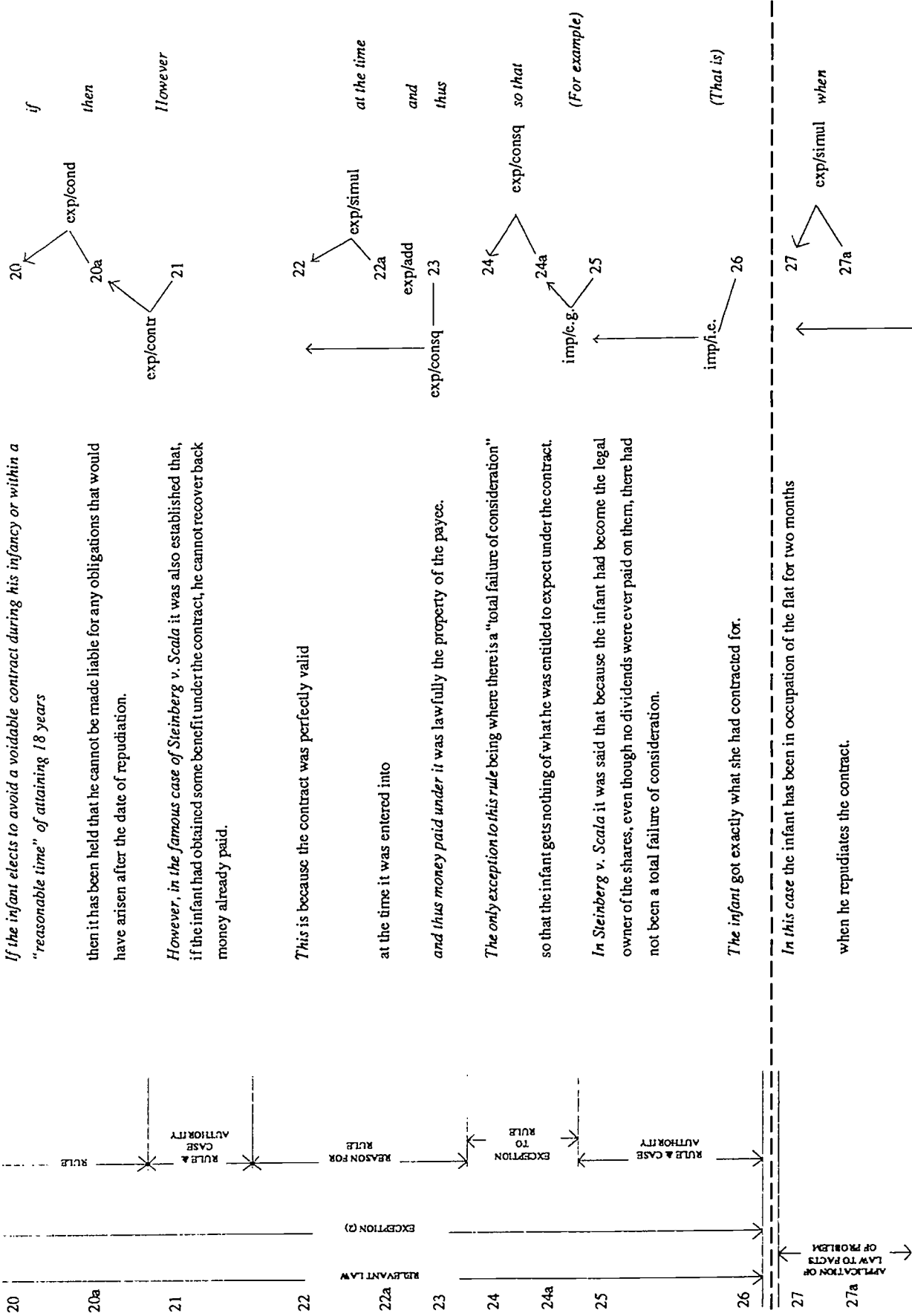
APPENDIX 2
SCHEMATIC STRUCTURE

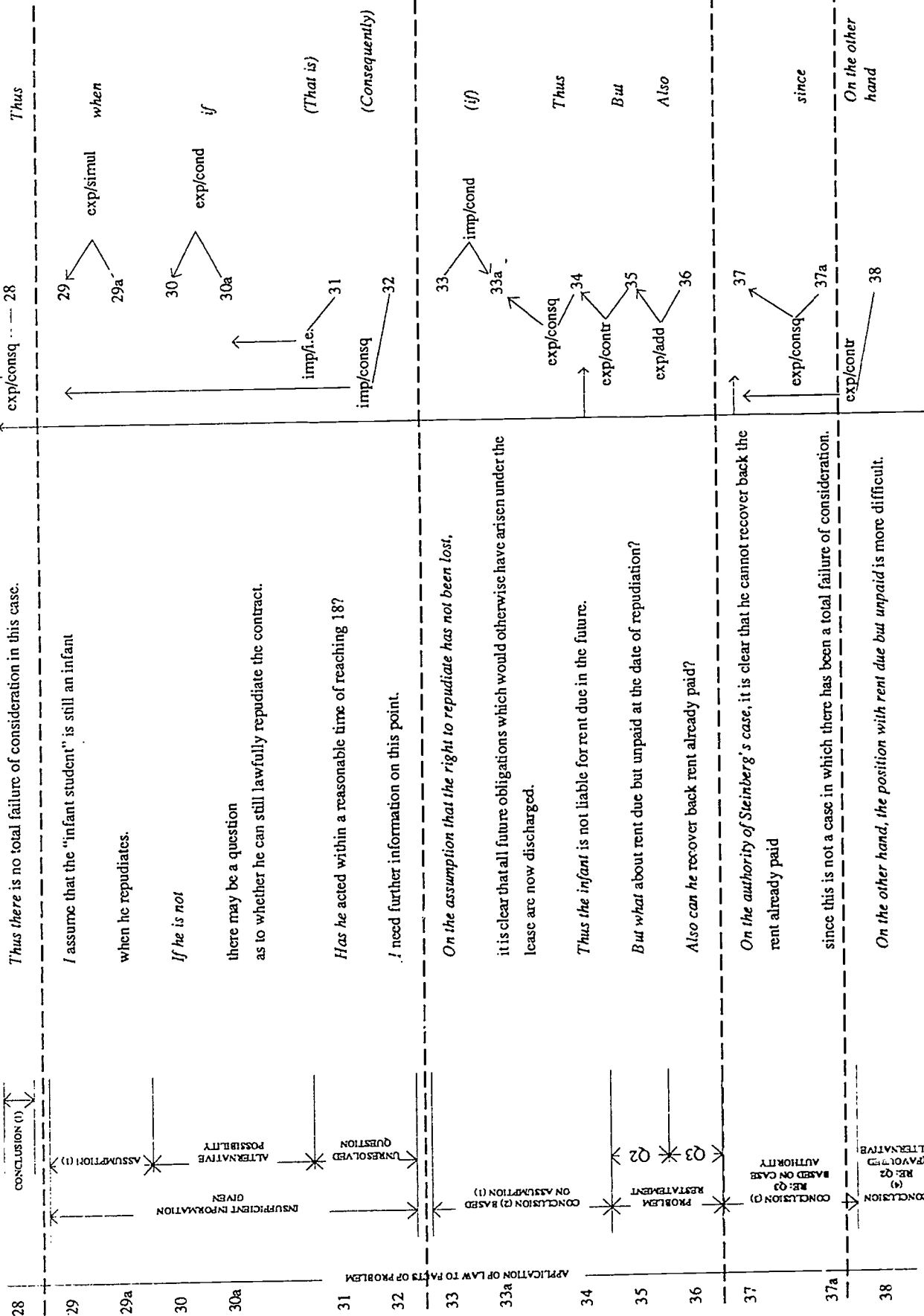
THEME (*italicised*)/RHEME

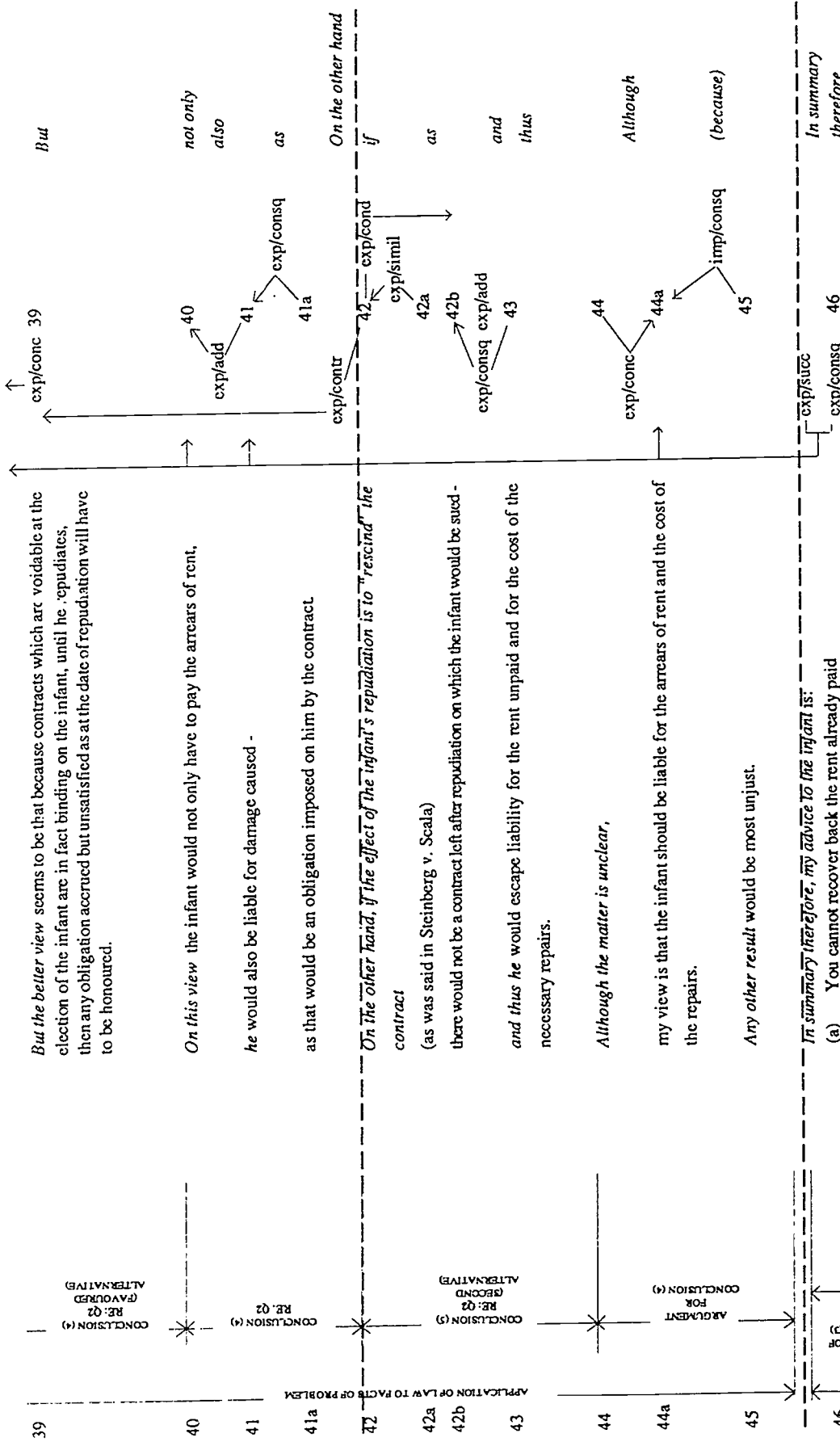
INTERNAL CONJUNCTION EXTERNAL











But the better view seems to be that because contracts which are voidable at the election of the infant are in fact binding on the infant, until he repudiates, then any obligation accrued but unsatisfied as at the date of repudiation will have to be honoured.

On this view the infant would not only have to pay the arrears of rent,

he would also be liable for damage caused -

as that would be an obligation imposed on him by the contract

On the other hand, if the effect of the infant's repudiation is to "rescind" the contract

(as was said in Steinberg v. Seal)

there would not be a contract left after repudiation on which the infant would be sued -

and thus he would escape liability for the rent unpaid and for the cost of the necessary repairs.

Although the matter is unclear,

my view is that the infant should be liable for the arrears of rent and the cost of the repairs.

Any other result would be most unjust.

In summary therefore, my advice to the infant is:

- (a) You cannot recover back the rent already paid because there has not been a total failure of consideration in this case. You have had the use of the flat for at least two months.
- (b) It is not certain that you will be liable for arrears of rent or for the cost of repairs - but the likelihood is that you will be liable for both.

But

not only also

as

On the other hand if

as

and thus

Although

(because)

In summary therefore