DESIGNING, IMPLEMENTING, AND EVALUATING
AN ONLINE RESOURCE FOR PROFESSIONAL
LEGAL COMMUNICATION SKILLS

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<tr>
<td>BLAC</td>
<td>Bilingual Laws Advisory Committee</td>
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<td>CALL</td>
<td>Computer-assisted language learning</td>
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<td>CEPA</td>
<td>Closer Economic Partnership Arrangement</td>
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<td>CEPAS</td>
<td>Common English Proficiency Assessment Scheme</td>
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<td>CMC</td>
<td>Computer-mediated communication</td>
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<tr>
<td>ICT</td>
<td>Information and communications technology</td>
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<tr>
<td>IELTS</td>
<td>International English Language Testing System</td>
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<td>LAWS</td>
<td>Legal Analysis and Writing Skills</td>
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<td>LLB</td>
<td>Bachelor of Laws</td>
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<td>LSP</td>
<td>Language for Specific Purposes</td>
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<td>NBLT</td>
<td>Network-based language teaching</td>
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<tr>
<td>PCLL</td>
<td>Post-graduate Certificate in Laws</td>
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<td>PRC</td>
<td>People’s Republic of China</td>
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<tr>
<td>TELL</td>
<td>Technology-enhanced language learning</td>
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<td>UEE</td>
<td>University Entrance Examination</td>
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<td>UELT</td>
<td>Use of English in Law Test</td>
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<td>WELL</td>
<td>Web-enhanced language learning</td>
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ABSTRACT

The ability to use language effectively is an essential part of legal training and has been identified as an area of concern for Hong Kong law students. In order to become proficient members of the legal discourse community, law students must develop an understanding of conventional writing forms, processes and practices as well as patterns of legal reasoning and problem-solving. However, in general, practitioners of legal education in Hong Kong tend to see language skills development as falling outside their area of responsibility. As a consequence, time and resources allocated to the important task of enhancing English for legal purposes are minimal.

In view of these constraints, it was felt that a computer-mediated online resource integrated with existing law courses would most effectively provide students with the language support that they needed. A small team of legal academics and language professionals collaborated in the development of the resource. The computer tools developed include: a Microsoft Word add-on, with help files designed to guide students in the writing process; an online concordancer with links to glossaries of legal terminology and academic vocabulary, and further links to legal and language dictionaries; and a genre-based web site with tasks, with content developed by legal academics and language professionals.

A number of issues arise in the development and implementation of such a computer-mediated resource for teaching and learning. For example, content must be designed to address gaps in students’ understanding of discourse community conventions (including form, process and practice as mentioned above). In addition, technological tools that clearly integrate with the students’ learning process and facilitate that process should be provided. Further, it is desirable that computer-mediated learning tools provide students with a mix of both formal and informal learning opportunities, promote student involvement and control, and provide students with space for
planning and evaluating learning experiences. It is also important that students learn
skills and strategies that will be of use to them once they move on from the academic
environment to the professional world of work.

This thesis evaluates law students’ understanding of discourse conventions in relation
to professional legal genres, by comparing student text and associated interviews with
the text of established legal professionals. The thesis also evaluates student online
behaviour, through a combination of large-scale logging of students’ online activity
and small-scale user tests, observation, analysis of learner journals and interviews.
Data collected over a 2 year period are compared in order to ascertain what kind of
learning activities were perceived to be valuable to students and why. Implications are
drawn from this study and suggestions made for changes in future practice.
STATEMENT OF CANDIDATE

I certify that the work in this thesis entitled 'Designing, implementing, and evaluating an online resource for professional legal communication skills' has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis. The research presented in this thesis was approved by Macquarie University Ethics Review Committee, reference number: HE28OCT2005-MO4355 on October 28, 2005.

Christoph Alexander Hafner (Student ID 40404676)

Date this day of 2008
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to janice, sophie and thomas with all my love
CHAPTER 1

Introduction

This thesis aims to further research into legal genres, and explore the potential role of technology in the development of professional discourse competence in the context of teaching language for specific purposes. In particular, the thesis evaluates a genre-based web resource designed to assist Hong Kong law students in the development of professional legal writing and drafting skills. Although lawyers in the main agree that competence in legal English is crucial to professional competency, legal professionals also take the view that efforts to enhance such competence should be remedial in nature rather than targeted at the specific communication needs of lawyers (Hong Kong Bar Association, 2001). In addition, many practitioners of legal education and training see language skills development as falling outside their area of expertise and responsibility (Redmond & Roper, 2001). Consequently, resources for such language development are sparse. In view of these constraints, creating online resources for the development of English language skills becomes a particularly attractive option. Students are able to access material in their own time, work at their own pace, learn ‘just-in-time’ for the real-world tasks that they are working on, and it is the students who are in charge of the learning process. However, it is by no means clear that student apprentices to a discipline such as law will perceive and utilize the affordances of such online language learning resources in the manner expected by designers versed in language and law.

In order to evaluate the use of online resources by law students, a comprehensive theoretical framework and methodology is required. Many studies of computer-assisted language learning (CALL) are informed by a cognitive view of second language acquisition, which focuses on concepts of comprehensible input, comprehensible output, and negotiation of meaning (Gass, forthcoming; Larsen-Freeman & Long, 1991). However, it has been argued (Block, 1996; Firth & Wagner,
1997, 1998; Lantolf, 1996; van Lier, 1994) that this perspective fails to take into account how learners make collaborative use of language in order to gain access to communities of practice (Lave & Wenger, 1991), such as the professional legal community in Hong Kong. Furthermore, such a principally cognitive perspective neglects the complexity inherent in the learning ecology of which technological learning resources are a part. Recent CALL theory (Murray, 1999; Salaberry, 1999; Warschauer, 1998a, 1998b, 2005) suggests that in order to understand how students make use of computer-mediated language learning resources for purposes of discipline-specific language learning, it is appropriate to adopt a socio-cultural perspective of SLA (e.g. Lantolf, 2000c; Lantolf & Appel, 1994; Lantolf & Thorne, 2006). This thesis adds to, and builds upon this existing literature, making particular reference to the affordances (van Lier, 2000, 2002) which students perceive and utilize in interactive online tutorials and while drawing on corpus tools.

In this introductory chapter, I provide background and context to the study, and an outline of the thesis.

1.1 The context of this study

The study reported in this thesis is situated in the City University of Hong Kong, School of Law. It reports all phases of the development, implementation and evaluation of a suite of online resources designed to integrate with a Post-graduate Certificate in Laws (PCLL) course in Legal Writing and Drafting. The PCLL is a practical legal qualification which Hong Kong law students undertake having completed their undergraduate LLB, and before continuing with a trainee solicitorship (if training as a solicitor) or pupillage (if training as a barrister). At the time of the study, I was employed as a part-time tutor on the Legal Writing and Drafting course in the School of Law, and a full-time tutor in the City University English Language Centre. I obtained a grant from the University in order to develop skills-based, genre-based online learning resources for the development of legal writing skills (see Appendix A: Teaching Development Fund). This enabled me to assemble a small group of legal academics, language professionals and technical advisors to work together on the development of the online resources, which would subsequently
become known as ‘Legal Analysis and Writing Skills’, or LAWS for short. LAWS consists of a number of different online resources, including online interactive genre-based tutorials; a downloadable Microsoft Word add-on with help files designed to create an enhanced writing environment for students; and, an online concordancer with links to glossaries of legal terminology and academic vocabulary, and further links to legal and language dictionaries.

A considerable body of literature in instructional design now suggests that design of instructional resources must balance considerations of learning theory and learning context (Hémard, 2003; Laurillard, 2002; Levy, 1997b, 1999; Trinder, 2003; van Lier, 1998). In the case of LAWS, the design of the resources was informed by a theory of situated cognition (Lave & Wenger, 1991; Rogoff, 1990), which views the students as apprentices or legitimate peripheral participants in the professional legal discourse community to which they aspire. The online content, tasks and technological tools were therefore designed in order to support this process.

In order to gain a full understanding of the legal communication needs of law students, one must consider the local social and institutional practices within which such legal discursive practices are embedded. Furthermore, in designing content and tasks supportive of the process of legitimate peripheral participation, it is helpful to be aware of the precise nature of the genres and practices of the target discourse community. To this end, genre analysis (Bhatia, 1993, 2004; Swales, 1990) can be an extremely informative analytical tool for needs analysis and materials design. In this thesis, I demonstrate, with reference to the genre of barrister’s opinion, how the process of genre analysis can inform materials design in online resources for Language for Specific Purposes.

Considering the technological environment, the tools provided in the LAWS online resources were deliberately chosen in order to fit easily within the existing PCLL learning ecology. Thus, online tasks and content clearly match tasks and content in
the PCLL Legal Writing and Drafting course, and tools such as the enhanced writing environment or the corpus tools are intended to be used in the process of completing existing legal writing tasks. In this way, the online resources created integrate in a meaningful way with students’ learning processes and the real-world learning environment.

In relation to the design, implementation and evaluation of the LAWS resources, two distinct phases of research were carried out. The first relates to the needs analysis of law students, while the second relates to the evaluation of the LAWS resources themselves. Research relating to the design and evaluation of the resources was guided by the following two fundamental questions for inquiry:

1. In the context of Hong Kong legal professional education, what factors must be taken into account in the design of an online resource for the development of professional legal writing skills (legal literacy)?
2. What affordances do students perceive and utilize in the technological resources and do these match the goals and objectives of such student learners in an ongoing and dynamic fashion?

As the research progressed, these questions were refined and the following detailed research questions emerged:

With respect to design:

*Question one:* How can the genre of barrister’s opinion (as a sample genre of focus) be described?
  
  a) In terms of intertextual and interdiscursive context?
  
  b) In terms of lexical and grammatical textualizations?
  
  c) In terms of novice and expert use?

With respect to evaluation:

*Question two:* What are students’ preferences in selecting particular online learning activities, affordances and modes of online learning?
Question three: What affordances do students perceive in corpus consultation?  
   a) In closely-monitored corpus consultation tasks?  
   b) In loosely-monitored, independent corpus consultation, for their own purposes and on their own chosen tasks?  

Question four: What strategies do students employ to exploit corpus tools as an affordance in proofreading legal writing?  

Question five: How intuitively accessible are concordancing technology, output and methodology in the context of academic and professional practice?  

Question six: How effectively do concordancing procedures introduced in academic settings dovetail with professional discourse community practices, so that the procedures fostered may extend beyond the academy, as a form of lifelong learning?  

1.2 Outline of the thesis  
The thesis is organized as follows. Chapter 2 considers the social and institutional context of legal education and training in Hong Kong. In this chapter I draw on a variety of literature sources in order to discuss language practices in Hong Kong, particularly in the context of legal education, and the language needs of Hong Kong law students. Drawing in particular on a review of legal education and training in 2001 (Redmond & Roper, 2001), the views of various stakeholders in legal education on the issue of language education are summarized and critiqued. Considering these views, implications for the design of online resources for the development of professional legal writing skills are suggested.  

Chapter 3 provides a review of relevant second language acquisition theory, in order to establish an appropriate approach to the design of the online resources. I argue that professional legal writing skills may be conceptualized as a form of legal literacy, which students develop through legitimate peripheral participation in the legal discourse community (Lave & Wenger, 1991). I consider how this process may be explained in psychological terms, with particular reference to socio-cultural theories of SLA (e.g. Lantolf, 2000c; Lantolf & Appel, 1994; Lantolf & Thorne, 2006). Finally, I suggest how this process may be facilitated by a variety of language learning tasks that can be applied in the online learning environment.
Chapter 4 provides an account of the instructional design process, including a brief description of the pedagogical approach taken to this process and an outline of the Legal Writing and Drafting course for which the online materials were designed. Details of the tasks and activities in the online resources are provided, with rationale.

In Chapters 5 to 10 I report on the two empirical studies in this thesis: firstly, the genre analysis of the barrister’s opinion as an under-researched genre (Chapters 5 and 6); secondly, the evaluative study of student use of the LAWS resources (Chapters 7 to 10). Chapter 5 provides some theoretical context for the genre analysis of barrister’s opinion, and methodological assumptions. Chapter 6 reports the results of the genre analysis, with a focus on the intertextual and interdiscursive context of the barrister’s opinion, its textualization, and a comparative analysis of expert and student text.

Chapter 7 is the first of two methodologically-focused chapters related to the evaluative study of LAWS. It provides a detailed account of the epistemological and methodological issues associated with evaluating learner behaviour in the online environment. I argue that in order to understand learner behaviour it is necessary to adopt a qualitative interpretive approach to the evaluation process. In Chapter 8, the research design for the evaluative study is described in detail, including the research process, data collection and analytical methods.

Chapter 9 reports the online learning behaviour of students with respect to the online tutorials. A variety of relationships are explored, including student use of the resources over time, student preferences for particular task types, patterns in student browsing behaviour and how such factors may be related to student background. Chapter 10 reports student use of the online concordancer. Students are observed both under closely monitored conditions and in independent corpus consultation tasks, when engaged in their own chosen tasks, for their own purposes.

Finally in Chapter 11 I bring together the theoretical and empirical strands of the thesis and make suggestions about future research and practice. The findings suggest that students interpret technological affordance in terms of their developing identity as
apprentices to the professional legal discourse community. I suggest that in order to further support this development, courses in LSP must focus not only on the linguistic features of characteristic genres, but also on the processes and practices associated with the construction of relevant genres. By attending to the processes and practices of genre construction, and ways in which these can be developed through technological affordance, this thesis bridges the gap between studies in LSP and studies of Professional and Organizational Communication.
CHAPTER 2

The social and institutional context of legal practice and training in Hong Kong

In designing an online resource for the development of professional legal communication, it is necessary to have a clear understanding of the language skills that novice lawyers need to develop so as to function effectively in the relevant legal community. This in turn requires that one consider the local social and institutional context within which the particular legal discursive practices are embedded. In the case of Hong Kong, the relevant attitudes, values and belief systems of the legal educational and professional communities have recently been crystallized in a series of texts emerging from a consultation process on legal education and training. This process culminated in the release from the Department of Justice of a Steering Committee Report entitled *Legal Education and Training in Hong Kong: Preliminary Review* (Redmond & Roper, 2001). An examination of the consultation documents, the consultants’ final report, and stakeholders’ submissions and subsequent reactions, allows us to gain an insight into the attitudes of the principal stakeholders on issues of importance to language and skills training in Hong Kong legal education. In this chapter I draw on these texts, and other available literature, in order to provide an account of the social and institutional context of legal practice and education in Hong Kong. This is followed by a critical evaluation of relevant recommendations arising from the consultation process. By undertaking this review it is possible to formulate an appropriate approach to the development of professional legal communication skills in the Hong Kong context.

2.1 Language and the law in Hong Kong

In order to fully appreciate the language needs of law students in the Hong Kong context, it is helpful to begin by reviewing Hong Kong legal language practices from
a broad perspective. Considering Hong Kong’s history as a British colony on mainland China’s doorstep, and also considering the position that Hong Kong has traditionally occupied as an international financial centre, one would expect legal language practices to involve a mix of codes, catering to a wide variety of domestic and international communities. In this section I provide some background to the legal language practices in Hong Kong, before considering the role of both English and Chinese\(^2\) in the context of legislation, the administration of justice and legal practice.

2.1.1 The social context: developing legal bilingualism

As a former British colony, Hong Kong has inherited many of its important institutions, including government, administration and legal system, from colonial rule. Under colonial administration, the common law legal system was implemented in Hong Kong, and this system continues to operate to the present day. From the outset, the official language of the law, including legislation, the judicial process and legal training was exclusively English. However, Hong Kong is an ethnically Chinese city, dominated by Cantonese speakers (Census and Statistics Department, 2008). The fact that English was the sole language of the law obviously made it difficult for the overwhelmingly Cantonese-speaking locals to understand the common law and gain access to legal institutions such as the government and the court system. Furthermore, the language barrier cast serious doubt on the validity of the common law presumption that ignorance of the law is no excuse (Lau, 1997: 134). Even recently, this has been compared to a situation of ‘linguistic apartheid’ (Roebuck, 1989, p. 396).

While the importance of English as a language of the law is still generally recognized, questions have been raised about the precise role of English in post-1997 Hong Kong. In particular, these questions relate to the socio-linguistic problems associated with governing in Chinese, but administering justice through the court

\(^2\) Here ‘Chinese’ refers to both the spoken and written form of the language. Where it is necessary to contrast spoken and written Chinese this is either done explicitly or made clear from the context. Similarly, where it is necessary to draw a distinction between dialects, for example Cantonese and Putonghua (also known as Mandarin, the lingua franca of the mainland) this is done explicitly. Note that the dialect spoken in Hong Kong is Cantonese.
system in English (Chen, 1985; Cheung, 1997a, 1997b; Roebuck, 1994; Zhao, 1997). Given the fundamental importance of language in law (see, e.g., Crystal & Davy, 1969; Danet, 1985; Maley, 1994; Mellinkoff, 1963; O'Barr, 1981), it is not surprising that there has been an increasing move towards legal bilingualism in recent years. The role of Chinese as a legal language in Hong Kong has grown steadily over the past 40 years or so and it now plays a role in all aspects of legal practice.

The first real challenge to the dominance of English as the sole language of law and power in Hong Kong came in the form of civil unrest and rioting in the late 1960s. This was followed by a student-led campaign to recognise the Chinese language as an official language in 1969-1970 (Chen, 1985: 21-22; Cheung, 1997a: 51-52; Zhao, 1997: 295-296). The government responded to this unrest by passing the Official Languages Ordinance in 1974, which recognised English and Chinese as the official languages of Hong Kong. While the Ordinance did much to promote the use of Chinese in government and administration, in practice it failed to provide equal status for the two languages. For example, where official documentation was available in both languages, the English version was treated as authoritative (Zhao, 1997: 296). In addition, section 4(1) of the 1974 Ordinance provided that ‘every Ordinance shall be enacted and published in the English Language’, thereby denying any possible role for Chinese in the legislative process.

It was not until 1984, with the signing of the Sino-British Joint Declaration whereby Britain agreed to return Hong Kong to the People’s Republic of China, that there was renewed interest in the role of Chinese as a language of the law in Hong Kong. Writing in 1985, Albert Chen (1985, pp. 28-29) notes that ‘since the signing of the joint declaration, a consensus appears to have emerged among members of the legal profession in Hong Kong (including those in the government) that the use of the Chinese language should be promoted for legal purposes.’ In support of this proposition, Chen cites recommendations by the Bar Association and the Council of the Law Society that substantial elements of the legal process, including legislation and aspects of courtroom procedure, use Chinese. In addition, he refers to plans (at the time) of the Attorney General and Solicitor General to translate existing
legislation into Chinese and provide training for Chinese language officers to become law drafting officers (Chen, 1985: 28-29).

From this point forward, the importance of Chinese as an official language in institutions of government began to pick up momentum and the government commissioned a number of committees to investigate the use of Chinese in government institutions. This included a committee to investigate the use of Chinese in the civil service (see 1995), as a result of which the government made a fundamental shift in its language policy. According to Lau:

> Although the government's objective was to 'develop a civil service which is bi-literate in English and Chinese and trilingual in English, Cantonese and Putonghua,' suggesting English and Chinese would have equal status, there was no denying that Chinese would eventually overtake English as the primary language of administration. In essence the report foreshadowed a fundamental change in the language orientation of the government. Instead of having every government documented drafted in English and then translating it into Chinese when necessary, the reverse would become the norm in the future. (Lau, 1997: 118)

This change in policy has now filtered through to Hong Kong secondary education, where the curriculum goals of achieving biliteracy and trilingualism are echoed:

> The language policy of the Government is to enable students and the working population to be biliterate (in written Chinese and English) and trilingual (in Cantonese, Putonghua and English). (2004: 23)

While one would expect similar policy forces to be at work in the domain of law, there are clearly strong interests at stake, and the issues are complex. There has been a strong policy drive to raise the profile of Chinese in Hong Kong and move towards a bilingual legal system, providing equal access to the law and legal institutions in both English and Chinese. However, there has been considerable resistance to this movement and advocates of legal bilingualism have been careful to point out that this process does not entail the replacement of English by Chinese (Cheung, 1997a: 69). Instead, developing a bilingual legal system means developing a system which is capable of functioning in both codes and therefore accommodating speakers of both languages.
The tensions inherent in developing a bilingual legal system of this nature provide a diverse, changing sociolinguistic backdrop against which Hong Kong professional legal language practices must be considered. This backdrop is multi-layered and complex – not only must we consider the role of English and Chinese, but the respective roles of Cantonese and Putonghua. As legal language practices tend to differ in different domains of law, it is instructive to consider these separately. In the following sections, we will consider language practice in legislation, the administration of justice, and legal practice.

2.1.2 Legislation

Background
Amendments to legislation in 1987 provided the necessary foundations for a bilingual legal system in Hong Kong: firstly, the Official Languages Ordinance was amended to require that all new legislation be passed in English and Chinese; and secondly, the Interpretation and General Clauses Ordinance was amended in order to provide guidance in interpreting different language ordinances. Section 10B(3) of that Ordinance provides that where different language versions of the same provision differ in meaning, ‘the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted.’ This principle has since become known as the principle of ‘two texts, one law’.

At the same time as these amendments were passed, the government began an ambitious project to translate all English language legislation into Chinese. In 1988 the Bilingual Laws Advisory Committee (BLAC) was established to oversee this process. The sheer volume of translation accomplished by this committee is impressive: the committee translated a total of over 600 principal Ordinances and 1000 pieces of subsidiary legislation into Chinese (Candlin & Bhatia, 1998: 9). All of this work was completed within eight and a half years and the translations were ready before the July 1, 1997 deadline. In addition to the translation of legislation, BLAC also produced an English-Chinese Glossary of Legal Terms, now in its third edition and comprising a total of 31,000 entries. A Chinese-English glossary is now also available, and this contains around 11,500 entries (Department of Justice, 2001, p. 29).
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The translation issue

The translation of legislation from English into Chinese has provided a useful first step in the process of developing a bilingual legal system in Hong Kong. However, for many, the translated product is regarded as inferior to the original. For example, it is argued that the translations are poor because they follow the English version too slavishly, producing unnatural, and at times incomprehensible, Chinese; alternatively, that there are no equivalents in Chinese for common law legal terms and that therefore the legislation cannot be translated; or, that the common law in some mysterious way depends upon the English language, and as a result the attempt to translate is in itself ill-founded.

The following extract from a letter to the Hong Kong Lawyer (May 1996), is typical of the first argument:

[The use of the Chinese text] runs counter to the idea that those who are conversant in English should find clarification and confirmation, not convolution, in the Chinese text, and that those who are less confident can rely on the Chinese text without further decoding and cross-referencing. The way it works now is that the Chinese text is mechanically grafted onto the English text of an ordinance without regard to, and respect for, the linguistic and cultural identity of the Chinese…

Strict adherence to form without regard to the pragmatic and cultural parameters of the Chinese language is an exercise in absurdity. (Cited in Candlin & Bhatia, 1998: 11)

Cheung (1997b, p. 324) is critical of the literal approach taken by translators of Hong Kong legislation. She notes that the grammatical construction of the English language legislation is frequently very complex, where Chinese, by contrast, has much simpler sentence structure. She concludes that adopting a literal approach in the translation of legislation has rendered much of the Chinese legislation ‘unintelligible to most readers’ (Cheung, 1997b, p. 324).

However, it is clear that the Translating Unit of the Law Drafting Division of the Justice Department felt that a conservative approach was justified, stressing that it would lead to greater precision in translation:
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...the style and syntactic structure of the Chinese text [should] be kept as close as possible to those of the English text. A free translation which focuses on the essence without regard to the form is thus inappropriate. (Chinese Drafting and Translation Unit: cited in Candlin & Bhatia, 1998, p. 12)

One view which follows from the difficulties encountered in the translation project, and which appears to have gained support from the Hong Kong government, is that Hong Kong Ordinances in both English and Chinese need to be reformed and expressed in grammatically less complex language (Cheung, 1997b, p. 334). As a result of such observations, the Department of Justice made plans to redraft legislation in a simpler, more direct manner (2001, p. 27).

However, another view questions the extent to which Chinese translations of legislation must rely on a word-for-word translation of the English text. In the context of translating the common law (i.e. case precedents as opposed to legislation) Roebuck and Sin (1993) have argued convincingly for more purposeful translation, recognising the essential prescriptive function of legal language. For them, the essence of law is its social regulatory function, and it is this aspect which must be precisely rendered in a translation. They argue that this can be achieved within the Hong Kong framework:

Legal language is used to confer powers and to impose obligations. It prescribes human behaviour. The human behaviour relevant to law is publicly observable. Accordingly all legal systems can be understood in the light of human behaviour observable in identifiable circumstances and conditions. Human behaviour, as well as the circumstances and conditions in which it is observed, can be described with similarly sufficient precision in any language. The behaviour prescribed and regulated by the common law is no exception. (Roebuck & Sin, 1993, pp. 201-202)

In essence, Roebuck and Sin maintain that the difficulties of translating legal texts into Chinese, including issues of terminology, can be overcome if clear semantic schemes of reference are maintained. They further argue that the appropriate scheme of reference for such translation work is the conceptual framework of the common law, as realized in its various texts, legislation, judgments and so forth. They note that ‘a Chinese legal vocabulary cannot have a common law meaning unless and until it is defined, understood and interpreted not in the light of Chinese legal thought, but in the light of English legal thought’ (1993, p. 203). As a consequence,
English serves an important ‘feeding and checking’ function in the development of Chinese as a legal language. Although Roebuck and Sin argue that translation is possible, they nevertheless caution that Chinese is not yet a fully autonomous legal language, and that the process of developing Chinese as a legal language will take considerable time if it is to succeed (1993, pp. 204-205).

**Practice**

As mentioned above, the BLAC translation project was accompanied by a change in practice from drafting laws in English to drafting in both English and Chinese. While official reports remain vague on the issue (2001), at least one account suggests that the practice has retained a bias towards the use of the English language:

>> In practice, the Law Drafting Division of the Legal Department first drafts English versions of new principal legislation or amendments to legislation that are already in bilingual form and then subsequently produces Chinese versions based on the English text. This process differs from merely translating the existing legislation because the English version of the draft can be varied to accommodate the Chinese version and to ensure a uniform meaning of the ordinance. (Zhao, 1997, p. 304)

The use of English in this way is supported by a number of practical considerations. Firstly, the various policy departments tend to issue their instructions to drafters in English. Secondly, there are very few experienced legislative drafters who are bilingual lawyers (Zhao, 1997, pp. 304-305).

In practice, there also appear to be some difficulties for the judiciary associated with the availability of legislation in both English and Chinese. The greatest practical problem arises where there is discrepancy between the two different versions, and litigants attempt to take advantage of the resulting ambiguity. According to Candlin and Bhatia (1998, p. 13) ‘in a well-reported case before the Court of Appeal in 1997, it appeared that two judges faced with the same facts reached different verdicts applying the English and Chinese versions of the law.’ This led to concern from some judges that the translation had effectively amended the law (Candlin & Bhatia, 1998: 13). However, this position should be tempered by the fact that in the common law system the role of interpreting legislation, including provisions that appear ambiguous in certain cases, lies with the courts. In this case, it would appear that the
judges involved felt uncomfortable about resolving the tensions that were created by the introduction of the Chinese language legislation. This may mean that it will take further test cases for the practice of interpreting bilingual legislation to become properly established in Hong Kong.

In summary, it would seem that while significant steps have been taken in the area of using Chinese as a language for creating policy and legislation, there have been some differences as to the proper approach to take in the translation of legislation. Furthermore, it seems that the practice of parallel drafting in English and Chinese is at present impracticable largely for pragmatic reasons. Finally, the role of the courts in interpreting bilingual legislation also needs to be clarified at this stage. Thus, there is still some way to go before Chinese can function autonomously as a language of legislation in Hong Kong.

2.1.3 The administration of justice

Background
The possibility of using Chinese in the court system can be traced back to the enactment of the Official Languages Ordinance in 1974, which listed a number of courts that might, at the judge’s discretion, use Chinese in their proceedings. Section 5(1) provided that 'proceedings in any Court specified in the Schedule may be conducted in either of the official languages as the court thinks fit.' Specified courts included the Magistrates' Courts, the Labour Tribunal, the Small Claims Tribunal, and the Immigration Tribunal. At the time, the Hong Kong Government’s Chinese Language Committee considered that issues dealt with in the lower courts were more factual than legal in nature, and so Chinese would be a suitable medium for such proceedings. However, Chinese was not considered appropriate to the discussion of legal issues, especially as the sources of law were at the time all in English (Chen, 1985, p. 24). It was not until 1995, with the amendment of the Official Languages Ordinance, that it became possible to use Chinese in the higher courts. However, whether or not to use Chinese remains at the discretion of individual judges and judicial officers, or in the case of the higher courts, the Chief Justice.
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According to the 2006 Hong Kong Judiciary Annual Report, the following criteria are relevant when exercising this discretion:

…the language ability and wishes of the defendants or the litigants; the language ability of the legal representatives; the language ability of the witnesses; the factual and legal issues in dispute; the volume of documents to be translated into the other official language; and the language ability of the Judge or Judicial Officer. (Hong Kong Judiciary, 2006, p. 90)

The Hong Kong High Court heard its first case in Chinese in December 1995 (Sun Ey-jo v. Lo Ching and others, [1996] 1 HKC 1), and its second in 1996 (Ng Ching-man & others v. Eliza Ng Lai-wah & others, Unreported, Case No. MP 2546/94). Both were civil cases, dealing with customary rights (in one case relating to property and, in the other, relating to the validity of a marriage). Speculating on why the Court chose to exercise its discretion in these particular circumstances, Cheung (1997a, p. 63) comments: ‘one can deduce that the ‘special reason’ for the High Court to exercise its ‘discretion’ to hear cases in Chinese is that the written documents at issue or the customary rites date back to the war time period.’ According to this view, the reason for hearing these cases in Chinese was largely pragmatic: given the large volume of documentary evidence and the fact that the parties did not speak English it would otherwise have been difficult to translate the necessary evidential documents or establish the relevant customary practices.

Significantly, the High Court has since then also refused to exercise its discretion to hear a case in Chinese, thereby definitively answering the question of whether litigants have a constitutional right to be heard in the official language of their choice in Hong Kong. In Re Cheng Kai Nam ([2002] 1 HKC 41) it was argued that the litigant had a right to be heard in Chinese, and in addition, a right to be understood without the use of an interpreter. This argument was rejected by Mr. Justice Hartman, who said, ‘The Basic Law is built upon the foundations of Hong Kong's special history. Part of that history is its adoption of the common law, the root language of which is English.’ (pp. 46-47) While for the time being this decision effectively cements the position of English over Chinese in the judicial process, it appears that the decision was influenced by policy considerations. For example, Mr. Justice Hartman commented that the District Court judge who assigned cases had a duty to ensure that all judges shared the workload evenly, whether they were...
Cantonese-speaking or not. It may simply be a matter of time before a truly bilingual court system, where language rights such as those argued in this case, can be established. At present, the system simply does not have the necessary resources to grant such rights.

**Practical concerns about the use of Chinese in court**

When bilingualism was promoted in the court system, around the mid 1990s, there were concerns about whether or not Chinese would be an effective medium for all aspects of the judicial process. The principal concern here was whether it would be possible to use Chinese in complex legal argument. In 1994, the then Chief Justice, Sir Ti Liang Yang, stressed the importance of a gradual introduction of bilingualism in the Hong Kong courts and adopted what he termed a ‘mixist’ position, whereby code-switching from English to Chinese could be used to maximize the contribution of each language (Candlin & Bhatia, 1998, pp. 10-11). Nevertheless, by the late 1990s, court cases conducted entirely in Chinese were not uncommon. Regarding this practice, Candlin and Bhatia note that ‘there are many examples currently in Hong Kong where full arguments are carried on in Chinese, with judicial intervention in Chinese and with full citational authority in Chinese’ (Candlin & Bhatia, 1998, p. 13). It would appear from this practice that it is possible to use Chinese in all aspects of court proceedings, though there may still be benefits to the use of English: for example, it may be that citing judicial authority in its original language will help to preserve the intended meaning (Candlin & Bhatia, 1998, p. 11).

A related concern was that judges and judicial officers would need additional language and legal training in order to be able to facilitate Chinese language trials effectively. This position is summed up in an article for the *South China Morning Post* (July 19, 1994) by Margaret Ng, legislator for the legal sector:

> There is an unfounded though common assumption that anyone who can speak Cantonese or is of ethnic Chinese origin must be able to conduct a trial or any judicial procedure in Chinese, and is, moreover, an efficient interpreter without training. This is far from the truth. Nor is it simply a matter of vocabulary or having a glossary of legal terms at hand. To be able to express oneself effectively in Chinese in law one has to be able to think in
Chinese in law. Few, if any, lawyers or judges have had their legal training in Chinese. (Ng, 1994, p. 19)

The judiciary has from the outset been aware of this knowledge and skills gap, and made training arrangements to cater for it. These have included mock trials in Chinese (Zhao, 1997, p. 307) and writing skills courses, addressing the need to write judgments in Chinese, at both Hong Kong and mainland universities (2004).

There has been some concern that taking the record in Chinese proceedings may lead to inaccuracy and consequently to injustice. The practice is to keep notes of evidence and submissions in English, even when the trial is proceeding in Chinese. Given that Hong Kong magistrates have been trained in English, many find it easier and more economical to take the court record in English (Cheung, 1997a, p. 66). However, where the trial is being conducted in Chinese, this may lead to irregularities, as English notes on what has been said in Cantonese or Putonghua may be inaccurate and unreliable, and this may be problematic should the case be appealed.

It has been suggested that each magistrate be provided with an official court reporter, whose function it is to take an official record (Ng, 1994, p. 19). Alternatively, tape recordings could be made, followed by written summaries (Candlin & Bhatia, 1998, p. 11; Cheung, 1997a, pp. 66-67). Such an arrangement would relieve the magistrate of the burden of reporting in a different language and also improve the reliability of the court record, should it be necessary to refer to the record at a later stage in proceedings. Some lawyers have responded positively to such suggestions (Candlin & Bhatia, 1998, p. 11).

There is now a clearly established need for more cases to be heard in Chinese and this has been recognised by the Hong Kong Judiciary (Hong Kong Judiciary, 2006, p. 90). In addition to the training measures referred to above, the Judiciary has attempted to facilitate this by increasing the number of bilingual judges and judicial officers on the bench. Furthermore, jury trials, until recently conducted only in English, may now be conducted in either English or Chinese, which means that jurors may be selected from a far larger pool of people. The effect of these measures
may now be making itself felt in practice, and this is evidenced by increasing use of Cantonese in court proceedings in Hong Kong.

According to Hong Kong Judiciary statistics, 78% of cases heard in the Magistrates’ Court in 2006 were heard in Chinese (Hong Kong Judiciary, 2006, p. 47). However, precise figures are not provided for higher courts. A brochure produced by the Hong Kong Judiciary (Hong Kong Judiciary, 2007, p. 33) notes that while the ‘vast majority’ of cases conducted in the Magistrates’ Courts, Labour Tribunal and Small Claims Tribunal are in Chinese, this is true of only a ‘limited portion of cases’ in the District Court or High Court. According to the brochure, English is most frequently used in the higher courts because the oral and documentary evidence in such cases is frequently in English (particularly for commercial cases). However, the composition of the judiciary is certainly another factor, as already noted with regard to the Re Cheng Kai Nam decision. According to the Judiciary’s figures, at 30 September, 2006, the proportion of bilingual judges sitting in the Magistrates’ Court was 80%. By comparison, the proportion of such bilingual judges in higher courts (i.e. High Court and Court of Appeal) is only 50% (a bilingual judge is defined as one who is ‘able to speak, read and write Chinese, including conducting trials and preparing summing-ups and judgments in Chinese’ (Hong Kong Judiciary, 2006, p. 89)). At the higher levels then, there are still proportionately fewer judges who are able to exercise their discretion to hear cases in Chinese, purely due to a lack of resources, and what Mr. Justice Hartman refers to as ‘Hong Kong’s special history’.

By way of summary, it would appear that significant numbers of cases are now being tried in Chinese, primarily in lower courts, though the option is not available as a constitutional right in Hong Kong. Initial concerns that Chinese was not suited to the delivery of legal argument have been shown to be unfounded following test cases in this area. It now appears that where the oral or documentary evidence is in Chinese, there is a greater chance of bilingual judges exercising their discretion to hear a case in Chinese. Furthermore, significant efforts are being made to improve the ability of the judiciary to hear cases in Chinese, including changes to legislation, the make-up of the bench and training for judges and judicial officers. Chinese appears to have gained considerable, if not unanimous, acceptance as a language of the law for the administration of justice. Nevertheless, a number of pragmatic factors
compel the continued use of English in the courtroom, sometimes in conjunction with Chinese. For example, English tends to be used for the proceedings in cases where the evidence is presented in English, as in many commercial cases. Secondly, many of the judges, particularly in the higher level courts, are simply not proficient in Chinese at this point in time.

2.1.4 Legal practice

Background
As a major international finance and logistics centre, Hong Kong has for a number of years acted as a ‘window to and from the mainland’ for business (Redmond & Roper, 2001, p. 94). The role of Hong Kong as a financial gateway to what has traditionally been an influential market is an important factor in legal language practice, especially in the arena of international business. I shall explore this in more detail with regard to the formation of legal education policy in the following section. For the time being, it should be noted that influential members of the legal profession in Hong Kong appear to see the maintenance of English language practices as essential to Hong Kong’s status as an international financial centre. The comments of Lester Huang, President of the Law Society of Hong Kong, are typical in this regard:

As an international commercial and financial centre and taking into account the nature of the legal system and legal work in Hong Kong, a high standard of English language competence remains an essential quality for those undertaking legal education and training in Hong Kong. (Huang, 2004, p. 93)

Most would agree with the sentiment expressed here, that in order to effectively serve the international business community, Hong Kong lawyers require a high standard of English language proficiency. This is particularly so given recent attempts to promote Hong Kong as a leading centre for international commercial arbitration in the region (Department of Justice, 2001, p. 7). However, at least two other factors must be taken into account when describing legal language practices in Hong Kong. Firstly, from a business perspective, Hong Kong has a long history of trade relations with mainland China, and with the handing over of sovereignty in 1997 there has been further economic rapprochement between Hong Kong and the
mainland. As a result, it is now more necessary than ever for Hong Kong business people to become familiar with the relevant institutions of law, administration and government on the mainland. There is therefore likely to be a demand for lawyers who have the ability to communicate with mainland Chinese in their own language and according to their own customs. Secondly, there is obviously a domestic market for legal services, where one would expect greater demand for Chinese rather than English services.

As suggested above, the political influence of China in Hong Kong has increased with the recent handover of power from Britain to China and the establishment of ‘one country, two systems’. Furthermore, Hong Kong and China have recently concluded a form of fair trade agreement called the Closer Economic Partnership Arrangement (CEPA), covering trade in goods, trade in services and trade in investment facilitation (Trade and Industry Department). According to Elsie Leung, the then Secretary for Justice, the effect of CEPA on the Hong Kong legal profession should be to enable Hong Kong lawyers to ‘serve as a bridge between lawyers in the Mainland and in other jurisdictions (especially those English speaking regions) and help enhance their communication’. (Leung, 2004, p. 11) As a consequence of such initiatives and the continuing rapprochement between Hong Kong and mainland business interests, Hong Kong legal practitioners increasingly need to understand the mainland Chinese legal system and legal language in order to facilitate their dealings with mainland firms. Young lawyers intending to work in multinational firms are now expected to come to the job with a good understanding of the Hong Kong common law system and some understanding of PRC\(^3\) law. In addition to this there are increasing language demands, the ideal being a candidate who is biliterate in English and Putonghua, and trilingual in English, Cantonese and Putonghua.

**Practice**

To my knowledge there have been very few ethnographic studies of language practice in the context of law firms in Hong Kong. The only empirical study that I am aware of is reported by Candlin and Bhatia in 1998, with a view to defining the skills and competencies required of legal professionals. Candlin and Bhatia observe

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\(^3\) People’s Republic of China
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a diverse range of language practices. A Hong Kong legal practitioner’s choice of language may depend on the nature or size of their firm, the kind of legal practice they are engaged in, the kind of clients that they work with. According to Candlin and Bhatia:

As one might expect, large international firms with overseas and mainland clients operate in a basically English-medium environment, with significant use of spoken Chinese (Cantonese) and Putonghua, and a good deal of correspondence and documentation in written Chinese. Smaller firms, especially those concerned with conveyancing, family and local civil matters, operate very much in Chinese (Cantonese) and written Chinese, though their reference to written documentation and legislation, and especially to precedent, will be English medium. (Candlin & Bhatia, 1998, p. 40)

Candlin and Bhatia’s study is of interest as it highlights a number of issues that are hidden from view if one only considers the interests of international business. Thus, the observation that smaller local firms tend to operate in the local dialect of Cantonese, confirms the suggestion made earlier that the local Hong Kong market for legal services demands lawyers who are proficient in Chinese as well as English. As we shall see, when it comes to making language policy, proficiency in Chinese is something that is either taken for granted or neglected altogether, and it would appear that the interests of the international business community prevail over those of the local Cantonese.

Candlin and Bhatia note that in practice choice of language appears to vary according to the role relationships of the participants. Thus, while Cantonese is likely to be used with co-workers within the same firm, it is less likely to be used with professionals from other firms (Candlin & Bhatia, 1998, p. 31). This supports the suggestion of Redmond and Roper (Redmond & Roper, 2001, p. 94) that ‘it appears, the use of English may be seen as a unifying lingua franca in a heterogeneous profession in which inter-lawyer communication is commonplace and essential.’ In addition, there may be strategic reasons associated with language choice (Candlin & Bhatia, 1998, p. 41). For example, in the courtroom or negotiating context, it may be possible to gain a legal tactical advantage by using a particular language.
In summary, language practices in the Hong Kong legal context are extremely diverse and depend on factors such as the nature and size of the firm, the area of law concerned and the needs of the client. It appears that while Cantonese is used in the workplace, English remains dominant in particular areas of practice in Hong Kong, especially the written domain, including reference material like legislation and precedent.

2.2 Formulating a language policy in Hong Kong legal education and training

I have thus far presented a view of the Hong Kong social context for legal professional communication in which important roles for both English and Chinese can be discerned in all areas of legal practice examined. In a region which is dominated by Chinese speakers it is clearly important as a matter of principle that legislation be written in Chinese. However, many of Hong Kong’s sources of law, particularly case-based precedents, originate in English language jurisdictions, making English an essential ‘feeder language’ to assist in the drafting and interpretation of legislation. Similar considerations apply to the administration of justice. In addition, the choice of language in court appears to depend primarily on pragmatic concerns, and no absolute language rights have yet been established in Hong Kong. In legal practice, complex, heteroglossic and multilingual language practices can be observed. To a certain degree such practices can be associated with the business practices of the legal practitioners, for example whether they serve a domestic Hong Kong, mainland Chinese, or international clientele.

The changing nature of language practices in the legal context in Hong Kong is especially noteworthy. As I have outlined, there has been an increasing move towards legal bilingualism on the one hand, stemming from the handover of sovereignty and a desire on the part of the government to better serve the local Hong Kong community. Yet balancing this, and competing with it, is the need to maintain Hong Kong’s status as an international financial centre and serve the needs of the international business community. As a result of the changing context of legal professional communication, increasing language demands are being placed on practitioners of law in Hong Kong. Most intending lawyers must in fact now
demonstrate proficiency in Cantonese and Putonghua as well as English (Candlin & Bhatia, 1998, p. 45). The prevailing climate in Hong Kong is one which demands biliteracy (in English and Putonghua) and trilingualism (in English, Cantonese and Putonghua) from its law graduates.

In this context, a consultation process was carried out by the Steering Committee on the Review of Legal Education and Training, roughly between the dates of November 1999 and August 2001. The values and attitudes of different sectors of the legal community to issues of legal education and training can be better understood by analyzing documents made available during this process. A detailed description of the review process is provided on pages 4-6 of the consultants’ final report (Redmond & Roper, 2001). In summary, the Steering Committee appointed two external consultants, Paul Redmond and Christopher Roper, to conduct the initial review, and they released a consultation document in September 2000. A number of submissions were received in response to this and the consultants met with stakeholders. One of the submissions received was from City University of Hong Kong. After further consultation, the consultants’ report was made available to the public in August 2001. The Law Society, Bar Council and the University of Hong Kong subsequently published position papers and responses.

The Steering Committee Report itself includes an analysis of the language situation in Hong Kong, its impact on the legal profession, and associated policy recommendations. The 367 page report makes a total of 160 recommendations related to all aspects of legal education and training in Hong Kong, and the first nine of these recommendations are specifically directed at language issues. In the rest of this section, I examine the findings of this committee insofar as they relate to the development of a language policy for Hong Kong legal education.

2.2.1 The need for Chinese in Hong Kong legal education and training

In their report, Redmond and Roper acknowledge that Chinese as a legal language in Hong Kong is ‘on the ascendancy’ (Redmond & Roper, 2001, p. 96), and suggest that lawyers dealing with mainland clientele will require written and spoken Chinese
language skills. In addition, the consultants appear to recognise the importance of Chinese language training in the promotion of legal bilingualism in Hong Kong (p. 97). Given the reported lack of suitably skilled legal personnel in Hong Kong (Chen, 1985; Cheung, 1997a, 1997b; Roebuck & Sin, 1993; Zhao, 1997), a need for training in Chinese language skills would appear to exist. Nevertheless, the recommendations of the report retain a strong bias towards the use of English in legal education and training, with eight out of the nine specific language recommendations focusing on English language skills development. The substance of these English language recommendations will be addressed later in this chapter.

With regard to Chinese language skills, the consultants recommend:

> It is highly desirable that there be a number of those admitted to practice in Hong Kong who are able to use the Chinese language, where appropriate to their practice, to comparable standards as those in regard to English. Continuing training in the Chinese language should be provided for students and lawyers who have capabilities in the use of Chinese. (Redmond & Roper, 2001, p. 110)

It is not clear what is meant here by ‘Chinese language’ and whether the consultants are referring to Cantonese, Putonghua or both. Similarly, the report is short on details as to how, when, where and by whom this ‘training in the Chinese language’ should be provided. Nevertheless, it is clear from the above recommendation that the training measures proposed envisage only a proportion of Hong Kong lawyers. By contrast, with regard to English language skills the following argument is cited with apparent approval:

> It was argued that if [Hong Kong wants to gain the status of an international finance centre], English language proficiency will be required of all lawyers, even those with exclusively Cantonese practices. There has to be a true bilingual ability even if this means a proportion of lawyers are ‘overtrained’. (Redmond & Roper, 2001, p. 94)

It is evident from the position adopted in the report, that English is seen as the appropriate language for legal education and training, even if the consultants consider that a ‘true bilingual ability’ is desirable. While Redmond and Roper recommend skills training in the Chinese language (whether Cantonese or Putonghua), they fail to truly engage with the issue, and to explore what kinds of Chinese language skills are required and for what purposes.
2.2.2 The need for English in Hong Kong legal education and training

As suggested above, an important conclusion of the report is that the Hong Kong legal profession should continue to follow a policy of promoting English language proficiency for all lawyers:

...there appears to be no pressure to depart from this strong emphasis on the importance of English, although there is a desire to strengthen written proficiency in Chinese. (Redmond & Roper, 2001, p. 96)

One argument is based on the notion that English is the language of the common law:

English and its nuances are needed to master the common law. Moreover, much of the common law is case law, expressed in English and in precise language. Without proficiency in the English language, one cannot explore and engage with that body of law. (Redmond & Roper, 2001, p. 93)

While in practice, the use of Chinese as a language of the law is increasing (see above, Section 2.1), English nevertheless appears to play a more important role in certain domains, including official documentation, legislation and precedent (Candlin & Bhatia, 1998, pp. 40-41). In an English common law system, it is perhaps not surprising that English should continue to dominate key elements of the legal process. In particular, it is understandable that there should be continuing reliance on English within the Hong Kong legal community, not only as a language of source texts, but perhaps also as a language to express the symbolic and abstract categories and concepts of the common law.

However, as noted earlier, one should be cautious not to overemphasise the role of English as the language of the common law in the Hong Kong context. Whilst stressing the importance for the time being of English in the Hong Kong common law system, one view (Roebuck, 1994; Roebuck & Sin, 1993) seeks to dispel the notion that the common law depends absolutely on the English language:

It has been suggested that there is some mysterious symbiosis between the English language and the Common Law.... Until the eighteenth century many [cases] were in Law French and when that language gave way to
Chapter 2: Social and institutional context

According to this view, future generations of lawyers in Hong Kong will develop a bilingual and bicultural understanding of the law, which will enable them to engage with an increasingly multicultural context (Roebuck, 1994, p. 195). In the interim, however, English retains a clear ‘feeding and checking’ function in the Hong Kong legal system (Roebuck & Sin, 1993, p. 204). Hong Kong legal professionals’ reliance on English as a language of the common law is likely to continue for some time.

Redmond and Roper further argue that the primary language of the law in Hong Kong is English, because ‘the vast majority of legal practice still occurs in English’ (Redmond & Roper, 2001, p. 94). As we have seen (Section 2.1), this may be somewhat of an overstatement. While there is very little research in this area, the available data suggests that both spoken and written Chinese is regularly used in practice, including the court system and private practice (Candlin & Bhatia, 1998; Hong Kong Judiciary, 2006, 2007).

Another argument for promoting English in Hong Kong legal education and training holds that the language issue depends on Hong Kong’s relationship with the mainland. The consultants describe the socio-economic background in Hong Kong in the following terms:

It is sometimes suggested that Hong Kong has a choice between being –

- an international financial centre, or
- a Chinese financial centre with international characteristics.

(Redmond & Roper, 2001, p. 94)

English language proficiency is seen as the key to establishing and maintaining the status of an ‘international financial centre’ and the distinctive nature of the Hong Kong legal system. The consultants note that:

It was strongly argued to the consultants that if Hong Kong goes the second route – a Chinese financial centre with international characteristics – it will weaken its distinctiveness as the window to and from the Mainland. That
Thus, some would argue that to neglect the use of English is to neglect not only the English common law legal system itself, but also the distinct system of international trade that it fosters in Hong Kong. It is hardly surprising then that the consultants argue that English language proficiency should be promoted not just with law students but with all students. This is because ‘in a globalized world, English is the language to be used’, and ‘Hong Kong needs to stress English language proficiency so that it does not regress from an international city to a provincial one’ (p. 95).

The last two arguments addressed suggest that questions of international trade play a very significant role in the formulation of a language policy for Hong Kong legal education and training. If the connection between the English language and the common law is a matter for debate (Roebuck, 1994), the dominant role of English as a lingua franca in the globalized economy is nonetheless well documented (Canagarajah, 2006). In their report, the consultants apparently place greater emphasis on the language needs of the international business community, than those of the local Chinese community, the mainland business community or even the Hong Kong government. By stressing the importance of English language skills, the consultants are essentially stating a preference for Hong Kong as an ‘international finance centre’, compared to a ‘Chinese financial centre with international characteristics’ (Redmond & Roper, 2001, p. 94). Viewed from this perspective, the pressure for English in legal education is not just a legal matter. Rather, the policy choice is strongly influenced by contextual factors including the prevailing socio-economic, political and historical situation in Hong Kong.

This point is subsequently emphasised when both the Hong Kong Law Society and the Bar Council express their approval of the language policy recommendation, in terms which link it explicitly to Hong Kong’s status as a commercial and financial centre. According to the Bar Council:

While Chinese is an official language of the law in Hong Kong, plainly English remains the more important language in many aspects of the law. Indeed, if Hong Kong is to remain a financial centre and a cosmopolitan city,
those engaged in the supply of legal services in Hong Kong must have a
good command of the English language. (2001)

2.3 Declining English language standards

Closely linked to the discussion of language policy in Hong Kong legal education and training is the theme of declining English language standards. Redmond and Roper note a strong perception from within the legal community that the standards of English language proficiency are in decline. For example, they record considerable concern about the ‘intellectual and language abilities’ of Hong Kong law students (Redmond & Roper, 2001, p. 80). It is felt that poor standards of language inhibit students’ ability to read in depth and to argue cogently (p. 99). They further note that ‘law graduates trained overseas, where they were immersed in English displayed higher language proficiency’ (p. 99).

The discussion of declining English standards is a recurring theme in the wider Hong Kong community. Participants in this debate tend to disagree about whether there is an actual decline in English standards, with some suggesting either that the standard of English in Hong Kong has always been poor (Lau, 1997, p. 103), or that it is actually improving (Bacon-Shone & Bolton, 1998). It may be, as Joseph (1996) suggests, that the concern about declining English standards in fact reflects a broader social change, indicative of increased educational opportunities with more Hong Kong people now gaining access to English:

> Whatever we mean when we talk about ‘English’ – whether we have in mind a set of words and rules existing independently from speakers, a form of knowledge in the minds or brains of speakers, or a way of behaving in communicative discourse – it is clear that what is happening in Hong Kong is that more people are getting access to English, not fewer. As is typical when a privilege of the few becomes open to the ‘hoi polloi’, it is no longer perceived as having the same quality as before. (Joseph, 1996, p. 170)

The concerns voiced in the Steering Committee Report are typical of the broader discourse in that no rational inquiry or empirical study into the question is referred to; rather the assertions made are all based purely on anecdotal evidence (Redmond & Roper, 2001, p. 100). As a result, it is impossible to characterise the language difficulties experienced by Hong Kong law students in anything but the most general way. It would undoubtedly have been helpful if members of the legal profession had
been able to give a clearer indication of how they assessed language standards and on what basis they felt there was a decline in standards.

Indeed, in its submission, the City University of Hong Kong takes issue with this question:

> Though we still lack any overall objective means whereby to assess it, there is clearly a firm belief in some quarters that the standard of English amongst Hong Kong’s young lawyers is worse than it was 20 years ago, and secondly that their proficiency in English is insufficient to meet the demands of the large, international law firms engaged in commercial work…

> However, though there is much criticism and large amounts of anecdotal evidence to support such a view, the exact nature of the ‘problem’ is not clear. Nor is it clear what respondents see as the ‘cause’ and ‘cure’ for this ‘problem’ of language proficiency. (2000, p. 12)

The submission goes on to suggest that the basis on which members of the legal community assess the English language proficiency of Hong Kong law students is inappropriate:

> It seems, for example, that some people take as their measure whether or not today’s students recognise a quote from Shakespeare when they hear one… Others complain that the ‘accent’ of today’s students is poor… A further identifiable complaint is that the written English of today’s students is inadequate… Another complaint is that today’s students do not understand the ‘nuances’ of English as a language. (2000)

Again the items in this list are mostly of such a general nature that they are of no assistance in understanding the problem whatsoever. It is not at all clear from such comments what practical tasks law students have difficulty with, nor what professional communication skills they need to improve in order to succeed. What is really required here is research into the relevant language practices, so that the nature of the practical tasks and the necessary legal communication skills involved can be better understood. Once such research has been carried out, the academy will be in a better position to provide students with opportunities to develop the language skills necessary for effective legal professional communication.

The issue of declining language standards demonstrates that while the legal community perceives a problem with language, it is uncertain both how to define and resolve it. In the following section, I examine the principal proposals made by
the consultants in the review of legal education and training, and consider the legal community’s reaction to them.

2.4 Addressing the English language ‘problem’: recommendations and reactions

The Steering Committee Report calls for a variety of measures to be taken in order to promote student language proficiency at law school. Of these, the measures directly related to curriculum and course development can be divided into three groups:

1. Testing
   English language benchmarking both at entry and throughout the law degree;

2. Remedial or enhancement teaching in English
   Remedial language tuition or enhancement teaching for students failing to meet benchmark English language requirements;

3. English within the law course
   The adoption of an active learning methodology with a strong emphasis on the use of English, and the integration of English language requirements in assessment criteria.

In this section I examine these different recommendations and consider their impact on legal education and training in Hong Kong.

2.4.1 Testing

One measure suggested by the consultants is to raise the entry requirement for legal studies, from a D7 grade in the A-Level Use of English Examination (UEE) by two levels to a C5 (Redmond & Roper, 2001, p. 108). While some doubts were expressed as to the validity of the UEE as a measure of the skills required for law students, Redmond and Roper nevertheless felt that this measure would be justified.
Further, the consultants advocate the creation of a test to be called the ‘Use of English in Law Test’, or UELT (p. 109). Students would sit this test at various times in their law school career, including after their first year of legal study and also before advancing to the vocational stage of their studies. The test would measure a candidate’s ability to use English for legal purposes. Students failing to meet the standard would be required to undertake remedial tuition and then sit the test again.

The legal community was divided on the issue of raising entry requirements. There was general support from the Law Society and the Bar for raising the UEE benchmark as suggested by the consultants (2001; 2001). The Law Society even suggested that ‘a grade B is more desirable’ (Law Society of Hong Kong, 2001, p. 17). However, in its submission, City University of Hong Kong had expressed serious reservations about this restriction, on the grounds that raising entry requirements could ‘deny the study of law to virtually the entire population of Hong Kong’ (2000, p. 12). Thus the division is between those who argue for equal opportunity in education, and those who seek to exclude at an early stage students that they consider lack the necessary language skills for legal practice.

The proposed UELT received qualified support from the professional legal community. The Law Society adopted the proposal in its position paper, while the Bar Council responded as follows:

> While the Bar is not opposed to the idea of having a Use of English in Law Test (UEL) as proposed in the Report, the Bar considers that so long as a candidate has demonstrated his English language ability by passing a specially designed English language test once during the whole course of the academic stage of the legal education, there should be no need for any repeated test. The downside of having too many language tests is that the students would inevitably have to spend time and attention to prepare for such tests. This would take away time from their legal studies. (2001)

The main issue here appears to be the repeated test suggested by the consultants, which students would have to sit before being able to proceed to the vocational stage. This second test was envisaged to be more ‘stringent’ than the first, presumably so that students could demonstrate an appreciation in their English language skills. It is interesting that the Bar, which is critical of the English language skills of law students, should reach the conclusion (implied above) that developing professional legal communication skills in order to pass a language test would be an
unproductive use of students’ time. The clear message here is that although members of the profession are unhappy with the ‘declining English standards’ in Hong Kong law students, they are unwilling to invest time or resources in order to solve this perceived problem.

A related issue is whether the introduction of further testing would achieve the stated aims of increased language proficiency. City University’s submission questioned this, and went on to say that the ‘focus should not be on adding another test but in creating a culture in which students want to learn law and language for its own sake and not in preparation for a test’ (2000, p. 24). The consultants themselves comment that suggestions to resolve the language issue through testing reflect ‘a persistent tendency in Hong Kong to use traditional testing as the primary means of dealing with educational issues.’ (Redmond & Roper, 2001, p. 104)

At the time of writing, there has as far as I am aware been no progress towards a Use of English in Law Test. There are two possible reasons for this. The first is that constructing such a test would be a major exercise, involving a number of specialists from diverse fields including language testing, legal education, professional communication and discourse analysis. The second reason is that since the Redmond and Roper report was released, the Hong Kong government introduced the Common English Proficiency Assessment Scheme (CEPAS), which promotes IELTS as a university exit test. A variety of other options for exit tests were also considered before the University Grants Committee settled on IELTS as the preferred option (Qian, 2007). It would appear that the current climate in Hong Kong is to prefer such generic language proficiency tests over more purposefully designed alternatives.

2.4.2 Remedial or enhancement teaching in English

While ‘remedial tuition’ forms an essential part of the recommendation to introduce the UELT as outlined above, the consultants devoted only two paragraphs to ‘remedial or enhancement teaching in English’. The position adopted was far from clear:
There are, of course, the existing English for Legal Purposes courses for all students at both law schools and these should continue. At CityU there is also the course for those with a lower UEE score. This, too, should continue. But the consultants have not concluded that the extension of courses such as these is the solution most likely to succeed. (Redmond & Roper, 2001, p. 105)

Thus, while the consultants appear to support existing language skills courses, no vision of how such language teaching contributes to the future success of law students is provided. Furthermore, the consultants make no specific recommendations about language courses at all.

Predictably, there was little response from the profession, although the Bar Council expressed the view that any English language courses should be restricted to remedial tuition, perhaps objecting to the notion of ‘English enhancement’:

The Bar considers any English course available to the LLB students should be remedial in nature and should not be counted as part of the LLB degree curriculum. The Bar does not see any need for any English for Legal Purposes courses in the LLB curriculum. If a student has a good command of the English language he should be able to apply his language ability to legal concepts and should be able to express himself well. Those who have a good command of the language generally and yet are unable to express themselves well in legal matters, are likely to be inadequate in their analytical power, or to be confused in their thoughts or legal concepts. (2001)

This view appears to equate poor communication with poor analysis and understanding of legal concepts, assuming always that a student has ‘a good command of English’ in the first place. Yet it is not clear why the Bar Council makes this assumption, especially as it also notes that ‘the command of the English language for many of the Post Graduate Certificate in Laws (PCLL) graduates is not up to the required standard’ (2001). For these students, the best ‘remedial instruction’ one could offer would be a course directly relevant to their language needs. That is, instruction in the grammar, lexis, and common rhetorical structures required for effective professional legal communication, in other words a course in English for Legal Purposes.

One can only guess at the assumptions underlying the Bar Council’s stated preference for remedial courses, or indeed what it understands by the term ‘remedial course’. It is interesting to note, however, the position that any course adopted
should not count towards the LLB curriculum. This is consistent with the Bar’s implicit view that developing professional legal communication skills is at best, secondary to learning content, and at worst, a poor use of law students’ time.

It is perhaps not surprising that after the release of the consultants’ report, both law schools at the University of Hong Kong and the City University of Hong Kong initiated major changes in their English for Law programmes. The net effect of this was a restructuring of the programme at the University of Hong Kong, which involved the discontinuation of one out of two English for Law courses (N. Bruce, personal communication, May 19, 2008), and the complete discontinuation of the English for Law programme at City University.

2.4.3 English within the law course

The consultants also recommend what they describe as a ‘pervasive approach’ (Redmond & Roper, 2001, p. 104) to teaching and assessment. With regard to teaching, the consultants recommend that law teachers adopt an active learning pedagogy which encourages participation from students and offers opportunities for language practice (pp. 107, 109). It is hoped that the interactions on the course will provide students with the practice necessary to improve their English. In order to encourage participation in class, the consultants also recommend that ‘students’ participation in class be a part of the assessment scheme of each LLB subject’ (p. 163).

With regard to assessment, the consultants recommend that English language be one criterion for the assessment of all oral and written work submitted in the LLB, and that it should be possible to fail an assessment based on this criterion alone (pp. 107, 109). It is suggested that this would not only provide students with the necessary motivation to develop their English communication skills, but also ‘weed out’ students whose language skills were inadequate.

A closer reading of the recommendations reveals just how dramatic the proposed reforms are. Redmond and Roper describe them as ‘a cultural shift of considerable dimension, rarely attempted’ (p. 253). The consultants envisage that:
...an effective, indeed the most effective, way to enhance law students’ language proficiency and ensure that minimum standards are achieved is to treat language as part of the learning process. This means that students, when expressing themselves orally and in writing, will be coached on their use of language, and the assessments will treat language proficiency as a criterion upon which marks are awarded. (Redmond & Roper, 2001, p. 255)

The suggestion to integrate language and legal instruction has definite merit, as students should be able to apply language they are learning to an immediately accessible context. However, the proposal places heavy demands on the willingness and expertise of law school staff, who are unlikely to be skilled in coaching students on their use of language. The consultants undoubtedly felt this to be the case, as they recommended that academic staff be given training (amongst other things) ‘to become proficient tutors in language within the context of law teaching’ (p. 255).

The immediate response of the universities to the notion of integrating English language training in legal courses was a rather muted one. After the release of these recommendations, the University of Hong Kong released a response, but did not address this particular issue, saying only:

We agree with the consultants’ views and suggestions regarding values in legal education, academic staff development and training, equity and access in legal education, and lifelong learning. (University of Hong Kong, 2001)

As far as I am aware, City University of Hong Kong did not make a formal response. However, it had provided a lengthy submission in response to the consultation document and the position of the legal education community on this issue may to some extent be reflected in this. One must however bear in mind that this was written at a much earlier stage of the consultation process, before the specific recommendations of the report had been compiled.

While it did not cover the precise issue of English within the law course, City University’s submission envisaged the possibility of ‘interactive teaching’ and a ‘reassessment of the approach to teaching and learning’ (2000, p. 32). However, in the same submission it was argued that the responsibility for improving standards of English language ought not to lie with the law schools:
Is what is being demanded that the law schools take the responsibility for improving students' English? This may be beyond their power, especially if (as many argue) the roots of the problem lie in Hong Kong’s secondary educational system. (2000, p. 12)

It seems likely that while law teachers may have agreed in principle with the notion of active learning, many would have felt that it was beyond the call of duty to assess the English language ability of their students. Indeed, in its submission the City University of Hong Kong took the position that it had already taken considerable measures to provide a positive environment for the development of language skills in its law programme. This position is summarized in the following short extract:

City University has worked consistently to develop strategies and programmes to improve students' English language skills. These initiatives have included raising the entry-level requirements for LLB students, adding separate legal writing courses on the LLB and PCLL programmes, increasing the opportunities for students to make oral and written presentations in English, and ensuring that students receive feedback on their oral and written work. (City University of Hong Kong, 2000, p. 24)

In summary, the recommendation to teach English within the law course presents two principal difficulties. Firstly, by integrating English language instruction, the responsibility for English language skills development is passed to a group of legal educators that lacks the expertise to address language concerns with the necessary confidence. Secondly, while legal educators would probably appreciate the benefits of an environment conducive to language learning, few are likely to see language ‘coaching’ as a necessary part of their job, and as a result there is likely to be strong resistance to the proposed measures.

2.5 Summary and conclusion

We have seen that complex social, economic and institutional interests within the Hong Kong context shape language policy in legal education and training in Hong Kong. A number of interesting questions arise. These include, but are by no means limited to: What are the respective roles of English and Chinese in the Hong Kong legal context? What language or languages should Hong Kong law graduates be proficient in? What, if any, support, should the academy provide for the development of language skills? Whose responsibility is it to provide such language
support? How should the academy go about providing language support? The preceding discussion has demonstrated a great deal of uncertainty with regard to these, and other, issues.

In forming a language policy for Hong Kong legal education and training it is important that the complex socio-linguistic context be fully understood. Naturally, one must take into account the importance of English as the original source language of the common law in Hong Kong. However, one must also recognise that language practice in the legal context is changing significantly, as the use of Chinese in all areas of legal practice increases. As the government’s goals of implementing legal bilingualism are gradually realized, Hong Kong’s law students will need to develop language skills related to legal writing, drafting and advocacy, not only in English, but also in Chinese.

In the discussion of language proficiency in the context of legal education and training two clear themes emerge. The first is the notion of declining English standards and the second is a general unwillingness to accept responsibility or implement measures to address this perceived problem. The tendency is to adopt entry and exit tests which operate to exclude, rather than support students in need of language skills development. In spite of a clear need for language support, opportunities for students to improve their language skills during the course of the law degree appear to have been reduced, in favour of substantive law teaching.

This situation can only be improved if the vague and general assertions characteristic of the discourse of the legal educational and professional communities are abandoned in favour of a more rational inquiry into the legal language practices in the Hong Kong context. What is required is research that provides a clear definition of the practical language skills and competencies necessary to complete everyday professional legal communicative tasks. In addition, we must establish the precise needs of law graduates attempting these tasks. Only when we understand the communicative task, necessary language skill set, and student needs, will we be in a position to suggest clear pedagogical strategies that promote effective legal professional communication. In this thesis I draw on both theoretical and empirical sources in order to inform the pedagogy and design of online tools and resources for
the development of professional legal communication skills. In the following chapter, I describe the theoretical framework adopted, and in Chapter 4 I demonstrate how this framework is implemented with reference to the resources created, before returning to the question of legal competencies in the empirical study described in Chapters 5 and 6.
CHAPTER 3

Teaching and learning professional legal communication: Theoretical considerations for an online resource

In Chapter 2 I argued that there is a need for grounded empirical research into the skills and competencies required for professional legal communication in the Hong Kong context. One aim of this thesis is to describe professional legal communication practices (in relation to the genre of barrister’s opinion) so that principled decisions about teaching and learning may be made. In making such decisions we must also be aware of learning processes related to the acquisition of technical communication skills. In this chapter I argue that it is helpful to conceptualize professional legal communication as a domain-specific literacy which develops as students gain access to legal communities of practice and develop specialized knowledge and skills that allow them to participate in these communities. The nature of this process will be examined in some detail, with particular reference to social theories of learning (e.g. Lave & Wenger, 1991), and socio-cultural theories of second language acquisition (e.g. Lantolf, 2000c; Lantolf & Thorne, 2006). In light of this discussion I consider various pedagogical approaches to the teaching of professional communication skills, including genre-based pedagogy and the use of corpora in language teaching. Throughout the chapter, I consider the possible role of technology in enhancing the legal language skills and competencies of law students, and recommend pedagogical implications for the design of an online resource for legal professional communication.
Chapter 3: Teaching and learning professional legal communication

3.1 Legal communication skills as domain-specific literacy

3.1.1 Legal education, legal professional practice and legal literacy

In considering the nature of legal professional communication skills and how these may be acquired by novice lawyers, we may refer to research in a variety of fields, including legal education, new literacy studies, second language writing and second language acquisition. For the purposes of this thesis, the appropriate starting point is the legal education literature, as it is squarely situated in the domain of law. By understanding the issues in legal education, we may begin to understand the norms of the legal professional community and appreciate the role that language plays in lawyers’ professional development. It is beyond the scope of this thesis to provide a full review of the legal education literature. However, developments in legal education have been treated more thoroughly elsewhere and the reader is referred to those sources (e.g. Boon, 1998; Holland & Webb, 2003; MacFarlane, 1992; Redmond & Roper, 2001; Sherr, 2000, 2001).

A review of the legal education literature reveals that practices in formal professional legal education in common law jurisdictions have gradually evolved to include a greater emphasis on the skills and competencies required by legal practitioners. Boon (1998, p. 153) characterizes this evolution in terms of a development from a pedagogy of instruction to a pedagogy of performance. A number of reasons have been suggested for this development, chief among them being ‘the changing nature of work in law and the changing nature of the legal profession itself’ (Sherr, 1996, p. vi). The essence of Sherr’s argument is that work in law has become much more specialized due to a greater amount of legislative output, and so in order to prepare students for the workplace it is necessary to focus on those aspects of the subject which are likely to be core, namely skills and competencies. Consequently, academic lawyers and teachers like Sherr and others have come to realize that simply teaching so-called ‘black-letter law’ (i.e. legal rules and principles) is insufficient to equip students with the competencies that they require in the workplace. Sherr sums up this realization in the following way:

Understanding the essential concepts leads to an understanding of what is essential about law and the work of law. Identifying essential elements, for
the first time allowed the possibility of teaching those items directly, rather than imagining that they would happen to be there in the mind of the educational product, the law student, at the end of the period of legal education. (Sherr, 2001, p. 14: emphasis added)

Thus the emphasis in legal education, especially at the vocational level, has tended to shift from the delivery of legal subject matter, to the development of skills and competencies required by legal professionals in the context of the workplace. This tendency to focus on skills has not been entirely unproblematic: MacFarlane (1992) reviews critical issues, including the question of whether a focus on vocational training is appropriate and desirable in the academic context. Nevertheless, the change in emphasis described above has led to a greater interest among legal educators in the kinds of skills and competencies that lawyers need when they begin their careers. Consequently, there have been a number of attempts to describe or define these skills and competencies for the purpose of formulating policy in legal education (e.g. MacCrate Report, 1992). Such definitions are usually arrived at through extensive review of the legal education literature and consultations with members of the profession. The resulting lists of skills and competencies typically express the desiderata for newly graduated lawyers entering the profession. Reviewing these lists, it is clear that language plays an important role in the lawyer’s arsenal of skills. Furthermore, legal scholars have recognized the importance of providing adequate language support to second language learners for the duration of legal education (see, e.g., Addison & Cownie, 1992).

In the Hong Kong context, perhaps the most comprehensive attempt to create such a taxonomy of skills and competencies can be found in the Redmond and Roper report, which was discussed in Chapter 2, with particular reference to the language issue. In their report, Redmond and Roper identify five key skill areas to be developed in legal education. From the point of view of English language education, this taxonomy is extremely interesting because of the various references to ‘language’, ‘literacy’ and ‘communication skills’. The following skill areas are identified:

- general intellectual skills and frameworks of a transferable character that are broadly common to university education in the humanities and social sciences;
Chapter 3: Teaching and learning professional legal communication

- intellectual skills and competencies that are specific to the discipline of law;
- professional skills, broadly interpreted, that might be considered appropriate to the academic stage of legal education as well as the vocational stage;
- skills and competencies required for legal practitioners; and
- personal attributes, ethical capacities and values that call for development and nurture in the process of legal education and training.

(Redmond & Roper, 2001, p. 73)

Of these five skill areas, the first three include an inevitable focus on language skills both in terms of general literacy and as a tool for specialized communication. To cite some examples, ‘general intellectual skills and frameworks’ include the ‘intelligent, critical reading of texts’ and the ‘ability to communicate orally and in writing in a clear, consistent and compelling way’ (Redmond & Roper, 2001, p. 104: emphasis added). Similarly, a number of language skills are identified as belonging to the category ‘intellectual skills specific to the discipline of law’. These include ‘the ability to read, with understanding, legal material, especially case law and statutes’ and ‘the craft skills of legal writing’ (Redmond & Roper, 2001, p. 115: emphasis added). Finally, a range of professional skills, or ‘lawyering skills’, are said to be appropriate to either the academic or vocational stage of legal education. According to the report:

[Lawyering skills] include the communication and interpersonal skills of –

- effective oral communication
- legal interviewing
- client counseling
- advocacy
- negotiation and dispute resolution; and
- legal drafting.

(Redmond & Roper, 2001, p. 116: emphasis added)

This list of lawyering skills explicitly focuses on the communication skills associated with a range of legal professional practices. Redmond and Roper comment that ‘these skills require a sensitivity to the needs of clients, a capacity for effective communication with them, and proficiency with the language required in the appropriate register and context.’ (Redmond & Roper, 2001, p. 116) It is clear from such policy statements that scholars in legal education are aware of the
importance of language and communication skills to novice lawyers. However, legal education has not yet developed a mature theory of learning to account for the development of literacy in first and second language learners. In order to fill this gap, one must look to theories developed in new literacy studies and applied linguistics.

From the perspective of new literacy studies (Barton, 2007; Barton & Hamilton, 1998; Barton, Hamilton, & Ivanič, 2000) the particular configuration of practices described above can be considered to belong to the domain-specific literacy, that of legal literacy. New literacy studies view literacy as a set of social practices, which pertains to a particular domain of life, or context (e.g. work, school, home). Because this approach views literacy as situated in a social and institutional context, it is possible to identify multiple literacies, which are engaged in different contexts of situation. Barton makes this point in the following way:

> Where these different practices cluster into coherent groups, it is very useful to talk about them as being different literacies. A literacy is a stable, coherent, identifiable configuration of practices such as legal literacy, or the literacy of specific workplaces. (Barton, 2007, p. 38)

The observations of practitioners in legal education, as described above, confirm the notion that a domain-specific legal literacy can be identified and observed. Furthermore, these observations go some way towards establishing what the defining practices of such a legal literacy might be. Such observations constitute an important first step towards understanding the practices of lawyers in a way that can be communicated clearly and unambiguously to novice lawyers in training. However, on its own, this is insufficient for the purposes of fostering the development of literacy in the legal domain, as legal literacy consists not only of the practices identified above, but also as a means of communication between members of the legal community. As a consequence, the practices identified above must be clearly linked to an understanding of the forms of language used in the context of professional legal communication.

Thus, it is useful to see legal literacy as socially situated, in that professional legal literacy practices serve specific communicative purposes in the legal community.
Furthermore, in order to promote professional legal communication skills, we must understand not only the professional practices of lawyers, but also how these practices are realized through appropriate legal genres, and legal language in use. However, as was noted in Chapter 2 (Section 2.4), the connection between legal practice and legal language is not properly understood in the Hong Kong context, with legal practitioners maintaining a cut and dried distinction between language proficiency on the one hand, and the purposive, rhetorical use of legal language for legal professional communication on the other. Legal literacy must be seen as a communication tool between legal professionals, and as such the language used in the service of purposive rhetorical goals is of central importance. In order to better understand the nature of legal professional communication in this sense, and how legal professional communication skills are acquired, two theoretical constructs may serve: the first is the concept of ‘genre’ and the second is the concept of ‘community of practice’.

3.1.2 Genre and legal literacy

The concept of genre, which Johns (2008) refers to as ‘the most social constructivist of literacy concepts’, is one which has found wide application in applied linguistics and second language writing (e.g. Berkenkotter & Huckin, 1995; Bhatia, 1993; Cope & Kalantzis, 1993; Freedman & Medway, 1994a, 1994b; Swales, 1990). Genre has been particularly useful for the way in which it links writing practices, such as the legal literacy practices outlined above, with their associated formal rhetorical and lexico-grammatical properties. Thus the concept of genre can be employed to provide a more complete picture of the texts and language practices associated with legal literacy. Genre has been defined in a variety of ways, but at their core, all of these definitions rely on a social view of language, in which the function of language is to scaffold some form of human activity (Gee, 1999, p. 1). Thus, genres have been defined as typified rhetorical action in recurrent social situations (Miller, 1984), staged, goal-oriented, social processes (Martin, Christie, & Rothery, 1987), and as communicative events between members of a discourse community (Bhatia, 1993, 2004; Swales, 1990).
Considering these definitions, a number of core properties of genres can be identified. Firstly, genres serve a social purpose, that is they are a means of getting things done with language. Secondly, genres are typified responses to recurrent social situations. As a consequence genres frequently become routinized and conventionalized in form, and appear as ready solutions to common problems. As noted by Bazerman, ‘eventually the genres sediment into forms so expected that readers are surprised or even uncooperative if a standard perception of the situation is not met by an utterance of the expected form’ (1994, p. 82). This means that social constraints to adopt expected rhetorical structures and associated linguistic forms are imposed upon writers in any given situation. Nowhere is this felt as strongly as in the domain of law, where reader expectations are frequently compounded by legally prescribed formal requirements which dictate the legal effectiveness of the text (e.g. in court documents, contractual documentation, legislation). Thirdly, genres are community texts adopted for specific communicative purposes between members of the discourse community. This point rests upon the assumption that homogenous communities of like-minded individuals can be unproblematically defined (a point which cannot be taken for granted, see Section 3.1.3). If we accept this notion, then it can further be argued that expert members of the community will be able to read, understand and write the community genres without difficulty, but novices or outsiders will lack the necessary knowledge to do so. One could easily add other characteristics of genres to this brief description (see Berkenkotter & Huckin, 1995, p. 4; Bhatia, 2004, p. 23). However, for the purposes of this thesis, legal genres may be succinctly characterized as the typical forms employed by members of the professional legal community in order to achieve their communicative purpose.

In order to develop the kind of domain-specific legal literacy described earlier, students of law must gain an understanding of the genres of the legal professional community. Furthermore, when constructing a particular legal professional genre, students must draw upon the range of genres associated with the professional activity they are engaged in. This range of genres can be variously conceived of as the ‘set’ or ‘system’ of genres corresponding to a particular professional activity (Bazerman, 1994; Devitt, 1991). Alternatively, it can be more broadly conceived of as the full range of professional ‘disciplinary genres’ of the community, defined as ‘all those discursive forms that are invoked in all professional practices associated with a
particular disciplinary or professional domain’ (Bhatia, 2004, p. 55). In the case of law, these discursive forms would include generic forms of legal reasoning, and more specifically identifiable genres such as legislation, law reviews, cases, letters of opinion, court pleadings, agreements and so on.

It is worth noting that the construct of genre is open to broader and narrower interpretations. For example, in the context of Australian state school education, a broad approach has been taken and pedagogical genres such as ‘description’ or ‘argument’ have been identified, and their lexico-grammatical realizations charted in detail with reference to Systemic Functional Grammar analysis (Halliday, 1985, 1994; Lock & Lockhart, 1998; Martin, 1992, 1993). Bhatia (2004, pp. 59-60) refers to such genre descriptions as ‘rhetorical/generic values’. In the context of law, it would be possible to elaborate similar generic values related to characteristic forms of legal argumentation, employed by lawyers as they engage in legal problem solving. Drawing on the work of Conley and O’Barr (1990; 1998; 2005), Barton (2004) goes some way towards such a description in her account of rule-based and relational reasoning, but stops short of a linguistic description of these generic values. According to Barton, expert lawyers apply a rules-based approach to legal problem-solving, in which they deductively apply legal rules to the facts of a situation in order to arrive at the appropriate outcome. Non-lawyers or novices are more likely to apply a relational approach, in which they consider the moral merits of parties to a case in order to arrive at the outcome. Barton’s study identifies the generic values adopted by legal experts in legal problem solving and could usefully be extended by a focus on the typical lexical and grammatical realizations of those generic values. Such a description could serve as a useful guide for law students developing their legal problem solving skills.

A narrower interpretation of genre is typically applied in the context of English for Specific Purposes, where it is more common to focus on a particular text type, its communicative purpose, realization through particular genre moves and associated lexico-grammatical items. An example of this in the legal context is the description of the legal problem question provided by Howe (1990). Howe finds that legal problem questions are made up of the following genre moves, as illustrated in Figure 3.1:
Figure 3.1 The generic structure of the legal problem question

1. The situation
2. The instruction
3. The forecast
4. The issue
5. The law
6. Its authority
7. The application of the facts
8. Opinion (and advice)  (Howe, 1990, p. 231)

Each move can be further described in terms of the lexis and grammar that is commonly employed to realize it. In this manner, the description provides an understanding of both the communicative purpose of problem questions and their common linguistic textualization. Once again, such a description has obvious pedagogical potential, especially for students who are regularly engaged in constructing such texts. Considering these applications of genre theory, it should now be clear that the construct of genre can be applied at different levels in order to illuminate the development of legal literacy in law students. Note that these examples are meant only to provide a snapshot of the genre-based methodology: the disciplinary genres of the legal domain are explored in more detail in Chapter 5.

By way of summary, a focus on genre in legal literacy entails both a focus on legal professional practices and their associated textualizations. As we have seen, legal professional practices can be related to a wide range of disciplinary genres in the domain of law. Furthermore, taking a genre-based approach to the development of legal literacy enables us to focus attention on the lexical, grammatical and rhetorical resources required to achieve a particular communicative purpose in specifiable legal professional activities. It has been argued that for law students to develop the necessary competence in the practices of their discipline, they must develop an understanding of the genres associated with professional practices. Taking a genre-based approach to legal professional literacy practices provides the necessary methodology to develop such an understanding.
3.1.3 Developing legal literacy in the legal community of practice

As suggested above, developing legal literacy may be seen as the process of acquiring the necessary understanding or ‘genre knowledge’ (Berkenkotter & Huckin, 1995) of the disciplinary genres in the domain of law. This process has been characterized as a ‘cognitive apprenticeship’ to the parent discourse community (Berkenkotter & Huckin, 1995), or a movement from peripheral participation to full participation in the sociocultural practices of the relevant community of practice (Lave & Wenger, 1991). In this section I review the salient features of this process and consider how it might apply to the domain of law. In particular, I explore the concepts of ‘discourse community’, ‘community of practice’ and the process of ‘cognitive apprenticeship’.

Descriptions of discourse communities or the related concept community of practice tend to focus on the unifying qualities of such communities. Both discourse communities and communities of practice have been characterized as relatively homogenous groups with shared purposes, beliefs and practices (Swales, 1990, pp. 24-27; Wenger, 1998, p. 45). Drawing attention to the commonalities of these communities presents considerable advantages, in that it permits a focus on typical rhetorical action and shared practices, as highlighted in the previous section on genre and legal literacy. By focusing on the shared aims, communicative purposes and genres of a disciplinary community of practice, one can begin to understand the rhetorical resources that expert members of the community typically draw on to achieve these purposes. The concept of discourse community can therefore act as a powerful tool to illuminate disciplinary practices, expectations of readers and writers, and associated textualizations.

While this unified view of discourse community undoubtedly has its uses, it has been criticized for obscuring the true diversity of such communities, which are perhaps better characterized by the diverse agendas of their individual members than by the characteristic of ‘shared common purpose’ referred to above (Hyland, 2000; Prior, 1994, 1998; Swales, 1998). Hyland notes that:

[Discourse communities] are composed of individuals with diverse experiences, expertise, commitments and influence. There are considerable
variations in the extent to which members identify with their myriad goals, methods and beliefs, participate in their diverse activities, and identify themselves with their conventions, histories or values. (Hyland, 2000, p. 9)

Unsurprisingly, similar observations have been made with regard to the concept of community of practice (Barton & Tusting, 2005; Candlin & Candlin, 2007). For example, Candlin and Candlin illustrate considerable diversity in a nursing community of practice, noting that such a community cannot be regarded as a homogenous entity (p. 263). In particular, the writers note significant changes in practice over time. For example, the introduction of multidisciplinary teams has the effect of blurring community boundaries, and increased specialization among nurses results in a greater diversity of experience and purpose across individuals.

Although community membership initially suggests a homogenous group of like-minded individuals, in reality community practices can be influenced by a diverse variety of participants. As noted by Woodward-Kron, ‘discourse communities can include vocationally oriented participants such as school teachers as well as academics involved primarily in research’ (2004, p. 141). In addition, members of communities may participate for different lengths of time, be involved in a variety of different communities simultaneously, and exhibit varying degrees of personal engagement in the community. As a result, different members of the community engage with community practices in a wide variety of ways.

It is commonly assumed that the goal of domain-specific literacy development is membership of the relevant community of practice (e.g. Bizzell, 1992; Johns, 1995; Swales, 1990). As already mentioned, a common metaphor used to describe the process is the metaphor of ‘apprenticeship’ to the discourse community. In particular, this metaphor has been explicitly adopted by Berkenkotter and Huckin (1995), who describe the process of acquiring genre knowledge as one of ‘cognitive apprenticeship’. Berkenkotter and Huckin variously describe the process of transmission of genre knowledge in terms of an apprenticeship, enculturation, or socialization. They note that genre knowledge ‘is transmitted through enculturation as apprentices become socialized to the ways of speaking in particular disciplinary communities.’ (Berkenkotter & Huckin, 1995, p. 7) According to this theory the acquisition of genre knowledge by novice members of a community is mediated by
guidance from expert community members. A similar process is described by Lave and Wenger (1991), who describe situated learning as a process of legitimate peripheral participation in a community of practice. According to this model, newcomers to a community learn through participation in the sociocultural practices of that community. At first, such participation remains at the periphery of the community, but through increasing opportunities to engage in community practices learners gradually move towards ‘full participation’ in the community of practice (Lave & Wenger, 1991, p. 29).

Belcher (1994, p. 24) describes the process of cognitive apprenticeship in the following way: ‘During this process, the mentors (1) “model,” by making their tacit knowledge explicit and revealing their problem-solving strategies; (2) “coach,” by supporting students’ attempts to perform new tasks; and then (3) “fade,” after having empowered the students to work independently’. However, Belcher questions the extent to which effective strategies such as ‘modeling’ and ‘coaching’ are actually in evidence in mentoring situations, even in the context of advanced academic literacy development (i.e. dissertation supervision). Similarly, Candlin and Plum (1999) criticize the apprenticeship metaphor on the grounds that participants to the process do not always perceive their learning in terms of apprenticeship. In the data they reference, there were few signs that undergraduate students of Psychology perceived themselves as being apprenticed to the discourse community of Psychology. The authors conclude that such students lacked sufficient opportunities for peripheral participation in the professional community. However, it is interesting to note that in the same sample, postgraduate students of Computing with relevant work experience did, to varying degrees, perceive themselves as apprentices to the professional community. Candlin and Plum attribute this to the prior workplace experience of the learners, and to the work-related nature of the assignments that students undertook, both factors which enabled students to make connections between their university tasks and their workplace activities.

In the context of law and the development of legal literacy, students can be seen as legitimate peripheral participants in two clearly different communities of practice, namely the academic and professional legal communities. If the world of law school is to prepare students for the world of work, then the question which must be
addressed is: to what extent do legal academic practices resemble legal professional practices? The debate about legal skills education alluded to earlier (Section 3.1.1) illustrates to some extent the diverse purposes of these two communities. Scholars in legal skills education have themselves asked the question whether a focus on practical, vocational skills is desirable or even possible in the academic setting (MacFarlane, 1992). Legal academics raise the concern that legal skills education will lead to an overemphasis on practical training, at the expense of liberal education and the critical teaching of substantive law. Once again, these concerns highlight the considerably different aims and purposes of the academy and the profession. To the extent that law school focuses on a critical understanding of law as opposed to its practice, one would expect the literacy practices in law school to differ in marked ways from those to be found in practice. Therefore, as students progress through law school and into the legal profession, they will need to refine their understanding of legal literacy practices, adapting their legal writing to different audiences (cf. Lou, in progress, with specific reference to the domain of Marketing).

Two further, related questions arise in the context of law and the development of legal literacy. Firstly, to what extent do students of law have opportunities for legitimate peripheral participation in the legal community of practice? Secondly, to what extent do students of law perceive themselves as apprentices to the legal discourse community? In relation to the first question, it should be noted that in the lifetime of a Hong Kong law student there are a variety of opportunities for practical workplace experiences. These include mentoring programs and pro bono summer internships organized by the law schools (Chinese University of Hong Kong, 2007; University of Hong Kong, 2005a, 2005b) and summer internships sponsored by law firms. Furthermore, legal vocational training in Hong Kong concludes with either a pupillage for barristers or a trainee solicitorship following the traditional model of apprenticeship in English legal education (Boon, 1998; Burrage, 1996; Redmond & Roper, 2001).

In relation to the second question and given this background, it seems likely that many participants to the legal education process would see their experience in terms of an apprenticeship to the professional legal community. Nevertheless, such a proposition cannot be taken for granted. The extent to which students actually
Chapter 3: Teaching and learning professional legal communication

perceive themselves as apprentices is likely to be variable, and depend on how advanced students are in their studies, whether they are committed to a career in law, whether they have been able to secure work placements and so on. In order to foster the development of legal literacy, it would be extremely important to provide students with suitably authentic work-related tasks at various times throughout the course of the law degree. This would enhance existing opportunities for legitimate peripheral participation and enable students to make connections between the world of the law school and the practical world of work. Thus, the role of the law school in promoting the development of legal literacy is to provide a solid introduction to legal literacy practices and over time provide students with a variety of opportunities for legitimate peripheral participation in the legal professional community.

3.2 Socio-cultural theory and the development of legal literacy

In considering the development of legal literacy one can choose to focus one’s attention on both individual and social processes (Scollon, 1998; Wertsch, 1998). By focusing primarily on participation in communities of practice, I have thus far emphasized a view of learning as a social process. However, it is important not to lose sight of the individual, psychological dimension of learning. This is particularly important when developing a tool like a computer resource which, while providing various possibilities for interaction, will ultimately be used by individuals in a social context. Two important questions arise. Firstly, how are individual, psychological processes related to the social processes of participation outlined in the previous section? Secondly, what are the key components of a social psychological theory of learning and instruction that must be considered in developing an online resource for the development of legal literacy?

In answer to the first question, Rogoff argues that individual and sociocultural factors can be viewed as mutually embedded, mutually constitutive. It is worth quoting a portion of her argument at length here:

Rather than viewing individuals, their social partners, and the sociocultural context as independent ‘influences’ or factors of development, I argue that they represent differing angles of analysis of an integrated process. Although researchers and scholars find it convenient to focus their investigation on a specific angle, looking at the complex process of
development through a particularly interesting window, the different angles or windows may artificially divide a unified, whole development process. For convenience of study or discussion, we may focus on one or another, but we must remember the integrated nature of the developmental process. (Rogoff, 1990, p. 26)

In other words, Rogoff argues that the development process is constituted of mutually embedded individual and social elements. In a sense this perspective recalls the observations reported in the previous section, that communities of practice are composed of a diverse range of individuals interacting as a social group (Hyland, 2000; Prior, 1994, 1998; Swales, 1998). Rogoff emphasizes the importance of recognizing the role of both individual and sociocultural factors in the development process, without privileging either set, seeking instead to understand the relationship between the two (Rogoff, 1990, p. 25). She concludes that cognitive development is inseparably linked to the social process of structured, guided participation in culturally organized activities, which process occurs between expert and novice members of a community (pp. 38-39).

If the individual, psychological processes of learning legal literacy are to be seen as inseparably linked to the associated social processes of legitimate peripheral participation, then it is also necessary to adopt a theory of mental development in which these processes are integrated. Sociocultural theory of second language acquisition (SCT), which draws upon the work of the Russian psychologist Lev Vygotsky, is such a theory (Lantolf, 2000c; Lantolf & Appel, 1994; Lantolf & Thorne, 2006). SCT, as defined by Lantolf (2006), refers to the body of research that has been developed drawing upon Vygotsky’s (1978) theory of mental development and functioning. This theory is of particular interest in the present context because Vygotsky’s theory of mind holds that mental development is reconstructed from social interaction, which would include formative interactions between novice and expert members of a community of practice (Lantolf, 2006, p. 90). According to Vygotsky all mental development is socially mediated. He explains the process in the following way:

> Every function in the child's cultural development appears twice: first, on the social level, and later, on the individual level; first between people (interpsychological), and then inside the child (intrapsychological) ... All the higher functions originate as actual relations between human individuals. (Vygotsky, 1978, p. 57: emphasis in the original)
Thus, in SCT, the individual and the sociocultural are seen as a functional system from which mental development arises.

Having established SCT as a useful theory to explain the process of individual, sociocultural development, I turn now to the second question identified above: what are the key components of a social psychological theory of learning and instruction that must be considered in developing an online resource for the development of legal literacy? In order to have a basic understanding of how legal literacy develops in the individual, we must further explore the concept of mediation, already alluded to. Lantolf and Thorne consider mediation to be the central concept of sociocultural theory (Lantolf & Thorne, 2006, p. 59). Mediation describes the mechanism by which the individual interacts with semiotic artefacts and sociocultural practices in one monist functional system. This functional system can be thought of as ‘agent-acting-with-mediational-means’ (Wertsch, 1998, p. 24). According to SCT, we do not act directly on the world, rather our action is mediated by the use of either physical or cultural tools (Vygotsky, 1978, pp. 25-27). The use of tools, also referred to as ‘artifacts’ (Lantolf, 2006) and ‘mediational means’ (Scollon, 1998; Wertsch, 1998), shapes our interaction with the physical world, with people in the social world and also with ourselves.

It is helpful to illustrate this concept of mediation with some examples. A physical tool, like a hammer, can be used to mediate interaction with the environment, enhancing labour. Similarly cultural tools such as language and culturally specific schemata (once appropriated), mediate our interactions with others, in goal-directed activity. In addition, it is important to note that these cultural tools can also be turned inward in order to regulate our own mental functioning. Lantolf and Thorne note that ‘just as physical tools (created by humans in history) empower us to control and change the physical environment, so symbolic artifacts and cultural practices (also created by humans in history) empower us to control our biological endowment (i.e. our brains) through auxiliary means.’ Vygotsky saw language as the most sophisticated cultural tool, and in language it is easy to see the bidirectional quality of mediation. Language both mediates communication in the external, social environment, and mediates higher mental functions (e.g. memory, rational thinking,
learning) when used in internal self-regulation. As we shall see, this has important implications for learning legal literacy.

Scollon (2001, p. 117) notes that a material tool can act as both an affordance and a constraint in interaction with the environment. He cites the example of a stick used to knock fruit down from a tree. While the stick affords greater reach, it also constrains the activity because it does not allow its wielder to judge which fruit are ripe enough to be knocked down. Similar affordances and constraints can be found with regard to more sophisticated mediational means, such as computer tools and language. For example, the use of a computer to mediate an interaction using email or chat affords easy communication over a distance, but constrains the interaction in the sense that the usual non-verbal cues present in face-to-face communication are missing. In the present context, the online resources developed mediate learning by supporting students’ construction of legal texts. Like other mediational means, the online resources offer both affordances and constraints, and these will be discussed in detail later in the thesis (in particular Chapters 7, 9, 10).

In order to account for the mental processes associated with developing legal literacy, it is necessary to understand the language forms (genres, rhetorical schemata) associated with legal literacy as cultural tools or mediational means in the sense just outlined. It is important to take a sociocultural approach to the concept of schema (McVee, Dunsmore, & Gavelek, 2005), rather than the more traditional information-processing approach (Schank & Abelson, 1977). Proponents of SCT argue that schemata are learned through a process termed ‘internalization’. Lantolf (2006, p. 90) defines internalization as ‘the process through which members of communities of practice appropriate the symbolic artifacts used in communicative activity and convert them into psychological artifacts that mediate their mental activity.’ In the case of law, symbolic artifacts would of course include the various legal genres, rhetorical schemata and other semiotic systems belonging to the legal literacy practices identified earlier. Sociocultural theorists stress that internalization involves an element of transformation, and cannot therefore be seen as a ‘fax-like’ copying from the external to the internal plane (Lantolf & Thorne, 2006, p. 160). The process involves the idealization of material artifacts (whether physical or cultural), as a consequence of which the individual gradually gains independence of
specific concrete circumstances (Lantolf & Thorne, 2006, p. 159). In the context of learning legal literacy, students would initially rely on a range of external cultural practices associated with the discourse of law, and over time appropriate the relevant schemata.

A final key construct in SCT outlined by Vygotsky is the Zone of Proximal Development (ZPD), which can broadly be defined as the learner’s development potential (Vygotsky, 1978, p. 86). Vygotsky conceives of the ZPD as the difference between a learner’s ability working independently, and a learner’s ability working in collaboration with others (for example, a teacher, a parent). Lantolf (2000a, p. 17) comments that the ‘ZPD is more appropriately conceived of as the collaborative construction of opportunities … for individuals to develop their mental abilities.’ This is an important concept in the present context as it is clearly related to the notion of scaffolding (Bruner, 1985; Donato, 1994; Wood, Bruner, & Ross, 1976), in which concepts are carefully brought within the reach of the learner through a series of negotiated interactions. Wood, Bruner and Ross identify the following scaffolding functions in tutorial interactions:

1. Recruitment
2. Reduction in degrees of freedom
3. Direction maintenance
4. Marking of critical features
5. Frustration control
6. Demonstration

(Wood et al., 1976, p. 98)

The process as described here involves capturing the attention of the student (recruitment), and subsequently managing the task by reducing it to a manageable level for the student (reduction in degrees of freedom). The tutor also has the role of keeping the student on task (direction maintenance) and accentuating the relevance of particular features of the task (marking critical features). Performing the task with the tutor should be less stressful than without (frustration control) and the tutor should be able to model a solution, consisting of an idealized version of the act to be performed (demonstration). Particular aspects of this process would seem to be very well-suited to mediation by computer technology, for example ‘marking critical
features’ of the task or ‘demonstration’. Typically, computers are not as well-suited as skilled teachers to responding to the evolving needs of students (particularly affective needs), though it is entirely possible to attempt to simulate this kind of scaffolding by keeping detailed learner profiles and tailoring activities to suit individual students.

In summary, for present purposes it is important to observe that I follow the assumptions of SCT in seeing learning as a socially mediated process. This has some consequences for the design of an online resource for the development of legal literacy. First, the resource must be integrated into wider literacy practices, including academic and professional legal literacy practices. Second, the resource must be designed to act as a mediational means to facilitate guided participation in those practices, for example by providing scaffolding for students’ writing processes. In Chapter 4, I outline the practical consequences of taking this approach, by describing the resource developed in detail.

3.3 Teaching legal literacy

In this chapter, I have thus far provided an understanding of legal literacy both from the point of view of legal educators and policy makers, and as seen by scholars in the fields of new literacy and genre theory. I have suggested that legal literacy be viewed as an understanding of the professional genres and practices in the legal professional domain. In addition, I have provided an account of how such legal literacy might be acquired through a scaffolded process of guided participation in the legal professional community of practice. Finally, I have suggested that computer resources may act as mediational means in the process of guided participation outlined. It remains to examine relevant issues of pedagogy related to the teaching of domain-specific literacy. This will be the focus of the current section, and I will focus in particular on teaching and learning genre, and the pedagogy of data-driven learning.
3.3.1 Teaching and learning genre

A preliminary issue that must be dealt with is the question of ‘teachability’ of genres. There has been considerable debate amongst genre scholars as to whether it is desirable to teach genres directly to students, and whether such explicit teaching can promote learning. Two important issues are raised in this connection: namely whether genres can be taught in the classroom and whether explicit teaching of genre restricts creativity. I address these issues below and argue that the explicit teaching of genre is indeed desirable. I then focus my attention on the range of instructional strategies that may be adopted in a genre-based approach to writing instruction and suggest how these might be applied in the case of legal professional genres.

On the whole, scholars working in the New Rhetoric tradition are critical of attempts to teach genre explicitly. In particular they are critical of the practice of explicit teaching of (for example) workplace genres and their formal features in educational contexts like the academy (e.g. Freedman, 1994). These scholars rely upon the cognitive apprenticeship and legitimate peripheral participation metaphors (Berkenkotter & Huckin, 1995; Lave & Wenger, 1991) as evidence that the acquisition of genre knowledge occurs solely as a result of increased participation in community practices. They view the direct teaching of the formal rhetorical structures employed in such practices as incompatible with the aim of increased community participation. It is undoubtedly true that at times a tension can be observed between practices in the academy and practices in the workplace, and therefore the position advanced should be considered carefully. However, as Hyland (2004) notes, this position does not exclude the possibility that formal instruction in genres may increase a student’s familiarity and confidence with the community genres, thereby ‘short-cutting the long processes of natural situated acquisition’ (pp. 17-18). It would therefore appear to be appropriate to employ the kind of rhetorical and contextual awareness raising tasks described in the ESP literature (e.g. Bhatia, 1991, 1993; Flowerdew, 1993b; Swales, 1990; Swales & Feak, 1994).

A second point raised by critics of explicit teaching of genre, is that such explicit teaching can be misconstrued by students as constraining creativity by prescribing approved rhetorical schemata for classroom use. Indeed Dixon (1987, p. 10)
characterizes the attempt to identify staged, goal-oriented generic sequences and moves, as exemplified by the Sydney school of systemic functional linguists, as ‘algorithmic’, suggesting a formulaic approach to language analysis and pedagogy. He further suggests that attempts to describe genres in terms of their formal features can lead to the neglect of important aspects of writing instruction such as the meaningful choice of genre, meaningful construction of text, and awareness of audience. This is a worthwhile critique in that it does highlight some of the dangers of an overemphasis on form. However, as we saw earlier (Section 3.1.2) particular rhetorical forms do in fact come to be expected in recurrent rhetorical situations, and this is especially so in legal contexts such as legislation, court proceedings or the negotiation of legal agreements. It is important to recognize that for these reasons, creativity is indeed constrained. The important point to bear in mind, is that these constraints on creativity are not absolute, but relative to contextual factors such as a writer’s status in the community, reader-writer relationships, and the communicative purpose of the text (including its intended legal effect in this case).

For the reasons described above I adopt the position that an explicit focus on genres and their associated textualizations is both desirable and beneficial to students learning domain-specific literacy. In developing appropriate pedagogical strategies a clear rationale can be derived from the work of Vygotsky (1978) and Bruner (1985) described earlier. In particular, the concept of scaffolding has been applied to provide a basis for classroom procedures and tasks in the context of Australian SFL genre pedagogy (Hyland, 2004). As was noted earlier, scaffolding involves a process of negotiated interaction in which a teacher, mentor or expert community member carefully brings concepts within the reach of the learner. This process can be incorporated into classroom practice through the use of direct instruction, discussion and analysis of sample texts, and various kinds of feedback on writing. While ESP practitioners do not rely directly upon the concept of scaffolding, many of the classroom practices in ESP are informed by the same underlying principle. Thus in ESP, tasks based on ‘consciousness-raising’, ‘gradual approximation’ and ‘developing socioliteracy’ (Johns, 1997; Swales, 1990; Widdowson, 1978) are premised upon the notion that learners will gradually develop mastery of a genre in a collaborative enterprise with the instructor. An overview of the kinds of tasks
observed in genre-based writing instruction is provided by Hyland, as shown in Figure 3.2.

**Figure 3.2 Tasks and relative support for writing (Hyland, 2003, p. 120)**

<table>
<thead>
<tr>
<th>Most support</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Graphology</td>
<td>Basic writing mechanisms (handwriting, keyboarding, spelling, punctuation, writing, layout)</td>
</tr>
<tr>
<td>Scaffolding</td>
<td>Contextual awareness (audiovisual materials, observations, research)</td>
</tr>
<tr>
<td></td>
<td>Language familiarization (comparisons, gapfill, feature identification)</td>
</tr>
<tr>
<td></td>
<td>Model analysis and manipulation (re-ordering transforming or combining features)</td>
</tr>
<tr>
<td></td>
<td>Controlled composition based on models (text completion and parallel writing)</td>
</tr>
<tr>
<td></td>
<td>Guided composition (data transfer, information transfer, medium transfer)</td>
</tr>
<tr>
<td>Composing</td>
<td>Composition heuristics (planning, pre-writing, multi-drafting, editing techniques)</td>
</tr>
<tr>
<td></td>
<td>Extended writing (creation of text for particular audience – real or imagined)</td>
</tr>
</tbody>
</table>

**Most independence**

Figure 3.2 usefully outlines the range of tasks that might be adopted in a genre-based approach, including tasks as simple as ‘gapfill’ and as involved as ‘research’. The range is necessarily broad as scaffolding may focus not only on textual features but also on the broader social and contextual features of disciplinary culture (Hyland, 2004, p. 122).

Bhatia (1991) provides a useful example of genre-based materials. The self-access materials he describes focus on a single sample text, an example of a promotion letter, and provide students with a range of exercises in relation to that text (4 worksheets in total). These include:

- Understanding the rhetorical organization of the text;
- Understanding the communicative purpose of genre moves in the text;
• Identifying possible variations in the choice and textualization of particular genre moves;
• Constructing particular genre moves;
• Recognizing linguistic features of particular genre moves;
• Recognizing common errors in language in use;
• Reconstructing a sample text in order to enhance its effectiveness.

In the task described, understanding the rhetorical organization and communicative purpose of the genre plays a central role, informing the design of the entire task. Bhatia demonstrates how the genre analysis methodology can be used to scaffold student interaction with the text and focus student attention variously on communicative purpose, rhetorical organization and language in use. By highlighting variations in both the choice and textualization of genre moves, the materials described encourage the learner to consider what Bhatia calls the ‘tactical aspect’ of language use, that is, what conventional language is used to achieve specified communicative purposes of the disciplinary culture. Finally, the tasks are organized according to the principle of scaffolding, so that ‘the learner gradually progresses from relatively simplified and guided tasks to more advanced and free exercises’ (Bhatia, 1991, p. 159).

As suggested earlier, the underlying rationale for exercises of this kind is that an explicit focus on genres will help novice students to short-cut the process of guided participation in the discourse communities to which they aspire. By becoming familiar with genre conventions and associated literacy practices students become more adept at writing for the target community. Bearing this in mind, it is important that the kinds of tasks described by Bhatia are integrated into a curriculum which fosters the process of guided participation envisaged, by providing students with opportunities to participate in community practices. Indeed, awareness raising tasks of the kind reviewed above will work best when they are combined with more authentic task types which reflect the practices of the legal community. One way of ensuring such authenticity of task would be to work in close collaboration with members of the law school, for example by combining an English for Law course with a legal content course in the way that Bruce (2002) has done.
In summary, I have argued that the explicit teaching of genres is both desirable and beneficial to students learning legal literacy. I have provided a theoretical rationale for the teaching of genre, which must be based upon the concept of scaffolding and carefully integrated into the curriculum so that students not only draw on authentic texts but also authentic tasks. There are two principal implications for the design of online resources for the development of domain-specific literacy in law. Any online resource should provide a variety of awareness raising tasks that enhance awareness of generic structure in terms of the relevant schemata at a rhetorical and lexico-grammatical level. Equally, it is important that such an online resource be integrated into the curriculum, so that students are engaged in authentic legal discourse practices when they draw upon materials provided.

### 3.3.2 Corpora in language teaching

Numerous researchers have found corpus tools to be very useful in elaborating the textual features of genres (e.g. Bhatia, Langton, & Lung, 2004; Flowerdew, 1998; Hyland, 2000; Swales, 2004; Upton & Connor, 2001). Therefore it is not surprising that there has been a great deal of interest in exploring how such corpus tools might be put to use in the teaching of domain-specific literacies in ESP (e.g. Flowerdew, 1993a, 1993b, 1996; Flowerdew, 2001; Gavioli, 1997, 2005; Lee & Swales, 2006; Milton, 1999, 2005, 2006; Thurstun & Candlin, 1998). Like other forms of authentic text, corpora can provide opportunities for scaffolding or awareness raising, especially in relation to the lexico-grammatical realization of genres. In this section I provide some background to the use of corpora in language teaching, consider issues of pedagogy, and how these issues relate to the present context.

The flexibility of corpus resources and tools encourages diversity in corpus-based approaches to teaching languages for specific purposes. As an example, at one level, corpus investigation may inform course designers of the particular lexico-grammatical features of the target discourse and genre structures relevant to the curriculum (Flowerdew, 1993a). Similarly, a corpus may act as a source of examples of authentic language in use, which can be exploited in class by teachers (Cobb, 1997; Johns, 1991a; Stevens, 1991; Thurstun & Candlin, 1998). At another level,
students may be actively involved in the use of computerized corpus tools to explore text in order to complete a particular pedagogical task, such as a discourse analytical study of relevant journal articles (Lee & Swales, 2006), or a project involving the serendipitous discovery of language forms in context (Bernardini, 2000). Further examples involving active corpus use by students include making use of the corpus as a feedback tool for students, frequently mediated by a teacher’s comments (Gaskell & Cobb, 2004; Milton, 2006).

Approaches that involve students in the analysis of corpus data, either directly (through the use of computer tools) or indirectly (through the use of printed handouts), tend to emphasize the value of student control over the learning process. Tim Johns, widely credited with pioneering this ‘data-driven learning’ approach to language teaching and learning, observes that ‘research is too serious to be left to the researchers’ (Johns, 1991b, p. 2). Thus Johns advocates a student-centred approach to teaching and language corpora that views the ‘learner as researcher’ into language use. In the context of ESP, John Flowerdew (1993b) suggests that students may discover the function of particular lexical items in specialist texts in this way. Emphasizing the exploratory nature of learning with language corpora, Bernardini (2002; 2004) prefers the metaphor of ‘learner as traveller’ which for her captures the spirit of discovery learning. Bernardini argues for an approach that emphasizes the serendipitous discovery and investigation of language forms, as students ‘wander’ through the corpus in a more self-directed manner. Bernardini distinguishes her approach from the ‘learner as researcher’ model adopted by Johns (1991b) on the grounds that it ‘encourages learners to follow their own interests whilst providing them with opportunities to develop their capacities and competences so that their searches become better focused, their interpretation of results more precise, their understanding of corpus use and their language awareness sharper.’ (Bernardini, 2004, p. 23) Bernardini’s critical observations here touch upon two widely held concerns in the literature on teaching and language corpora: firstly, that learning tasks should be self-directed and meaningful; secondly, that learners should be provided with guidance in the corpus consultation task.

A major criticism of the use of corpora in language teaching is related to the extent to which texts in a corpus can be considered to be truly authentic. Widdowson
argues against an over-reliance on corpus texts, on the grounds that such texts are ‘static abstractions’, and have only a ‘reflected reality’ as traces of a presupposed real discourse (Widdowson, 2000, p. 7). In other words, essential contextual aspects of the discourse, such as the participants, the mode used, and the intended effect of the text, leave only a faint trace in the textual product. Widdowson argues that it is necessary to ‘contextually reconstitute’ such texts, but that students with little awareness of discourse conventions are ill-placed to undertake such a task (p. 7). No doubt the nature of concordance output, which frequently returns large numbers of truncated key-word in context lines, only adds to the argument that corpus text is ‘decontextualized language’ (p. 7). However, Widdowson nevertheless acknowledges the pedagogical potential of corpora in language teaching (p. 8), and his critique has given pause for practitioners to consider how the use of corpora can be made as meaningful as possible to students, by employing a more authentic range of tasks.

The recent case study by Lee and Swales (2006), using corpus analysis as an awareness raising task for post-graduate students, illustrates some of the instructional strategies that may be used to overcome the limitations identified by Widdowson. First, the corpora made available to students were carefully selected to reflect students’ interest (and experience with) academic language. Second, the course included a corpus construction component, where students were required to construct a corpus including both their own writing and expert writing drawn from their discipline. Students who construct their own corpora in this way will inevitably be more familiar with the originating context of the corpus texts. Naturally, this is particularly true of their own writing. It is likely also true of expert writing that students evaluate as suitable for inclusion in their corpus, as such judgments are likely based upon contextual factors (e.g. the content of the writing, who is writing and for what purpose). Finally, as part of the course, students were asked to do a self-directed project which consisted of the presentation of corpus-based findings. Such a task can be seen as authentic in the sense that it is personally meaningful to the participants, though there is a danger that students might fail to make the connection between the corpus task and their own writing.
Indeed, Lynne Flowerdew notes that ‘another important consideration is how corpus work can be systematically integrated into the grammar and writing work of a course and not just used as an end in itself’ (Flowerdew, forthcoming). A common process used to achieve this end, is to make use of corpus tools as a means of providing feedback to students, or to train students to make use of corpus tools as an alternative to other, more traditional resources such as dictionaries or grammar books. Chambers and O’Sullivan (2004) explore the latter possibility, by asking students to refer to corpus tools to correct errors identified by the teacher. Both Milton (2006) and Gaskell and Cobb (2004) have explored the use of corpus tools to provide what Milton terms ‘resource-rich’ feedback. This involves the use of dedicated technological tools to allow teachers to identify errors in students’ writing and create ‘pre-cast links’ to online concordance output, which displays the lexis as used in a corpus of text. Both applications aim to integrate corpus tools swiftly into the process of student writing.

In summary, corpora are well-suited to awareness-raising exercises for the development of domain-specific literacy. Such exercises allow students to explore the lexical and grammatical realizations of genres in law. This in turn facilitates the ongoing process of legitimate peripheral participation in the legal community of practice. The review of corpus-based pedagogy above illustrates a number of principles. Firstly, some form of training in corpus analysis would likely be necessary for students to benefit from the corpus tools. Secondly, it would be desirable for corpus-based tasks designed to be self-directed, draw upon corpora that students can easily authenticate, and be integrated into students’ regular writing practices.

3.4 Summary

In this chapter I have argued that it is useful to view legal professional communication skills in terms of a domain-specific legal literacy. Moreover, this legal literacy can be understood as knowledge of the genres and practices of that community, which students gradually develop as they participate in those practices. The process of legitimate peripheral participation which students are engaged in may be scaffolded by a variety of mediational means, including the use of computer tools.
Taking this approach has a number of pedagogical implications, which are relevant to the development of an online resource for legal writing skills. An important consideration is that the resource must be integrated into wider literacy practices, so that it is perceived as relevant to their development, and clearly facilitates the process of guided participation described. In providing for the development of genre knowledge a variety of scaffolding and awareness raising tasks can be provided, focusing on contextual, rhetorical, lexical and grammatical aspects of legal literacy. In the following chapter, I provide an account of how these principles were put into practice for the purposes of this thesis study, given the constraints of the learning context.
CHAPTER 4

Design of the LAWS resources

In this chapter I describe the context, rationale and design of the experimental online resources which were produced in part for the purposes of this project. These resources, known as Legal Analysis and Writing Skills, or LAWS for short, were conceived as a result of discussions with Law School faculty, who expressed a desire to enhance e-learning opportunities for law students. As a consequence of these discussions, a grant for the development of online resources was obtained (Hafner, Fok, Scully-Hill, Stockhill, & Williams, 2005). Providing online resources offered a number of perceived advantages. Firstly, course materials could be made available for students to engage with according to their own particular needs and learning preferences. Secondly, additional supplementary materials could be created in order to address some of the less common problems identified among law students on particular courses (especially language problems). Thirdly, over time some of the input delivered in lectures could be devolved to an online mode, freeing up face-to-face resources for more intensive skills training. The design and development of the LAWS resources was in itself a substantial achievement, involving considerable technical and pedagogical co-ordination. As we shall see, the LAWS resources are broad in scope, and provide students with a range of more and less structured learning opportunities. These include online tutorials with a focus on rhetorical consciousness raising, online commenting functions to facilitate interaction in the learning community, the provision of an enhanced writing environment to assist students in the legal writing process, and online corpus tools for discovery learning.
4.1 Rationale and context

4.1.1 Approaching instructional design

In approaching the design of educational technology, or CALL materials, it is necessary to take into account a number of factors. In particular, it is necessary to consider a theory of learning, salient features of the learning context and an effective process in instructional design. The proposition that CALL materials should be theory-led rather than technology-driven has become somewhat of an axiomatic principle in CALL design (Levy, 1997b, 1999). As noted by van Lier (1998, n.p.) ‘without [a complete theory of educational linguistics] any meaningful discussion of technological innovation would be spurious’. Therefore, theoretical considerations such as those outlined in Chapter 3 are essential to the design of an online resource like LAWS. Chapelle (1998) provides an interesting example of how design decisions can be motivated entirely by a theoretical paradigm, in her case instructed SLA. Nevertheless, it is equally important to realize that the learning context itself (e.g. institutional setting, course aims, learner preferences, teacher and learner roles etc.) plays an important role in decisions related to the design of CALL materials (Levy, 1997b; Trinder, 2003). In other words, design decisions are typically motivated not only by theoretical considerations, but also by practical considerations related to the affordances and constraints of a particular learning context.

Furthermore, in designing CALL materials we must have regard to the learning context in its entirety, what van Lier refers to as the ‘learning ecology’ (van Lier, 1998: this concept is explained in more detail in Chapter 7). This concept of learning ecology is a useful one as it highlights the notion that the instructional technology designed makes up only a part of what is already a complex learning environment. By focusing on the learning ecology and the role that the instructional technology plays in that ecology, one avoids the pitfall of concentrating attention solely on the elaboration of technological tasks and media design. Instead, it is important to consider how the instructional technology may enhance existing learning processes. In the case of self-access resources, where students are expected to spend time consulting the resources independently, thought must be given to the way in which such resources can be combined or integrated within the framework of the curriculum, so as to contribute to curricular learning goals.
Chapter 4: Design of the LAWS resources

In an effort to promote the design of context-sensitive instructional technology, both Laurillard (2002) and Hémard (2003) advocate the adoption of an iterative design process, in which the design is informed by formative evaluations by students. Laurillard (2002, p. 198) outlines the following process for instructional design: 1. needs analysis; 2. design of learning activity; 3. design of media prototype; 4. refinement of prototype through testing in an iterative process; 5. identification of further needs; 6. piloting to ensure that learning activities integrate with each other and fit the learning context. In Laurillard’s model, the entire process is informed by a constructivist theory of learning. What is interesting about this process is the tight connection established between learning context and design: the formative evaluations embedded in the process allow the designer to judge whether the theoretical assumptions adopted in the design of the instructional technology are shared by students or not. By gradually refining the design through successive evaluations, a fit between the theoretically led design and the practical needs of students can be achieved.

4.1.2 Pedagogical rationale and contextual factors

The pedagogical rationale adopted for the LAWS online resources is described in detail in Chapter 3. As noted, the LAWS resources are informed by a sociocultural theory of learning, which views the acquisition of legal literacy or legal genre knowledge as a process of legitimate peripheral participation in the practices of the legal community of practice. This process can be mediated by computer tools, which may scaffold the process through a variety of consciousness raising tasks that enhance students’ awareness of generic structure and schemata at the rhetorical, lexical and grammatical levels. In order for such online resources to be most effective, it is essential that the various tasks created be properly integrated with the legal literacy practices of the academy and of the profession.

As well as taking into account these theoretical considerations, the design of the resource was also constrained by practical factors. As is sometimes the case (Levy & Stockwell, 2006, p. 17) the online resources were specifically designed to enhance an existing course, in this case a course in Legal Writing and Drafting at the City
University of Hong Kong. In the initial stages of design, a needs analysis with potential end users of the resource was conducted. This needs analysis included focus group interviews with students of the Legal Writing and Drafting course and a meeting with teaching staff. The aim of the needs analysis was to explore how an online resource could benefit stakeholders, and to solicit staff and students’ views on students’ most pressing legal language needs. In this preliminary needs analysis, staff expressed some reservations, especially about the idea (suggested by students) of providing feedback on coursework assignments through electronic fora. The primary concern was that this would add unnecessarily to staff workload. Through these initial discussions it became clear that it would be necessary to adopt an approach which would meet the aims of the course, meet the needs of the students and have a minimal impact on staff teaching the course. Taking into account both theoretical considerations and contextual constraints, it was decided that the resource should:

- provide students with self-access materials which they could use in an integrated fashion as a reference resource to complete tasks on the Legal Writing and Drafting course;
- provide scaffolding for the genres taught on the Legal Writing and Drafting course;
- provide students with a variety of consciousness-raising exercises for those genres, at rhetorical, lexical and grammatical levels;
- adopt technologies that would require little maintenance by teaching staff on the Legal Writing and Drafting course.

### 4.1.3 The Legal Writing and Drafting course

As noted above, the LAWS resources were specifically designed to support the Legal Writing and Drafting course for the Post-graduate Certificate in Laws (PCLL) at the City University of Hong Kong. The PCLL is the professional stage of legal education in Hong Kong, to be undertaken after the Bachelor of Laws (LLB) but before entering legal practice as either a trainee solicitor or barrister pupil. As a practitioner’s qualification, the PCLL includes a focus on a number of practical
Chapter 4: Design of the LAWS resources

skills, including accounting, advocacy, negotiation and professional legal writing.
The Legal Writing and Drafting course is a skills development course, organized by
the School of Law, and taught by qualified lawyers. The aims of the course are
summarized in course materials in the following way:

At the end of the course students will:
- Be familiar with a range of problem solving techniques
- Be able to analyze a problem in a clear and logical manner
- Be able to apply problem solving techniques to solve clients’ problems
- Understand how to plan and structure a piece of writing
- Be able to structure a document effectively
- Know what information must be conveyed in certain types of legal documents
- Understand the principles of Plain English
- Be able to write in Plain English
- Understand the rules and guidelines for various types of writing
- Be able to apply the rules and guidelines to create clear and effective writing
- Understand the importance and appropriate extent of editing and rewriting
- Be able to edit and rewrite to produce a clear, simple and accurate piece of writing that meets the needs of the audience and serves its purpose

(City University of Hong Kong, 2005)

Thus, the course focuses on all stages of the writing process, including aspects of
legal problem solving, planning and revising, organizing and writing.

The course is delivered through a mixture of lectures, tutorials and individual
consultations, the tutorials employing a case-based mode. Through their lectures,
students are given direct instruction on how to write a wide variety of professional
legal genres, including letter of advice, statement of claim, defence and
counterclaim, affidavit or affirmation, opinion, and agreement. Students practise
these writing tasks for their tutorials, by referring to invented case files and fact
situations in which they play the role of a junior barrister or solicitor, writing a
particular professional legal document. They then discuss their work with their peers
and tutors in tutorials, and receive a mixture of formal and informal feedback from
their tutors in tutorials and consultations. I have included in the Appendices the
course schedules for the two years relevant to this study, and these schedules provide
a more detailed outline of the structure of the course (see Appendices A and B).
Students on the PCLL come from a variety of backgrounds. Some have had many years of work experience, while others have proceeded to the PCLL directly upon completion of their LLB. Some have had experience working in legal practice, while others have not. Some students have obtained their undergraduate degrees from overseas universities in places like Australia, Canada, New Zealand and the United Kingdom. Others have studied exclusively in Hong Kong. All students have achieved a minimum score of 7 in IELTS, but there is nevertheless a wide discrepancy between the most proficient and least proficient users of English. Because students have such a varied background, some are much better prepared to meet the aims of the course than others.

In light of the aims of the course and the variable abilities of students taking the PCLL, there was a need for an online self-access resource capable of supporting students with:

1. particular genres of legal language, especially at the level of:
   a. contextual factors;
   b. rhetorical structure;
   c. typical lexico-grammatical realization of rhetorical moves.

2. the writing process and/or legal problem solving process, for example:
   a. planning/revising;
   b. researching.

Students were expected to access this resource while in the process of completing a coursework task, for example writing a letter of advice or a statement of claim. Because the case-based tasks employed in the Legal Writing and Drafting course elicit specific legal genres from students, a genre-based approach to the design of instructional materials was ideally suited to provide targeted reference material for the course. In addition, online corpus tools would provide students with the opportunity to explore legal language in use and discover relevant functional lexical phrases. It was felt that the approach would work best if the tools and materials provided online were clearly relevant to the various writing tasks. Keeping these considerations in mind, three principal technologies were developed and implemented:
1. a web site with interactive online tutorials;
2. a downloadable add-on for MS Word, to provide an enhanced writing environment;
3. an online concordancer.

Each of these (described below) was designed to address the needs of students in the process of writing a piece of professional legal writing.

4.2 Online tutorials

As mentioned above, the main aim of the online tutorials was to provide students with scaffolding for disciplinary writing practices, as far as possible integrated into students’ process of writing. In particular, the tutorials aimed to promote students’ genre knowledge of relevant professional legal genres, through a variety of contextual and rhetorical consciousness-raising tasks, involving a mixture of examples, commentary and interactive tasks. The materials were intended to act as a reference for students completing assignments, preparing for class or revising after class. In this section, I first recap the underlying approach taken to the design of the online tutorials, then describe how this approach was implemented in terms of organization of materials and interactive task design. Finally I consider the role of learner autonomy and online interaction in the design of the online tutorials.

4.2.1 A genre-based approach

As noted in Chapter 3 (Section 3.3), researchers and practitioners in English for Specific Purposes have found genre analysis to provide a useful theoretical framework for materials development (Bhatia, 1991, 1993; Swales, 1990). A genre-based approach to writing skills development encourages the development of sociolinguistic and communicative competence, and in particular the development of ‘genre knowledge’ (Berkenkotter & Huckin, 1995). Genre knowledge entails an understanding of the social and cultural processes and practices that contribute to the creation of texts particular to a community of practice.
The development of genre knowledge can be seen in terms of the acquisition of cognitive schemata, or systems for organizing our prior experience (Hyland, 2004). According to schema theory, we interpret discourse with reference to our prior experience and background knowledge, including our knowledge of content and common rhetorical structures (Carrell, 1987). As was noted in Chapter 3 (Section 3.2), it is important to take a sociocultural view of schemata, in order to take into account social and cultural aspects of text interpretation. Bhatia (1993) suggests that the rhetorical strategies adopted by writers reflect the underlying communicative purpose of the genre, and refers to the resulting regularities of organization as ‘cognitive structuring’. He goes on to note that:

This cognitive structuring reflects accumulated and conventionalized social knowledge available to a particular discourse or professional community. In this sense it is different from the organization of presupposed knowledge in an individual, which is primarily the case in schema theory, frames or scripts. (Bhatia, 1993: 21)

Thus we understand the texts we encounter with reference to expectations about formal text structure, the communicative purpose of a text, how it is used, when and by whom. This socially enriched view of schemata implies that schemata develop in response to social and cultural experience.

It follows that promoting the development of genre knowledge requires attention to a wide range of factors. Hyland notes that:

…teachers need to help students not only to understand the conventions of organization, grammar, vocabulary, and content associated with a genre but also to see how these are tied to wider regularities of activity: locating genres in the cultures and institutions within which they are used. (Hyland, 2004: 56)

In the online tutorials created, material was therefore developed in order to raise students’ awareness of the writing context, generic structure, the purpose of each text type and their textualizations.
4.2.2 Organization of content

The primary organizing principle of the online tutorials was by legal genre, to match the organization of tasks in the Legal Writing and Drafting course. More importantly perhaps, this organizing principle ensures that the tutorials reflect authentic practices of the professional legal community. This means that as well as meeting students’ immediate needs, the tutorials will be relevant to students at later stages of their career, when they go out into practice. One should also note that care has been taken to identify each genre in terms that ‘make sense’ to members of the legal professional community. This should ensure that students are easily able to identify the support materials that they require at any given time.

At the next most specific level, the content is organized in a similar way for each genre. The tutorials address issues of language, rhetorical structure, content, process and practice. In Chapter 3 (Figure 3.2, Section 3.3.1), an overview of tasks for scaffolding the writing process taking a genre-based approach to writing instruction was outlined (Hyland, 2004). To summarize, the tasks address a wide range of needs, from basic graphology to contextual awareness to more independent composition, which includes the writing process. The current resources are similarly designed to address aspects of context, rhetorical structure, language awareness, and discourse conventions. As such, each individual genre is divided into the following sections:

- **Learning plan** Focuses on organizing learning;
- **Planning/revising** Focuses on writing process and practice;
- **Audience/purpose** Focuses on grammar and lexis, content, process and practice;
- **Structure** Focuses on rhetorical structure;
- **Language** Focuses on grammar and lexis as related to rhetorical structure;
- **Formatting** Focuses on discourse conventions;
- **Example** Focuses on grammar and lexis, rhetorical structure, content.

The overall organization of the online tutorials can therefore be summarized as in Figure 4.1 (over page).
4.2.3 Interactive task design

As has already been described, the starting point for design in this project was the Legal Writing and Drafting course itself, together with another legitimate starting point, namely the language learning task (Levy & Stockwell, 2006). Students commonly expect online learning materials to involve a certain amount of interactivity, whether this be in the form of exercises, simulations, questions, or other such techniques (Carliner, 2002: 77). In the present case, the interactive potential of the computer was exploited in order to provide students with an
environment in which they could test their awareness of the discursive functions described through a variety of online quizzes, as well as reflective questions embedded in the text. The following kinds of quizzes were used for awareness raising purposes:

- Multiple choice (with either one or several correct answers)
- Gap fill (open or multiple choice)
- Drag and drop (for sequencing and layout)
- Select text (where the student searches for a relevant part of text and clicks it)
- Open-ended text entry with modeled feedback

The tutorials give simple feedback to most tasks in the form of what Clariana (2000) refers to as knowledge of response (an indication of whether the student’s response is correct or not) and knowledge of correct response (an indication of the correct response for an item). In addition, some elaborative feedback is also provided, in the form of comments elicited in the course of the tasks. Furthermore, in some cases successful completion of the task will mean the discovery of, for example, the conventional way of formatting a pleading, or a typical rhetorical structure for a letter of advice.

In spite of what might seem like a rather limited repertoire of mostly convergent task types, these quizzes are not intended to function as a behaviourist drill for students. Rather, they act as a means to enhance the presentation of the learning material and engage students in an active learning process. It should be noted that in many cases students are not obliged to complete the tasks to complete the learning, as information is presented in a variety of ways. This means that students can choose between an inductive mode of learning by doing, and a more deductive mode of learning, depending on their learning preference. Furthermore, after their first attempt at a task a student can select a ‘get answer’ button to display a model answer (see Figure 4.2: interactive task procedure). Whether a student persists with a given task will depend on their own particular learning style and preferences.
Figure 4.2 Interactive task procedure

Figure 4.2 above shows the generic interactive task procedure adopted. Students attempt a quiz and upon submitting their first attempt receive feedback with scoring (knowledge of response). Elaborative feedback may also be displayed in the form of a comment, explaining why the answer is correct or incorrect. At this point, the ‘get answer’ button becomes available. The student can repeat the quiz as many times as desired before using the ‘get answer’ option to display a model answer (knowledge of correct response).

4.2.4 Sample materials

Figure 4.3 below provides a useful example to illustrate a number of the principles that have been discussed in relation to the online tutorials up to this point. Firstly, the organization of the material is clearly visible from this screenshot. At the highest level of navigation the student has selected ‘Professional writing’, below that ‘Pleadings’ and below that ‘Audience/purpose’. The aim of these materials is to raise students’ awareness of disciplinary practices relevant to the drafting of court pleadings (the Pleadings section includes two distinct genres: statement of claim and defence and counterclaim).
The material begins with a simple multi-choice task, encouraging students to actively reflect on the role of pleadings in the wider context of professional legal
practice. In Figure 4.3, the student has made two attempts to answer, the first judged incorrect, the second correct. In addition, the student has been provided with a short comment to explain this feedback. Underneath the task is a more deductive explanation of the audience and purpose of pleadings. The purpose of this explanation is to place the genre in its cultural context. This example demonstrates the way in which interactive task design has been used to raise awareness of the processes and practices associated with a particular genre. A similar approach has been taken with points of language, rhetorical structure and content. A variety of animated sample tasks can be viewed on the CD-rom attached to this thesis (see Appendix K for a table of contents), and the reader is invited to view these for a better appreciation of the full range of typical tasks designed as part of the LAWS online tutorials. Other typical awareness raising tasks employed are described in Figure 4.4 below:

**Figure 4.4 Typical awareness raising tasks for the LAWS resources**

<table>
<thead>
<tr>
<th>Aim</th>
<th>Task type</th>
<th>Quiz type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consciousness-raising: context, audience, purpose</td>
<td>Identifying content that is inappropriately written for the text type, audience, purpose</td>
<td>Select text</td>
</tr>
<tr>
<td>Consciousness-raising: Discourse conventions</td>
<td>Formatting a legal text according to conventional layout</td>
<td>Drag and drop</td>
</tr>
<tr>
<td>Consciousness-raising: Rhetorical structure</td>
<td>Sequencing the genre moves of a legal text</td>
<td>Drag and drop</td>
</tr>
<tr>
<td>Consciousness-raising: Rhetorical structure</td>
<td>Identifying genre moves in an example text</td>
<td>Select text</td>
</tr>
<tr>
<td>Consciousness-raising: Language usage</td>
<td>Selecting or entering the appropriate language items in a given legal text</td>
<td>Gap-fill (multiple choice or open/divergent)</td>
</tr>
</tbody>
</table>

Note that the above examples are just a small selection of the kind of tasks that were created for the LAWS resources, and by no means exhaustive.
4.2.5 Autonomy and self-directed learning

Benson defines autonomy as the capacity to take control of one's own learning (2001, p. 47). In the context of an online resource, students may be said to have greater autonomy if the resource permits them to make choices about their learning. Kenning suggests that different programs provide different degrees of control:

Thanks to technological and programming advances such as the development of Windows, Hypertext and Hypermedia, it is now possible for materials writers to organize courseware in a way that gives students greater control over what and how they learn. And many packages do indeed make use of facilities such as help files for learners to call up as and when needed. Not all packages, however, allow learners to move around the materials with as much freedom as would seem to be desirable for the development of cognitive and metacognitive autonomy. (Kenning, 1996, p. 126)

The LAWS resources have been designed to allow students a great deal of freedom and independence. This is because the integrated model of learning adopted requires students to evaluate their own needs and locate the resources they require to meet those needs. Thus, in this context, the students decide what information they need to know, for example, additional information about the audience and purpose of pleadings. In addition the students decide how they will find out that information, either by doing a task, reading some text, or both. As with most online resources, the students are in control of when, where, and at what pace they do these activities.

To encourage students to identify learning needs and possible learning resources, an interactive ‘learning plan’ was designed for each genre. In essence, this learning plan is a simple drag and drop exercise, which allows students to prioritize a predetermined list of anticipated needs, or learning goals. Once the student has ranked these learning goals in the desired order, the student submits this ranking and the computer returns a ‘suggestions page’ which contains a hyperlinked list of recommended online resources for each learning goal submitted. This suggestions page can be bookmarked by the student or emailed to their registered email address. The learning plan may help students to plan their learning and understand what kind of needs they can address by using different parts of the online tutorials.
4.2.6 Community building, interaction and evaluation of learning

It is now common to refer to online learning groups as communities of practice (Lave & Wenger, 1991; Wenger, 1998). Members of such online communities negotiate meaning with one another and learn from one another through collaborative tools such as bulletin boards, discussion forums, corporate wikis, and so on. In the case of LAWS, it was established early on that the role of the resources would be to provide self-access materials to supplement the existing face-to-face course. Furthermore, in order to reduce the amount of maintenance required of Law School faculty, it was decided to minimize the online collaborative potential of the website. However, it was nevertheless felt that it would be desirable to provide students with a site for interaction with other members of the learning community, including tutors, on the website. As a result, an ‘add comment’ function was built into the website, for students to add their own reflections to the existing content.

By filling out a simple form, students can add a comment to any web page on the site, in much the same way as comments are added to weblogs. A potential affordance of this function is to allow students to reflect on the content and tasks presented in the online tutorials. It was anticipated that students would comment on issues such as the effectiveness, difficulty and authenticity of the materials. In so doing, they evaluate both the materials themselves and the learning process that they have engaged in. Students would also be able to pose questions about the materials, and these could be answered either by comment administrators (Law School tutors) or other students visiting the site. Activities or content that was perceived as interesting or problematic (for whatever reason) might attract a number of comments from different students and thereby generate an online discussion of (for example) writing strategies and legal discourse. In this way the online resources would gradually become enriched through the addition of multiple perspectives.

Figure 4.5 below shows the form used for entering comments at the foot of each web page. Students enter a title for their comment and the desired text. The comment is forwarded to a comment moderator by email, who either approves it or deletes it. Comments do not become visible to other students until they have been moderated in this way.
4.3 Enhanced writing environment

The second technology developed was a downloadable add-on for Microsoft Word, designed to provide support for students while they were using their word processing application. The approach adopted views the word processor as writing environment, which allows the student to work in partnership with the computer to develop effective writing and learning strategies. Pennington (1996, p. 13) describes this approach in the following terms: ‘the computer functions for the writer not only in its basic machine function, that is, as a tool, but also as a resource and an environment - and as a provider of other tools, resources and environments - for writing.’

There have been a variety of attempts to enhance this word processing environment. One common focus is to provide students with interactive support on the process of writing. Phinney describes this design as follows:

Perhaps the greatest potential lies in software designed especially to teach the writing process. This software, which often uses dialogue heuristics for prewriting, content generation, organization and revision, allows a computer to act as a partner in a writing conference…. Such prompting programs help the student recall the steps involved in writing, stimulate content generation, and help students focus on aspects of their writing that need revising. (Warschauer & Healey, 1998, pp. 92-93)
A different focus adopted by Milton (1999), is to make language tools such as concordancers accessible from within the word processor, so that students can check their writing against expert samples as they progress through their writing task. Milton has expanded this approach to involve the teacher by developing a comprehensive set of feedback tools within the word processor. These enhance the existing feedback functions of the word processor and link to external resources such as web sites, search engines and online concordancers to allow teachers to provide ‘resource-rich’ feedback to their students (Milton, 2005, 2006). By integrating advanced language tools and drawing on the commenting functionality of the word processor, Milton is able to create an environment which supports language learners in the composition process.

In the present context, the aim was to enhance the writing environment by providing students with access to help files and external tools from within their word processing application. The content of the help files (stored on the local computer) focus on aspects of the writing process, including necessary pre-writing and revising tips for the different genres that students need to engage in. Unlike the prompting programs mentioned above, these help files are not interactive, but rather consist of a set of checklists, a different one for each genre. In the process of writing students have the option to seek process-oriented help about a particular genre that they are engaged in constructing. Other tools that would be installed in the word processor included a link to the LAWS web concordancer and links to online tutorials on the LAWS web site (organized by genre: see Figure 4.1 above).

To make use of this Word add-on, students download a self-extracting file from the LAWS web site and install the application on their local computer. A drop-down menu (‘LAWS’) is added to their Microsoft Word application, and this allows them to access the new resources: help-files, concordancer and links to online tutorials. This is illustrated in Figure 4.6, which shows the new LAWS drop-down menu installed to the right of the Help menu. The first group of items in this menu (‘Letter of advice’, ‘Statement of claim’, ‘Defence+counterclaim’, ‘Affidavit’, ‘Documents’) is a set of hyperlinks to the online tutorials. Selecting one of these menu items will open the student’s web browser at the appropriate index page in the LAWS online
Dear Teddy,

Wellman Limited (WL) v Chan’s Beauty Supplies Limited (CBSL):

Thank you for meeting me today. I am pleased that my firm will be representing WL in the upcoming lawsuit against CBSL. The lawsuit concerns damages for breach of contract.

The breach occurred on October 1, 2023, when WL delivered goods to CBSL, which were not as specified in the contract. WL has suffered monetary losses due to this breach.

Please provide me with your thoughts on the matter.

Yours sincerely,

[Signature]

Letter of advice

Planning and revising

Pre-writing strategies

Before you begin drafting your letter, analyse your problem and write a plan that takes into account all the relevant legal, formal, organizational and language issues. You can use the following checklist to guide you.

Pre-writing checklist for a letter of advice

Have you....?

identified the purpose of the writing task?

- the purpose of this piece of writing
- the goals and objectives of the client
resources, allowing the student to gain access to the full range of interactive support materials described in Section 4.2 above. By selecting the Legal Writing menu item students can access help files stored locally in MS Word, which focus on the writing process for the genres targeted. By selecting a word or phrase in the text and clicking ‘Concordancer’ the student is able to launch the LAWS website and automatically search the selected word or phrase in the online concordancer. Selecting ‘Refresh’ allows the student to manually update the help files. In principle, designing technology which makes these resources available to students from within their word processing application should facilitate the integration of the LAWS online resources into students’ academic literacy practices, as the design envisages an integrated process of writing and support.

4.4 Online concordancer

The third and final technology developed for the LAWS resources was a simple online concordancer, designed to provide students with language support at the level of grammar and lexis. Students can access and query the concordancer from the LAWS website, or alternatively by selecting the Concordancer menu item from the LAWS menu in their word processor (see above, Section 4.3). In Chapter 3, it was noted that corpus-based tasks should preferably be designed to be self-directed, integrated into students’ regular writing practices and draw upon corpora which students can easily authenticate. Furthermore, it was suggested that some training in the corpus-based methodology and technology would be necessary in order for students to benefit. In this section I describe how these and other considerations motivated the design of the LAWS online concordancer.

4.4.1 Corpus consultation: an integrated, task-based approach

In the present context, it was envisaged that students refer to the corpus tools for assistance in carrying out their legal writing tasks. Chambers and O’Sullivan refer to such an integrated approach to the use of corpus tools as ‘corpus consultation’ (Chambers, 2005; Chambers & O’Sullivan, 2004; O’Sullivan, 2007; O’Sullivan & Chambers, 2006). The approach is summarized by Aston in the following terms:
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One [procedure] widely proposed in the literature... is to treat the corpus as a reference tool for the solution of problems which emerge in the performance of other tasks... Faced with a particular problem, the learner could turn to the corpus for evidence that a particular form could have a particular meaning in a particular context, the similarity of the corpus texts to that involved in the task making it relatively likely that models and analogies would be found. (Aston, 1995, p. 267)

The aim of taking such an approach was to integrate the concordancing task as fully as possible with authentic legal writing tasks that students were engaged in, in the course of their legal studies. The principal advantage of such an approach is that it encourages students to use the corpus tools in a self-directed, meaningful way, identifying genuine needs in their own written discourse and utilizing the corpus tools to make discoveries about legal language in use. Taking this approach, students are subsequently able to put their discoveries to immediate, purposeful use in an authentic legal writing task. This approach attempts to meet the criticism that corpus-based language learning tasks lack authenticity, by drawing upon authentic legal writing tasks, and providing students assistance in developing their emerging legal literacy practices (see Chapter 3, Section 3.3.2).

The approach adopted here, which involves a high degree of learner autonomy, requires that students be provided with adequate supportive frameworks so that they have the knowledge and skills required to exercise choices responsibly and effectively. Because the concordancing task is likely to be unfamiliar to students, students may need to be guided through a number of preliminary tasks. This may be seen as a kind of orientation or even apprenticeship, which ‘[stimulates the] development of appropriate learning strategies through practice’ (Kennedy & Miceli, 2001, p. 79). Such support can be provided through the online tools themselves, in the form of help files, animated demonstrations, and short tasks, or through scheduled face-to-face tutorials that cover the essential items.

In the present context, practical constraints limited the amount of training time which could be allocated to students using the corpus tools. Although the corpus tools were very well received by Law School faculty it was not possible, for example, to suggest that an entire course be dedicated to the development of students’ corpus consultation skills and language awareness, as is sometimes done (e.g. Bernardini, 2000; Lee & Swales, 2006). In any case, the approach adopted did
not call for this level of intervention. In the event, in the first year of this study, students were given only a brief demonstration of the corpus tools, including their design and functionality. In the second year this was expanded to a full hands-on tutorial with interactive tasks, which are available also in online self-access mode.

### 4.4.2 Corpus construction

Where students will be consulting a corpus for an identifiable purpose, as in this case, it is clearly desirable to construct a corpus from texts that respond to that purpose. A specialized corpus, tailored to the students’ field, will usually be more revealing than a general purpose corpus. As Tribble observes (1997, pp. 112-113):

> … if one wishes to investigate the lexis of a particular content domain (e.g. health) a specialist micro-corpus can more often be useful than a much larger general corpus. For example, in the written component of the BNC Sampler (1,000,000 words) there are no instances of ‘cancers’. An Encarta® micro-corpus of health articles (24,805 words) gives 33 usefully contextualised examples!

For purposes of linguistic description, Hunston (2002) identifies four principal issues in corpus design: size, content, balance and representativeness, and permanence. Often though, where a corpus is constructed for teaching purposes, the principle issue is student needs (Gavioli, 2005, pp. 61-62). Other considerations may be neglected as long as the corpus is seen to address the fundamental needs of the students concerned. For example, Flowerdew (1993a) uses a ‘micro-corpus’ of just over 100,000 words, containing a variety of different texts in the field of biology, in order to obtain a sample of language for purposes of course design. Here, the value of the corpus lies in the selection of texts that represent the kind of discourse students will be required to understand and reproduce, rather than in its size or permanence.

Ideally, the corpus should contain examples of the specific genres that the students will be engaged in writing themselves. Amongst other things, this would allow students to investigate contextual issues such as participant roles, communicative purpose, and explore how these are reflected in systematic language choice. However, such an ideal is not always attainable. Constraints on obtaining certain
kinds of data can make it difficult to construct a corpus containing the full range of
genres relevant to student needs. This is particularly true if one is interested in what
Swales calls ‘occluded genres’ which are hidden from the public gaze, as is
frequently the case in the domain of law, where confidentiality is an especially
sensitive issue.

When constructing the LAWS corpus, it was envisaged that students would refer to
the corpus for assistance with the following genres:

- Letters of advice from solicitor to client
- Affidavits/affirmations
- Statements of claim
- Defences
- Counterclaims
- Legal opinions from barrister to solicitor
- Agreements/contracts

As a first step in the corpus design process, it was decided to create a number of
different micro-corpora, using legal judgments drawn from different fields of law.
Judgments were chosen for two reasons. Firstly, they are easily accessible. Secondly,
in terms of generic structure, grammatical and lexical patterning, judgments
resemble letters of advice and legal opinions in some respects. In addition,
judgments are a form of legal argumentation and may therefore be useful samples of
language for some language functions in other legal genres as well. Nonetheless, it is
important to note that there will always be subtle differences between different legal
genres because of the complex intertextuality and interdiscursivity that is
characteristic of legal discourse (Bhatia et al., 2004). Students searching corpus
output in order to understand usage of lexical phrases in their characteristic legal
professional contexts would have to be aware of these issues.

In order to ensure that the corpus be relevant to law students, law school staff were
asked to suggest judgments for inclusion in the corpus, based on the courses that
they were teaching. The final composition of the corpus is represented in Figure 4.7.
It should be noted that judgments were finally collected from the fields of Tort,
Contract and Company law. Tort and Contract were suggested as useful subject
areas because they are compulsory first year subjects and therefore well-known to
students. Company law was suggested as it was perceived to be a popular field with Hong Kong students preparing for commercial practice.

![Figure 4.7 Composition of corpus](image)

<table>
<thead>
<tr>
<th>Corpus</th>
<th>Sub-corpus</th>
<th>Number of words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Company administration</td>
<td>120,000</td>
</tr>
<tr>
<td></td>
<td>Partnership</td>
<td>77,000</td>
</tr>
<tr>
<td></td>
<td>Miscellaneous</td>
<td>159,000</td>
</tr>
<tr>
<td>Contract</td>
<td>Consideration</td>
<td>163,000</td>
</tr>
<tr>
<td></td>
<td>Intention to create legal relations</td>
<td>43,000</td>
</tr>
<tr>
<td></td>
<td>Offer and acceptance</td>
<td>88,000</td>
</tr>
<tr>
<td>Tort</td>
<td>Personal Injuries</td>
<td>146,000</td>
</tr>
<tr>
<td>All corpora</td>
<td>All corpora</td>
<td>797,000</td>
</tr>
</tbody>
</table>

### 4.4.3 Browsing the corpus and sharing corpus queries

In addition to the integrated approach to corpus consultation described above, it was felt that some students might instinctively approach the corpus tools in a manner similar to that described by Bernardini (2000; 2002), that is by serendipitously browsing through the corpus and making discoveries about legal language in use, but in a less focused manner. In order to facilitate such an approach to the corpus tools, a starting point is required. In this case, two possible starting points were identified: the first took the form of glossaries of commonly occurring technical legal lexis and the second an automatically updating list of ‘top ten user searches’.

Technical legal lexis can be divided into specialized vocabulary used almost exclusively in the field of law and vocabulary that occurs more generally but has a particular meaning in the field of law, which is different to its ordinary meaning (Nation, 2001, pp. 198-199). An example of specialized vocabulary particular to the legal field would include the term *ratio decidendi* which refers to the binding rule
created by a judgment in case-made law. An example of more generally occurring vocabulary with specialized meaning is the term *consideration* which in the law of contract refers to a payment made in exchange for goods, services, or other contractual promise. In order to understand such vocabulary, linked as it is to the content of the discipline, it is necessary to have a good understanding of the subject as a whole. Nation comments that:

> From the learner's point of view, unknown technical words usually cannot be ignored when reading because they are closely connected to the topic being discussed. They are also difficult to guess from context if the reader does not already have a good background in that technical area. For the same reason, looking the word up in a dictionary does not bring much satisfaction. Clearly, learning the technical word is closely connected with learning the subject. (Nation, 2001, p. 204)

If such vocabulary is a matter of concern in reading, it seems likely that it will be a matter of concern in writing too, where legal ideas and concepts must often be conveyed in strictly accurate technical terms.

As mentioned above, in order to assist students in identifying needs with regard to technical legal vocabulary, a set of glossaries were created. Specifically, a glossary of commonly occurring technical legal terms was created for each of the sub-corpora listed in Figure 4.7. In order to construct these glossaries a wordlist for each sub-corpus was created and words that appeared in the General Service List (West, 1953) and the Academic Word List (Coxhead, 2000) were extracted from this list (this procedure was facilitated by an application called RANGE (Heatly, Nation, & Coxhead, 2002)). Words that appeared in no list were also identified in this way and categorized as ‘off-list’. Subsequently, the glossary was analyzed to ensure that all the lexis listed could accurately be characterized as technical legal lexis related to the particular sub-field concerned. By using these glossaries as a starting point, students can identify vocabulary items that they find either interesting or problematic, and browse the corpus to discover how they are used. As the acquisition of these items depends also on subject knowledge, a link was provided from the concordancer to a legal dictionary, which would help students to understand how the terms were used.

A second such stimulus to browse the corpus was designed in the form of a ‘top ten users’ searches’ table, located at the home page. This table summarizes the top ten
searches performed by students up to the present point in time. This feature in effect monitors and shares some of the corpus-based queries made by students using the online corpus tools. Students entering the site might notice an interesting search (to them) here, find that it corresponds to their learning needs and decide to pursue it. Because the learning community includes an entire class of (approximately 150) students completing the same assignment at the same time, it is conceivable that students would benefit from pursuing each others’ shared searches in this way.

4.4.4 Practical example of concordancing interface and task design

In order to meet the anticipated functional lexical needs of students the following tools were provided online, as part of the concordancing package:

1. Online concordancer with a corpus of legal texts;
2. A glossary of frequently occurring legal terms for each corpus;
3. Links to (external) learner’s dictionary, advanced dictionary and legal dictionary;
4. An automatically updating list of ‘top ten user’s searches’.

Figure 4.8 shows the concordancer interface and the expected steps that students would follow in entering a search. The interface has been designed to provide students with access to a variety of tools and to maintain a relatively simple and straightforward look. Note that students can enter a search from anywhere on the web site by using the toolbar at the top of the page, which appears on every page of the site. This facilitates access to the concordancer when students are engaged in other tasks, for example the online tutorials.

Students search by entering their keywords in the search box on the top left. If desired they can choose which corpus to search, and if no selection is made the concordancer will search all available corpora. Students also select how they would like the output displayed, namely: a) whether output is by key word in context lines or by sentence output; b) whether output is sorted by frequency, alphabetically, to the right or left of the key word; c) how many concordance lines are shown; d) what
Figure 4.8 Concordance output and expected procedure

1. Enter search term
2. Select corpus
3. Select output style
4. Results displayed
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the minimum occurrence of a collocation is for it to be included in the collocation list.

Once the concordance output is returned, students can then browse the concordance lines or browse the collocation list. If they wish to see expanded context, students click on the hyperlinked keyword in the concordance line to call up the entire document with the relevant phrase or sentence highlighted. Alternatively, students can search any of the collocations by clicking on the hyperlink in the collocations list. This enters the collocation as a search using the same output settings as before. Finally, all searches are automatically pasted to the dictionary search boxes and if students require a dictionary definition then they can obtain one by selecting the dictionary of their choice. In addition to the screenshot below, the concordancer interface is also demonstrated in the animations on the CD-rom attached to this thesis and the reader is invited to view this demonstration.

4.5 Summary

In this chapter I have demonstrated the principles and processes of instructional design adopted with respect to the LAWS resources. A key principle in the design of these online resources was to integrate the technical tools developed with authentic writing tasks required as part of the Legal Writing and Drafting course and, arguably, the legal skills curriculum more generally. Following this approach, the online materials and resources function as online reference tools, which scaffold the legal writing process for students. It was necessary to consider carefully the nature of the writing task and the kinds of skills that students would need to develop, when designing the resources. In doing so, online materials were developed that explicitly address different genres of legal writing, including aspects of content, rhetorical structure, audience and purpose, and language usage. An enhanced writing environment was designed, integrating process-focused reference resources in students’ word processing applications. Finally, an online concordancing tool was developed, in order to provide students with opportunities to explore the language of legal discourse. In the next chapter I turn my attention to the problem of understanding law students’ needs with regard to the development of legal literacy.
and describe methodological considerations in the study of legal literacy practices associated with the legal genre of barrister’s opinion.
CHAPTER 5

Genre analysis of barrister’s opinion: Background and methodology

In the process of instructional design and materials development described in Chapter 4, it was necessary to take into account the expected formal features of legal genres (e.g. letter of advice to client), and anticipate student needs with respect to these genres. As part of this process the design team drew upon a variety of sources: 1) existing expertise as lawyers and applied linguists; 2) existing literature on legal language and skills development; 3) findings from previous research projects (Candlin & Bhatia, 2002; Langton, 2003). Particular attention was paid to the careful description of relevant legal genres. While some such descriptions could be derived from the projects mentioned above, for many of the practical legal genres (such as pleadings), no genre analytical descriptions were available. In such cases it was necessary to conduct a genre analysis of available text, guided by specialist information obtained from legal colleagues, in order to better understand generic structure and associated legal literacy practices.

In this chapter and the next I provide an example of the kind of genre analytical research which can be of assistance in the teaching of legal writing and drafting, whether this be in an online, face-to-face, or (as in the present case) blended mode of teaching and learning. I draw upon the genre of barrister’s opinion, which is an as yet little-described professional legal genre (the only linguistic description I am aware of being Tessuto (2006)). Through a detailed genre analysis of professional texts, a comparative analysis of professional and student writing, as well as individual and focus group interviews, it is possible to describe the genre in terms of discourse practices, generic structure, typical lexical and grammatical patterning, and potential problems encountered by students. In the present chapter, I provide essential background to this study, including an overview of epistemological and
methodological issues, a review of relevant legal discourse practices, and the method used for the study.

5.1 Epistemological and methodological issues

The epistemological assumptions adopted for the purposes of this study are described in detail in Chapter 3 and so I provide only a brief outline of the main principles here. For the purposes of this thesis I adopt the view of language as genre (Chapter 3, Section 3.1.2), which sees genres as forms of rhetorical action, or staged, goal-oriented social processes (Martin et al., 1987; Miller, 1984). From the perspective of genre theory linguistic form is inextricably linked to social context. Therefore, a genre analysis focuses not only on the text as object of study, but also on the social context and process of text construction. This focus on social context is consistent with an historical trend to account more for social factors in the analysis of discourse (Bhatia, 2004, pp. 4-13). Such social factors include participants to the discourse, individual and institutional goals and communicative purpose, and discursive practices, processes and procedures (Bhatia, 2004, p. 11). A genre analysis typically attempts to identify and explain recurrent patterns in text (either at the level of rhetorical structure or grammar and lexis) by referring to such social factors.

If one takes such a view of language as fundamentally socially situated in everyday literacy practices, then it is appropriate to adopt a methodological paradigm which takes into account a broad range of contextual factors in the analysis of genre. In the present study I therefore take a qualitative interpretative approach to the analysis (Davis, 1995; Erickson, 1986; Lincoln & Guba, 1985; Richards, 2003), which is concerned to describe the process and practice of genre construction from the point of view of members of the legal discourse community. Such a qualitative interpretive approach is not unusual in genre analysis, and a number of scholars in the New Rhetoric movement advocate the use of ethnomethodology (Garfinkel, 1967) in order to better understand the processes and practices associated with genre construction by expert members of discourse communities (Bazerman, 1997; Miller, 1984; Paré & Smart, 1994). Ethnomethodology is seen as a suitable methodology because of the use of techniques such as participant observation, which serve to
foreground the perspective of the participants and allow the analyst to develop an understanding of the genre from their perspective. In addition, a qualitative interpretive approach is holistic or ‘emic’ in nature, and this makes it well-suited to an analysis of genre as social action, which must draw on a wide variety of contextual factors in order to provide a satisfactory explanation of discourse practice.

A variety of methodological techniques can be employed in order to observe the ‘social actions’ relevant to genre construction. The technique of participant observation, referred to above, allows the observer to gain a very thorough understanding of cultural practices by becoming a member of the community under observation. However, it is not always necessary to be so deeply involved with the discourse community which is being researched. Fairclough (1992, pp. 227-228) suggests a number of other ways in which textual data can be ‘enhanced’, including the use of panels of experts and interviews with community members. Panels of experts can provide judgments about discourse samples collected, which can in turn assist with interpretation of the discourse. Interviews with participants can be used in a similar way, and also to go beyond the text and provide information about the social practice in focus (Fairclough, 1992). Similarly, Bhatia (1993) emphasizes the importance of consulting community informants in order to understand discourse community practices in genre analysis, a view which is echoed by Hyland (2000) in his study of scientific discourse.

The techniques discussed so far all aim to overcome the problem that many potential meanings in discourse are only available to insiders of a particular discourse community or social group. The independent researcher approaches such communities as an outsider and must find ways to gain access to the store of tacit, communal knowledge, as it were. In this connection, Sarangi and Candlin (2001, p. 383) comment that in the analysis of professional discourse ‘considerable time and effort and considerable negotiation, is needed in order to immerse oneself in the research site so as to enable access to necessary tacit knowledge’. In the present study this process was facilitated considerably by my status as a lawyer-linguist teaching Legal Writing and Drafting on the PCLL. At least as far as the analysis of student text is concerned, I was able to draw upon considerable depth of contextual understanding in interpreting findings. My involvement also allowed me to approach
the study with particular ‘motivational relevancies’ (Sarangi & Candlin, 2001) as I was highly sensitive to needs of participants in the research site. The ongoing collaboration with law school colleagues engendered a form of ‘thick participation’ (Sarangi, 2005, 2006) with local participants both informing the analysis and drawing upon it for their own purposes.

In order to develop a highly contextualized understanding of the barrister’s opinion genre, we may be guided by the following method for genre analysis, proposed by Bhatia (1993) and subsequently adapted by Hyland (2000) in his study of disciplinary discourses. Bhatia suggests 7 steps:

1. Placing the given genre-text in a situational context
2. Surveying existing literature
3. Refining the situational/contextual analysis
4. Selecting corpus
5. Studying the institutional context
6. Deciding the level of linguistic analysis
7. Checking findings against a specialist informant

(Bhatia, 1993, pp. 22-36)

If one examines these 7 steps, it should become evident that each step of the analysis is sensitive to issues of context: participants, communicative purpose, discourse practice. In order to explore the context fully, Bhatia suggests that the analyst draw upon their own background knowledge, reviews of the relevant literature, and on specialist informants. For present purposes, it is necessary to give an outline of this contextual background and indicate how it will and does influence the analysis of the genre of barrister’s opinion. By reviewing existing literature from both legal and applied linguistic communities it is possible to situate the barrister’s opinion in terms of a legal literacy practice, and also to identify possible problems which students might encounter in attempting the genre. In the following, I therefore draw upon existing applied linguistic and legal literature in order to contextualize the genre of barrister’s opinion and highlight the key legal discursive practices which are relevant to the analysis.
5.2 Towards a context for the barrister’s opinion

A full genre analytical description of the barrister’s opinion will be provided in the next chapter, for present purposes it is sufficient to provide a short working definition. According to PCLL Legal Writing and Drafting lecture notes:

An Opinion is a practical document in response to a set of instructions coming from a solicitor or a firm of solicitors (i.e. the professional client) to ask the Counsel to advise. It deals with a unique factual situation and offers a legally sound practical advice or solution in response to the individual facts and legal issues presented by the case. (City University of Hong Kong, 2005, p. 8.1: emphasis in the original)

As with any legal literacy practice it is important to recognize that writing a barrister’s opinion is situated within a larger social and institutional context, which the barrister draws upon in constructing the text (for a discussion of the concept of legal literacy as socially situated in communities of practice see Chapter 3, see also Barton & Hamilton, 1998; Barton et al., 2000; Barton & Tusting, 2005). In addition the construction of a legal argument in a barrister’s opinion is a social act which relies for its effectiveness upon the assumed shared values and beliefs of members of the legal discourse community. In order to fully understand any such legal genre it is necessary to go beyond the immediate context and investigate the nature of these shared institutional values and beliefs. In the present case, it is particularly helpful to develop an appreciation of the process of legal reasoning, i.e. the legal community’s tacitly agreed method of resolving legal problems. Legal reasoning acts as a professional discursive resource which barristers may draw upon in an interdiscursive fashion. In this section I attempt to elucidate the social and institutional context of the barrister’s opinion genre by providing a broad brush account of this legal reasoning process, and by examining how legal argument is textualized in related legal genres, such as the legal judgment and legal problem question.

5.2.1 Legal reasoning

Legal reasoning is often referred to as the ability to ‘think like a lawyer’ (see, e.g., Mertz, 1996, 2007; Vandevenalde, 1996), particularly in the context of law school where such an ability is highly valued, though rarely defined in clear terms
This ability to think like a lawyer is aptly characterized in Conley and O’Barr’s (1990) study of the discourse of lay litigants in informal courts (e.g. small claims tribunals) in the U.S.A. This ethnographic study identified two principle orientations for lay litigants, namely ‘relational’ and ‘rule-oriented’, as summarized below:

In conceptualizing a dispute, interpreting rights, and allocating responsibility for events, relational litigants focus heavily on status and social relationships. They believe that the law is empowered to assign rewards and punishments according to broad notions of social need and entitlement. By contrast, rule-oriented litigants interpret disputes in terms of rules and principles that apply irrespective of social status. They see the law as a system of precise rules for assessing responsibility, and reject as irrelevant everything not circumscribed within these rules. (Conley & O’Barr, 1990: emphasis in the original)

It is the second of these two orientations, that of the rule-oriented litigant, which most closely matches the logic of the law. Legal reasoning is thus a form of rule-based reasoning, in which abstract principles are applied to given fact situations in order to determine the legal rights and duties of parties to a dispute. Conley and O’Barr comment on the power conferred upon litigants adopting a rule-oriented approach, as the courts are easily able to identify with their arguments. By contrast ‘courts often fail to understand [relational litigants’] cases, regardless of their legal merits, and this frequently results in frustration and alienation’ (Conley & O’Barr, 1990, p. ix). Thus, in order to construct effective legal arguments it is essential to adopt a rule-oriented approach and accompanying beliefs and values. The study by Candlin et al. on lawyer-client interactions (see Candlin, Maley, Crichton, & Koster, 1994; Maley, Candlin, Crichton, & Koster, 1995) confirms that lawyers tend to adopt the rule-based orientation discussed here, while their clients are overwhelmingly relational in their orientation.

Adopting a rule-oriented approach, which privileges rules over relationships, has consequences in terms of the legal reasoning process. Vandevelde (1996) summarizes this process of rule-based reasoning as follows:

1. identify the applicable sources of law, usually statutes and judicial decisions;
2. analyze these sources of law to determine the applicable rules of law and the policies underlying those rules;
3. synthesize the applicable rules of law into a coherent structure in which the more specific rules are grouped under the more general ones;
4. research the available facts;
5. apply the structure of rules to the facts to ascertain the rights or duties created by the facts, using the policies underlying the rules to resolve difficult cases. (Vandevelde, 1996, p. 2)

It is noteworthy that the legal rule cannot itself be taken for granted but rather must be constructed by the lawyer from the applicable sources of law. In the common law tradition, rules are dynamic in nature and subject to interpretation (and re-interpretation) by the courts, albeit in accordance with given conventions. The constantly evolving nature of legal rules introduces an element of uncertainty into the legal reasoning process, making it difficult for lawyers to predict how a particular case will be decided. However, it also presents an opportunity for lawyers to argue for an interpretation of the law which best suits the interests of their client. Depending on the circumstances, a lawyer may wish to argue for a literal interpretation, a purposive interpretation, a wide interpretation, a narrow interpretation and so forth. In presenting arguments, lawyers may avail themselves of a variety of legal conventions: with respect to legislation, maxims of statutory interpretation; and with respect to case law, the doctrine of binding precedent or *stare decisis*, which loosely formulated is the convention that a court is bound to follow its prior decisions (for a more detailed treatment of these conventions the reader is referred to Holland & Webb, 2003).

The sources of law referred to above by Vandevelde are typically either statutes or judicial decisions. Two different logical processes may be called upon in handling these sources of law: deductive reasoning and inductive reasoning by analogy. Deductive reasoning involves the identification of a general principle and its application to the specific facts of the present case. The classic example of this form of reasoning is the syllogism, as illustrated by the following time-honoured example attributed to Aristotle:

```
All men are mortal   Major premise
Socrates is a man   Minor premise
Therefore Socrates is mortal  Conclusion
```
Such syllogistic reasoning is obviously suited to the legal context, and as a result scholars have elaborated the legal syllogism, as illustrated below:

(a) A rule of general application (*the major premise*)
(b) The particular fact(s) (*the minor premise(s)*)
(c) A legal outcome (*the conclusion*)

(Holland & Webb, 2003, p. 324)

This form of deductive reasoning applies particularly well to legislative rules, which are formulated in general terms. By contrast, in an argument by analogy, the strategy is to compare a precedent case to the case at hand, and argue that the facts are so similar to the instant case that the court is bound to arrive at a similar outcome. Holland and Webb illustrate this process in the following way:

In case x, factors A, B and C existed. Judgment was given for the claimant.
In case y, factors A, B and C existed. Judgment was given for the claimant.
In case z, factors A, B and C exist. Judgment should, therefore, be given for the claimant. (Holland & Webb, 2003, p. 322)

Here specific cases are used as the grounds for justifying the conclusion that judgment should be given. Note that the deductive and inductive modes of reasoning frequently operate in tandem, for example when the lawyer synthesizes a general principle from a larger body of case law through a process of reasoning by analogy. Such a general principle may subsequently be deductively applied to the facts in the given situation. However, regardless of the form of logic applied, there is a continuous interaction between the facts and the law in legal argument, and a need for the lawyer to establish a connection between them. Bhatia (2004, p. 51) refers to this interaction as one between two distinct discourse worlds: the ideal world of rules, regulations and ordinances, and the real world of facts, precedents and legal reasoning.

The lawyer’s task of mapping the ideal world of the law to the real world of facts (i.e. applying the law to the facts) is not always straightforward. The question of whether a particular rule or principle can be applied to a given situation, and if so, under what circumstances, cannot always be resolved by a simple application of logic, as would be possible in a clear case. Holland and Webb note that:
The role of theoretical logic is thus limited by the fact that it may take the judge only as far as identifying a number of rational options. From there, the values that the legal system is seen to serve will play a significant part. This is often explicitly recognized in the legal process by reference to such terms as ‘public policy’ or ‘public interest’ (Holland & Webb, 2003, p. 332).

Thus, in a so-called ‘hard case’ whether and to what extent a rule can be said to apply in a particular factual situation may ultimately depend on factors related to social policy. As a consequence lawyers must examine the policy considerations for the rules formulated in a given case, and prepare appropriate arguments. Vandevelde (1996) explicitly acknowledges the importance of this element in the 5-step process of legal reasoning described above, by referring to the need ‘to determine the applicable rules of law and the policies underlying those rules’.

Thus, we have seen that for lawyers to construct acceptable arguments, they must formulate them in the language of legal rules and follow clearly defined processes of deductive or inductive, analogic reasoning in order to arrive at a possible legal conclusion. Furthermore, in so doing, they may draw upon conventional discursive resources, such as maxims of statutory interpretation or the doctrine of binding precedent. Finally, in hard cases lawyers may be guided by socio-political factors such as the wider, public interest. These resources and constraints on legal argument are social and institutional in nature: that is, they inform legal discourse practice in a general sense and ought to be applicable to a range of genres. Therefore, it is to be expected that existing descriptions of legal genres should be capable of illuminating discourse practices in relation to the genre of barrister’s opinion. In particular, applied linguistic studies of legal judgments, and the pedagogical genre of the legal problem question seem especially relevant.

5.2.2 Related legal genres

A considerable amount of work has now been carried out on legal genres in the field of applied linguistics. However, much of this has focused on the peculiarities of legislative text rather than on the generic features of legal argument (e.g. Crystal & Davy, 1969; Danet, 1985, 1990). For present purposes, I will limit the discussion to a consideration of Maley’s (1985) analysis of legal judgments, and Howe’s (1990) analysis of the pedagogical genre of legal problem question. Both legal judgments,
as exemplars of legal opinions, and legal problem questions, as a training tool used to socialize students into the process of thinking like a lawyer, form part of the intertextual and interdiscursive context which barristers may draw upon when writing their opinions.


**Figure 5.1 Generic elements of judgments**

1. Facts
2. Issues (of fact or of law)
3. Reasoning
4. Conclusion
5. Order or Finding

(Maley, 1985, p. 160)

In the particular assenting judgment studied, there is no separate Facts element (Maley, 1985, p. 165), rather a knowledge of the facts is assumed from the other judgments. Issues are signaled by phrases like ‘the question in the present case…’ and a number of the paragraphs follow a pattern of Issues – Reasoning. Characteristics of the Reasoning identified by Maley include:

- Exophoric reference to the facts in the majority judgment (e.g. ‘the locking pins’, ‘the ladder’, ‘the aircraft’) (p. 165)
- Epistemic modality, either objective modal expressions (e.g. ‘it cannot be doubted’, ‘it is clear’, ‘it would be anomalous’) or subjective modal expressions (‘in my opinion’, ‘it seems to me’) (pp. 165-166)

In addition, the Reasoning element also contains principles of law stated in ‘general’ and ‘norm-giving’ terms (p. 164). Maley’s analysis suggests that the Reasoning element is subject to the kind of interaction between facts and law described in Section 5.1 above, and in addition suggests that epistemic modality is a key discursive resource used in order to mediate this interaction. One might logically
expect barristers to employ similar discursive resources in the reasoning of their opinions.

As well as judgments, the genre of legal problem question may provide some insights into the discourse of barrister’s opinion. The problem question is a pedagogic genre in which students are required to provide a legal analysis of a given fact situation, predicting the legal outcome. The task provides students with an opportunity to showcase their knowledge of the law and their ability to apply it convincingly to a given set of facts. Howe (1990) analyzed 20 legal problem question texts drawn from a pool of texts by native-speakers, non-native speakers, students, lecturers, and including some text-book samples. She identified the following 8-move generic structure:

**Figure 5.2 The generic structure of the problem question**

1. The situation
2. The instruction
3. The forecast
4. The issue
5. The law
6. Its authority
7. The application of the facts
8. Opinion (and advice)

(Howe, 1990, p. 231)

In this analysis, moves 1 and 2 are instructor moves, while moves 3-8 represent the student’s argument. Howe draws explicitly upon Maley’s analysis, and finds all of the structural elements identified by Maley, except for the Order. In contrast to judgments, legal problem questions have no ‘declaratory’ function of reaching a holding, but both genres have the ‘justificatory’ function of providing clear reasons for the conclusion reached (see Maley, 1985, p. 161). Howe was also able to further develop the analysis of Maley’s Reasoning element, breaking it down into three separate elements: law, authority, application of the facts.

Comparing the legal judgment with the legal problem question, an interesting contrast can be made with specific reference to the language of the opinion move.
(Howe, 1990) or conclusion element (Maley, 1985). There appears to be some difference in the way in which conclusions in these two genres are formulated. Consider the examples below:

(1) It may be concluded at this stage that it is most likely that the jury will find Percy dishonest. (Howe, 1990, p. 231)

(2) The short answer to the argument of the Commonwealth seems to me to be that there is no principle, and no reason of policy, that would exclude the operation of the ordinary rules of the common law of negligence... (Maley, 1985, p. 173)

Example (1) from a legal problem question exhibits somewhat more hedging than (2) (hedging is considered in more detail in Section 5.3 below). This difference can be attributed to the different contexts of situation: a judge delivering a judgment has greater authority than a student attempting to predict the likely legal outcome of a simulated fact situation. Unlike students, judges must also balance the need to give a firm opinion on the present case, with the need to protect themselves from the possibility of being found in error in subsequent appeals or other related cases. With regard to student writing, Langton’s (2001; 2002) study of hedging in legal problem question answers found that it was generally inappropriate for students to display a high degree of certainty in the conclusion, in particular where this was not warranted by the relevant facts and law in the particular circumstances. Consequently, she recommends that students ‘avoid categorical statements (unless supported by analysis) by using ‘If’ + may/would + possible, probable etc’ (Langton, 2001, p. 60). Given this difference in observed student and expert writing, we may hypothesize at this point that writing conclusions in the barrister’s opinion may provide a source of possible confusion for students. This is all the more likely as the available literature on the barrister’s opinion suggests that under the right circumstances a strong commitment to the conclusion is possible, as in the following example:

(3) My conclusion is thus that in English law there was no valid creation of an inter vivos trust by the Respondent. (Tessuto, 2006, p. 301: emphasis in the original and emphasis added)
5.2.3 Barrister’s opinion genre: key issues

It is possible to gain a sense of the key issues that students may face in writing the barrister’s opinion, by referring to the one available applied linguistic study in this area, and to legal writing manuals which focus on the genre.

Tessuto’s (2006) exploratory genre analysis of the barrister’s opinion identifies a three move structure, which may be summarized as 1. Title; 2. Reasons/Reasoned arguments; 3. Conclusion (p. 294, 300-301). Although Tessuto refers to sub-moves in move 2, these are not clearly labeled, defined or described, and more detailed analysis of the typical textualization of genre moves is required. Tessuto’s analysis shows that a key feature of the discourse is the use of hedging devices in the reasons and conclusion sections, ‘to widely temper the writers’ [commitment] to the truth value of the information presented’ (p. 300). Furthermore, as already suggested, this use of hedging was found to vary considerably, with some writers stating their conclusions in no uncertain terms. Tessuto concludes that there is a ‘need for advocates to strike the right balance between certainty and uncertainty in giving advice’ (p. 302).

This conclusion is supported by the legal writing literature also. The Inns of Court School of Law manual on opinion writing (Inns of Court School of Law, 2007) provides a range of writing tips to students, highlighting the importance of providing clear answers to solicitors’ questions:

Your instructions are a series of questions, all of which need to be identified and answered. Not only must you answer all the questions, you must answer the actual questions asked and not those which have not been asked, as illustrated above. You will tend not to answer the right questions if your mental attitude is wrong, and if you don’t answer the right questions you will not be advising your client properly. (Inns of Court School of Law, 2007, p. 27)

This suggests that students may not only have difficulty striking the correct balance between certainty and uncertainty in their writing, but that focusing the content of their opinions may be an issue also.
The legal writing literature further suggests that students writing opinions may have difficulty because of the practical nature of the genre. Inns of Court (2007, p. 25) advises students to abandon an academic approach to their writing. Such advice is understandable, as the focus of legal education at the vocational stage is different to the focus at the academic stage. The emphasis switches from the analysis of law to the analysis of facts, in particular ‘how available evidence can support the argument on the case to be proved’ (Hanson, 2003, p. 199). At the academic stage, students are required to display their knowledge of the law, and demonstrate their capacity for legal reasoning. However, at the practical stage of legal education, principles of law are taken for granted, and it is the facts which are treated as problematic. Thus, the style of writing which students have become accustomed to in their undergraduate years, and which involves lengthy expositions of the law, is not appropriate to a practical document such as the barrister’s opinion.

Thus, this brief review of the available literature highlights two key issues. Firstly, students may have difficulty providing appropriately hedged yet clearly expressed ‘answers’ to instructing solicitors’ questions. Secondly, students may adopt an inappropriately academic approach, by attending overly to issues of law and failing to elaborate important issues of fact. As we shall see in Chapter 6, these two key issues suggest interesting starting points for the comparative analysis of student and expert opinions.

5.3 Hedging and the barrister’s opinion

It was suggested in Section 5.2.2 that barristers might well be expected to draw upon modality as a discursive resource to mediate the interaction of facts and law characteristic of legal reasoning. Tessuto’s (2006) study shows that epistemic modality (Lyons, 1977; Palmer, 1990) combines with other, pragmatic hedging strategies in the reasoning and conclusion moves of the barrister’s opinion in order to qualify the barrister’s commitment to the truth value of propositional content expressed. In support of his analysis, Tessuto draws upon Hyland’s (1998) study of hedging in scientific research articles, in which hedging is characterized as a mix of epistemic devices (cf. Holmes, 1988) and pragmatic strategies. According to Hyland, scientists strategically hedge knowledge claims in their writing by referring to
limitations in the state of available knowledge. Such strategic hedges fall into three broad categories (Hyland, 1998, pp. 142-148):

1. Reference to limited knowledge;
2. Reference to limitation of model theory or method;
3. Reference to experimental limitations.

It was demonstrated earlier (Section 5.2.1) that in legal reasoning both elements of fact and law are subject to interpretation by the court and that this introduces elements of uncertainty into the barrister’s reasoning process. In Tessuto’s study, both reasoning and conclusion moves are characterized by pragmatic hedging strategies, which signal what Tessuto characterizes as a ‘lack of information’ or ‘deficiency in advice model’ (p. 300). Consider the following examples:

(4) I regret that on the available information it is difficult to provide a more optimistic assessment of Mrs. M’s claim. It may be that if more details could be provided the matter might best be discussed at a Conference in Chambers, […] (Tessuto, 2006, p. 300: my emphasis)

(5) The claimants are in the position of seeking to rebut that presumption. It is very difficult to overturn the presumption of due attestation and I do not think the claimants will succeed on the basis of just one, relatively elderly witness. (Tessuto, 2006, p. 301: my emphasis)

Applying Hyland’s concept of strategic hedging to the barrister’s opinion genre, I suggest that example (4) may be interpreted as a reference to limited knowledge of the facts, while the doubts expressed in example (5) may be interpreted as a reference to limited evidence. Thus, the previous studies of legal discourse reviewed here suggest that pragmatic and epistemic hedging are likely to play an important role as discursive resources in the barrister’s opinion genre. Accordingly it is necessary to provide a brief elaboration of these concepts at this point.

Although there is some disagreement about the scope of hedging, Hyland (1998) provides a useful definition of the concept:

The notion of hedging has been in the linguistic vocabulary since the term was introduced by Lakoff (1972) to describe ‘words whose job it is to make things more or less fuzzy’. It has subsequently been applied to the linguistic devices used to qualify a speaker’s confidence in the truth of a proposition,
Hedging devices or hedges can therefore be defined as such linguistic devices used to qualify the speaker/writer’s commitment to the truth value of a proposition (Crompton, 1997, p. 281 drawing on Lyons, 1977). Undoubtedly, this definition includes the category of linguistic devices associated with epistemic modality, used to comment on the truth value of the proposition (Skelton, 1997), for example the modal auxiliaries, lexical verbs, epistemic adjectives, adverbs and nouns (Holmes, 1988; Hyland, 1998). Hedging as understood in the present study also includes the kind of pragmatic strategic hedges alluded to above (Hyland, 1998; Tessuto, 2006) which may result in a range of additional textualizations, such as question forms, if-clauses, and contrastive markers among others (Hyland, 1998).

When discussing the concept of hedging, it is important not to focus overly on the surface features of hedging as such surface features may vary greatly and be very unpredictable. For the purposes of this study, which takes a qualitative approach to the analysis of certainty and doubt in the barrister’s opinion genre, it is not necessary to elaborate a formal classification scheme. However, it is important to be aware of two major functions of hedging: 1. an epistemic, content-oriented function; 2. an interactional, reader-oriented one (Hyland, 1998). Briefly, a content-oriented hedge reduces the speaker/writer’s commitment to the truth value of a proposition, as suggested above. A reader-oriented hedge is an interpersonal strategy used to express deference to the community of readers and recognize that claims asserted depend on community acceptance for their ultimate validity (Myers, 1989 and see below). Content-oriented hedges may be further divided into those which are related to the accuracy of the proposition itself, and interpersonal, writer-oriented hedges which attempt to ‘shield’ the writer from possible negative consequences of error (Prince, Frader, & Bosk, 1982). This pragmatic model of hedging can be represented as in the following figure:
It is worth pointing out that hedging is inherently polysemous and polypragmatic, and as a result it will often be possible to recognize a plurality of meanings in any one particular hedge. As an example, a writer may on the one hand be hedging a proposition in order that the proposition more accurately corresponds to the writer’s understanding of the facts of the matter, which may be tentative or incomplete (accuracy-oriented). On the other hand, such hedging may simultaneously function to signal a reduction in the writer’s commitment to or confidence in those propositions (writer-oriented) (see Skelton, 1997). For present purposes I wish to draw attention to the difference which this model signals, between hedging which is accuracy-oriented (which I will refer to as propositional hedging), and hedging which is not (i.e. interpersonal hedging).

Much of the literature on hedging has focused on the second, interpersonal function of hedging (e.g. Myers, 1989; Prince et al., 1982; Salager-Meyer, 1994). For example, Myers (1989) constructs hedging as a politeness strategy to mitigate face-threatening acts (FTAs) (Brown & Levinson, 1987). Myers notes that:

Hedging is a politeness strategy when it marks a claim, or any other statement, as being provisional, pending acceptance in the literature, acceptance by the community - in other words, acceptance by the readers. (Myers, 1989, p. 12)

Although Myers’ work is situated in the context of scientific writing, such a politeness strategy need not be limited to the scientific community. It could also apply in other contexts, including the present one, where a barrister’s reasoning and conclusions can be construed as provisional until accepted by the instructing
solicitor and lay client. However in performing a contrastive analysis of student and expert writing as in the current study (see Section 5.4 below), it is important to keep in mind the full spectrum of modal meanings which are possible when hedging is employed. Hedging must be interpreted with regard to both the writer’s desire to limit impositions on the reader, and the writer’s desire to avoid the ‘negative consequences of being proved wrong’ (Hyland, 1996, p. 479). At the same time we must bear in mind that students who are operating in a foreign language may not be able to appropriately deal with semantic and pragmatic indeterminacies of hedging (or fully with their lexico-grammatical realizations) (Bloor & Bloor, 1991; Skelton, 1988).

In summary, I expect that both pragmatic and epistemic hedging will play an important role in the construction of the barrister’s opinion and have the potential to cause difficulty to student apprentices to the legal profession. In analyzing hedging devices it is important to take a functional view, understanding hedges both as a means for speakers/writers to modify their commitment to the propositional content and as an interactional resource to negotiate meaning with a community of readers.

5.4 Research questions and research design

I have so far outlined my methodological approach to the research, and provided a thorough theoretical framework for the discourse analysis. In this section I build on this foundation by providing the research questions and describing the precise research design adopted.

5.4.1 Research questions

As already mentioned, the genre analysis reported here serves as an exemplar of the kind of applied linguistic research that may be carried out in order to investigate student needs in the context of English for Specific Purposes materials development. Thus the following question for inquiry served to guide the research:
1. In the context of Hong Kong legal professional education, what factors must be taken into account in the design of an online resource for the development of professional legal writing skills (legal literacy)?

Relating this question directly to the genre of barrister’s opinion, the following focused research questions emerged during the course of the genre analysis:

*Question one:* How can the genre of barrister’s opinion (as a sample genre of focus) be described?

a) In terms of intertextual and interdiscursive context?

b) In terms of lexical and grammatical textualizations?

c) In terms of novice and expert use?

In the following sections, I elaborate the research design and methods used to address these questions.

### 5.4.2 Research design

The basic design of the research involved an initial exploratory analysis of 5 professional barristers’ opinions, followed by a comparison of these professional texts with 19 student texts written for the purposes of a PCLL course in Conveyancing and Probate Practice. Conceptually, the study can therefore be divided into two parts: an ‘exploratory genre analysis’ and a ‘comparative genre analysis’. As already mentioned, the study took a qualitative interpretive approach (Davis, 1995; Erickson, 1986; Lincoln & Guba, 1985; Richards, 2003) drawing on a broad range of data sources, including student and professional texts, interviews with students and professionals, background information questionnaires, and (for students) grades awarded by law school tutors. Data for the exploratory genre analysis was collected before the Conveyancing and Probate Practice course, in December 2005 and January 2006. Initial findings were used to inform teaching practice on that course. The student data which was used in the comparative genre analysis was collected towards the end of the course, in April and May 2006.
Because of privacy concerns, barristers were not asked to provide ‘live’ opinions, but rather to write an opinion about a simulated set of instructions, in the same way that PCLL law students do when writing assignments. These instructions and the associated fact files were created by an informant from the School of Law, a legal academic with many years of practical experience as a solicitor. Barristers taking part in the study were instructed to complete the task in their normal way, exactly as they would if responding to an instructing solicitor. The possible limitation of this approach is that the fact files created are inevitably less complex than authentic case files (which may run to hundreds of pages). However, the barristers’ opinions created in this process nevertheless reflect authentic communication from one legal professional to another. In addition, where texts have been constructed on a restricted range of topics, it is possible to make comparisons which would otherwise be impossible. In this study, three barristers responded to the ‘Hair Flair’ instructions and case file (Appendix D1) and the remaining two responded to the ‘Villa Rouge’ instructions (Appendix D2). All students responded to the ‘Hibiscus court’ instructions (Appendix D3). All of the case files are in the same general area of Land and Property Law, meaning that discursive variation between texts is less likely to be attributable to considerations of content. Furthermore, comparisons can be made between writers performing the exact same task, and this permits interesting observations in terms of individual variation.

The research can be divided into a number of distinct stages, as summarized in the following figure.

<table>
<thead>
<tr>
<th>Study</th>
<th>Stages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploratory genre analysis</td>
<td>1. Identification of barrister participants</td>
</tr>
<tr>
<td></td>
<td>2. Creation of case files, distribution of instructions and collection of written opinions</td>
</tr>
<tr>
<td></td>
<td>3. Preliminary analysis of expert writing</td>
</tr>
<tr>
<td></td>
<td>4. Interviews with barristers</td>
</tr>
<tr>
<td>Comparative genre analysis</td>
<td>1. Identification of student participants</td>
</tr>
<tr>
<td></td>
<td>2. Instruction: PCLL Conveyancing and Probate Course</td>
</tr>
<tr>
<td></td>
<td>3. Interviews with students</td>
</tr>
<tr>
<td></td>
<td>4. Collection of student assignments and grades</td>
</tr>
</tbody>
</table>
As has been suggested above, the research played an active role in the delivery of the PCLL Conveyancing and Probate course, which included a skills-development component. Initial findings from the exploratory genre analysis could thus immediately be made available to students and this process both facilitated student learning about the genre and furthered the research process. As well as investigator, I also acted as tutor in charge of one tutorial class for the skills development component of this course. In this role I was able to benefit from a variety of discussions with students and law school staff, and such conversations provided a catalyst for the development and refinement of research questions and analysis. Furthermore, in my specialized role as lawyer-linguist within this community, I was able to build up and subsequently draw upon a certain amount of community insider knowledge, which informed the analysis throughout.

5.5 Data collection and method

As mentioned above, two different sets of data were collected: data for the exploratory genre analysis (drawn from expert writers) and data for the comparative genre analysis (drawn from expert writers and student writers). In this section, I describe the selection of participants, sources of data, method of data collection and analysis.

5.5.1 Selection of participants

*Exploratory genre analysis (expert writing)*

An informant from the legal discourse community (a colleague from the School of Law) assisted in enlisting the participation of barristers in this study. A set of criteria for this recruitment process was drawn up, as follows. It was considered desirable to have a range of differently experienced barristers, including some junior barristers and some more senior barristers. Further, it was felt that it would be preferable if the barristers participating in the study had no experience in teaching, as such experience might affect the manner in which they performed the task. Consequently, only barristers who were not involved in teaching activities at the City University of Hong Kong were contacted. It transpired that this criterion was difficult to fulfil, and in the event all of the barristers who participated had some prior teaching experience.
at some stage of their career. It appears from this group that such involvement in legal education may be quite common among barristers.

The final group of barristers participating in the study comprised a mix of junior and more senior barristers. Figure 5.5 summarizes barrister experience as well as relevant details of the texts written.

**Figure 5.5 Background to barristers and texts written**

<table>
<thead>
<tr>
<th>Participant ID</th>
<th>Amount of experience as a barrister in Hong Kong</th>
<th>Length of opinion (excluding the backsheet)</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1</td>
<td>22 years</td>
<td>3370 words</td>
<td>Hair Flair (D1)</td>
</tr>
<tr>
<td>B2</td>
<td>11 years</td>
<td>1256 words</td>
<td>Villa Rouge (D2)</td>
</tr>
<tr>
<td>B3</td>
<td>5 years</td>
<td>878 words</td>
<td>Hair Flair (D1)</td>
</tr>
<tr>
<td>B4</td>
<td>4.5 years</td>
<td>883 words</td>
<td>Villa Rouge (D2)</td>
</tr>
<tr>
<td>B5</td>
<td>7 months (with 6 years’ experience as a solicitor)</td>
<td>2089 words</td>
<td>Hair Flair (D1)</td>
</tr>
</tbody>
</table>

As demonstrated in Figure 5.5, the practical experience of barristers participating in the study ranges from a junior barrister with only 7 months in chambers, to a senior counsel with 22 years of experience practising in Hong Kong. With regard to B5, it should be noted that this barrister had gained 6 years’ experience working as a solicitor and had recently switched to working as a barrister. Therefore, while technically B5 had only recently begun practice, this barrister nevertheless had considerably more experience of the law than might normally be expected. Figure 5.5 also summarizes the length of the texts written, and the instructions and case files that the various barristers responded to. There was considerable variation in the length of the texts collected, from 883 to 3370 words. The case files are reproduced in Appendices D1 (‘Hair Flair’) and D2 (‘Villa Rouge’).

*Comparative genre analysis (expert and student writing)*

The comparative genre analysis compares data from the expert barristers described above with data collected from a group of students taking the PCLL Conveyancing
and Probate Practice course. The first assignment on this course was a written barrister’s opinion, based on the ‘Hibiscus Court’ case file (Appendix D3). For this study it was necessary to find participants who were willing to submit a copy of their assignment to me, give permission to the School of Law to subsequently share their grade with me, and spend an hour of their time in focus group interview. Students (including my own) were approached during class time and asked whether they would be willing to take part. In the event, a total of 20 students volunteered for the interview, and of these, 19 submitted their written opinions to me. Nine of the students came from my own tutorial group.

Students participating in the study filled out a background information questionnaire (Appendix C2). The students taking part in this study make up a highly educated and diverse group, which is perhaps to be expected given the strict entrance criteria for the PCLL course. Most of the students in the study held a second tertiary qualification in addition to their LLB, and about a quarter of the students held Master’s degrees of some description. Many of the students had completed some part of their education overseas, in places like New Zealand, Australia, Canada, or the United Kingdom, with only six students having completed their entire education in Hong Kong. Out of the 20 participants, 9 were men and 11 were women. They ranged in age from their low twenties to over 40 years. Almost all (19 out of 20) reported some kind of prior work experience, either full-time employment or some law-related experience such as a summer internship. 17 of the students interviewed considered Cantonese to be their first/native language, while 3 considered their first/native language to be English. Students had all taken the IELTS test, in order to be admitted to the PCLL. The range of results reported was from 7 to 9, with a mean of 7.8.

Figure 5.6 summarizes background details of the written texts collected.

<table>
<thead>
<tr>
<th>Max length</th>
<th>Min length</th>
<th>Mean length</th>
<th>Max grade</th>
<th>Min grade</th>
<th>Mean grade</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>2607 words</td>
<td>2062 words</td>
<td>2452 words</td>
<td>37 / 40</td>
<td>19 / 40</td>
<td>27.5 / 40</td>
<td>Villa Rouge (D3)</td>
</tr>
</tbody>
</table>
As demonstrated by Figure 5.6, the texts were roughly similar in length, which is not surprising as students were writing to a word limit of 2,500 words. To judge by the grades awarded by law school tutors, a fair cross-section of student work has been collected from this relatively small sample. The maximum achievable grade was 40 and marks ranged from less than half of this (19) to a maximum grade of 37 (awarded to two students in the sample).

**Ethical considerations**

In any study involving human participants it is important from an ethical point of view to obtain the informed consent of those participants. In the present case, with some participants I acted in the capacity of both teacher and researcher. Performing these dual roles, it was particularly important to adhere to established guidelines of ethical conduct in research, as there is a risk that students may perceive that participation in the research is somehow linked to course outcomes, and consequently feel compelled to volunteer. Following standard ethical procedures of the Macquarie University Ethics Committee, informed consent was obtained from both student and barrister participants in this study (see the consent forms in Appendix E). Participants were informed of the aims of the study, the extent of their commitment, possible benefits to them, steps that would be taken to protect their identity in publications, and that they could withdraw from the study in future without having to provide reasons. In addition, student participants were informed that participation would have no effect, positive or negative, on their grades for the course. In the case of barristers, it was felt appropriate that a token honorarium be paid to the barristers in appreciation of their professional services and time (see Appendix E2). However, no such financial incentive was offered to students.

### 5.5.2 Data sources and method

In this section I describe the methods used to collect and analyze the data described above. The section is divided into two parts: exploratory genre analysis and comparative genre analysis. Note that these two studies overlap and inform one another, but it is convenient for present purposes to treat them as conceptually distinct and describe them as two separate procedures.
**Exploratory genre analysis**

The sources of data relied upon for the exploratory genre analysis include: barrister’s opinion texts written by professional barristers; individual semi-structured interviews with the barristers; background information questionnaires; legal professional training manuals and associated literature. In this study, the expert writing provides the primary evidence of the discursive resources which the barristers draw upon in constructing their opinions. However, it is not possible to interpret barristers’ strategic use of these resources with confidence in isolation from secondary sources of data consulted.

Bhatia (1993, pp. 22-36) emphasizes the importance of placing the given genre in a situational context, and suggests a number of procedures, including drawing on prior knowledge, surveying existing literature, and drawing on the intuitions of specialist informants. An important aspect of this process is the interaction of disciplinary culture and genre analysis. In the present study, I was able to draw upon my own prior knowledge about the genre, which I had acquired as a tutor on the Legal Writing and Drafting course. I also familiarized myself with disciplinary writing about the barrister’s opinion and legal writing more generally, as described in Section 5.2.

Once texts had been collected from barristers, an initial genre analysis was carried out, drawing upon knowledge of the disciplinary context. In the present study, qualitative data analysis software (QSR NVivo (QSR International, 2006)) was used in order to code genre moves and sub-moves. Where the initial analysis raised questions about the text, including the kind of discursive strategies employed by barristers, a note of these questions was made. Subsequently, the barristers were interviewed individually with the aim of: a) confirming the initial genre analysis; b) addressing questions raised by the initial analysis; c) understanding barrister’s perceptions about the genre in terms of a learning process, writing process, writing context, and disciplinary practices (see Appendix G1 for a list of questions). These interviews were audio-recorded, transcribed and coded for emerging themes relating to the genre analysis. The process of comparing and categorizing barristers’ accounts.
of their own writing and of disciplinary practices served to provide insights into the contextual factors constraining and shaping the genre.

Finally, the texts were re-analyzed in light of the understandings arrived at through the interviews. In order to validate this final genre analysis a specialist informant from the School of Law was asked to review the analysis and make comments from a legal perspective (cf. Bhatia, 1993; Hyland, 2000).

**Comparative genre analysis**

The primary data relied upon in the comparative genre analysis was the expert writing referred to above, and student writing collected. In addition, the analysis was supported by individual and focus group interviews with students (semi-structured), background questionnaires for both students and experts, and detailed records of the grades awarded to student texts.

As suggested above, some students were interviewed individually and others in focus groups (the size of these groups varied from two to five students). Because of constraints of time and the need to arrange interviews at times that were mutually convenient to the students, it was not always possible to arrange groups for interview. The aims of the interview were to collect data about students’ perceptions of the genre of barrister’s opinion, with specific regard to: a) the discursive context; b) students’ writing process; c) students’ process of learning the barrister’s opinion; and, d) the difficulties associated with writing a barrister’s opinion. The questions for interview are reproduced in Appendix G2. The interviews were tape-recorded, video-recorded and transcribed. The interviews were analyzed using NVivo (see above), first coding for emerging themes and then subsequently organizing these themes into conceptual categories. In this way, the interviews served to illuminate the student perspective and frame the subsequent discourse analysis of text.

As should hopefully be clear, the expert writing relied on for this comparative analysis was the same writing as in the genre analysis described above. At this stage I was therefore familiar with the genre and some tensions had been observed, which held potential as a focus for comparison. However, in order to settle on an
appropriate area of focus it was necessary to become fully familiarized with the student text. An initial exploratory analysis of the student text was conducted for this purpose, again using NVivo. All student writing was coded by genre move, and notes of unusual or unexpected textualizations were made. This process allowed for a full exploration of the text, both confirming and building upon observations that had already been made in the exploratory genre analysis of expert text. Having taken stock of the text in this way, it was then possible to focus the analysis in one of two ways:

1. By focusing on particular pragmatic features (e.g. features of more or less academic style, features associated with providing an opinion) and drawing on the entire corpus of student and expert text in a ‘quantitative’ fashion
2. By selecting significant cases for comparison and investigating these cases in depth

Both of these analytical strategies were used in the present case. By focusing on particular pragmatic features, the analyst attempts to provide an accurate account of variation between two sets of data. The study by Hyland (2000) is a good example of this focused approach. In the present case, the two corpora compared are small, and we must be cautious about generalizing from the results. Nevertheless, the small size of the corpora should not detract from the interest of the findings. The findings will have greater validity if the features for comparison are carefully selected, and the differences observed in the text can be explained with references to other data sources such as interviews with writers, or observations in legal writing manuals (Gee, 1999).

In selecting significant cases for comparison, the analyst attempts to provide a more comprehensive analysis of discourse, but on a limited sample. Fairclough’s (1992; 1995) work is a good example of this approach to text analysis. This method is useful where it is necessary to demonstrate the cumulative effects of discourse, rather than particular linguistic or pragmatic features in isolation. Again, the careful selection of cases is extremely important to the validity of the analysis. As a general observation, because of the small-scale nature of this comparative genre analysis, the
study should be considered exploratory in nature and the findings interpreted as limited to the context of the study.

Finally, once this comparative genre analysis was complete, it too was reviewed by an informant from the School of Law, in order to check interpretations from a legal perspective.

5.6 Summary

In this chapter I have addressed the epistemological and methodological issues related to the genre analysis of barrister’s opinion conducted for the purpose of this thesis. Based on a review of the available literature in both applied linguistic and legal fields it has been possible to contextualize the barrister’s opinion genre, identify likely issues in analysis and establish a theoretical framework. Finally, I have outlined the research questions and methods adopted for the study. In the next chapter I describe the results obtained.
CHAPTER 6

Genre analysis of barrister’s opinion:
Results

In this chapter I report the results of the genre analysis of the barrister’s opinion, addressing the research questions established in Chapter 5:

*Question one:* How can the genre of barrister’s opinion (as a sample genre of focus) be described?

  a) In terms of intertextual and interdiscursive context?
  b) In terms of lexical and grammatical textualizations?
  c) In terms of novice and expert use?

The chapter is divided into three sections: an exploratory analysis of the writing context, an exploratory analysis of the generic structure of the opinion, and a comparative analysis of the student and the professional writing of such opinions. The exploratory genre analysis (Sections 6.1 and 6.2) draws on texts and interviews by professional barristers, supplemented by discussion of the relevant literature from the fields of legal writing, jurisprudence and discourse analysis (see Chapter 5). In the comparative analysis I compare this data with texts and interviews by students from the PCLL (see Chapter 5).

6.1 Exploratory genre analysis: Writing context

In order to understand the genre of barrister’s opinion it is helpful to appreciate the writing context, including both the interactional context and genre system to which the barrister’s opinion belongs. A barrister’s opinion is usually written in the context of a legal dispute or problem. Typically, an aggrieved party (the ‘lay client’) contacts their solicitor for advice, relating their side of the story to the solicitor. This story
usually consists of a sequence of events culminating in damage to the lay client, for example personal injury or breach of contract. At this point, the solicitor may decide that the case is procedurally complex, or legally unclear, and the solicitor requires the advice of an expert (the barrister). Alternatively, the solicitor may instruct counsel if they believe that the matter will be litigated in the High Court at trial (solicitors do not have higher rights of audience and so it will be necessary to retain a barrister). The solicitor drafts ‘instructions to counsel’ which relate the facts of the matter to the barrister (referring to relevant files), and request advice on summarized legal issues. The interactional context can be conceptualized as in Figure 6.1 below:

Figure 6.1 Interactional context of the barrister’s opinion

Figure 6.1 illustrates the way in which a number of different discourse worlds meet and interact in the genre of barrister’s opinion. The genre is framed by the legal problem which it describes, and yet different participants to this genre may understand the problem in different ways. The barrister constructs the legal opinion by drawing upon the documents and instructions provided by the solicitor and upon their knowledge of legal rules and procedures (derived from statute, common law, and other sources of legal convention). Therefore, the barrister’s opinion is replete with intertextual references (e.g. to the solicitor’s instructions) and interdiscursivity (drawing on the rule-based discourse of the law). For example, in order to provide an effective opinion, the barrister must reconstruct the lay client’s account of the facts in legal, procedural terms, taking a rule-based approach (Conley & O’Barr, 1990, 1998, 2005). Figure 6.1 also illustrates the nature of the relationship between
barrister, solicitor and lay client. The barrister has no contact with the client, and therefore lacks a first-hand understanding of the client’s situation. As a result the barrister must construct this understanding from the instructions and documents provided by the solicitor. Because the barrister is dependent on the solicitor for this information, the opinion may be viewed as in essence a co-constructed text.

This brief exposition of the writing context raises two important questions for the barrister’s opinion genre. Firstly, who is the barrister writing for? Secondly, what is the purpose of the opinion? Regarding the first question, the barristers in this study considered the primary audience to be the solicitor, although they might also consider the needs of the lay client when writing. This interdiscursive and intertextual juggling act was well summarized by B1:

Yes, of course, your audience is a lawyer, and usually quite an experienced one. And so he doesn’t need to be told simple things, or things which lawyers normally know. But the client, I mean you don’t know the client unfortunately, usually how intelligent and educated he is and whether he speaks English or not, and to what level, and so on. But normally, especially if he’s a business man, he will take a bit of interest in it. He’ll want to see that summary and that conclusion, and he might be interested in the reasoning. So it’s a good idea not to be too technical about it… (B1, Interview)

Thus, while acknowledging that the primary audience is the solicitor, the barrister nevertheless notes that the opinion may well be read by the lay client as well. This implies that a slight tension may arise: on the one hand there is no need to tell the solicitor ‘simple things’, on the other hand the lay client may show interest so ‘it’s a good idea not to be too technical about it’. Other barristers were quite clear that they would expect the instructing solicitor to explain to the lay client any part of their opinion which the lay client could not understand, and on that evidence it would appear that barristers write principally with a legal audience in mind. Indeed, the genre provides barristers with an opportunity not just to provide a legal opinion and advice but also to showcase their legal expertise and problem-solving skills to fellow professionals. One barrister reflected that legal opinions could be put to a great variety of uses and be read by a great many and diverse people, so that as a result it was necessary to write in as thorough and as professional a manner as possible:
So when you're writing an opinion, you have to consider, this might be seen by the Chief Justice of Hong Kong, and I need to write in a way that my future audience will know that I considered this, I considered that, and I put it all into the opinion. (B5, Interview)

The second question identified above relates to the purpose of the barrister’s opinion. The Inns of Court School of Law manual on opinion writing identifies a number of functions of Barrister’s Opinions (Inns of Court School of Law, 2007, pp. 33-34). Two of these seem particularly important:

1. to provide an objective assessment of the lay client’s legal position, like a kind of *interim judgment*;
2. to provide (subjective) advice on what the lay client should do to solve their problem.

It is interesting to note the tension between objectivity and subjectivity identified here. The barrister writing an opinion must be able to shed the role of advocate and adopt a neutral stance towards the lay client’s situation. One of the barristers interviewed for this study contrasted this neutral, impartial role with that involved in other kinds of paperwork that barristers are required to undertake:

> Firstly, [the barrister’s role is] to be neutral. If we write a skeleton submission, we have to be very subjective, because we want the judge to be on our side, but when it is an opinion, sometimes we have to be really frank so the client may know that he may lose the case. (B4, Interview)

In this connection, it is important to note that barristers view the pragmatic function of the opinion not as to persuade, but rather to describe or explain, as noted in this comment:

> I’m supposed to be dealing with facts and statements of law. I don’t think I should be persuading them in any way… So you should be explaining the position and explaining your reasoning to the client and to the solicitor rather than persuading them. (B2, Interview)

In spite of this perception of the opinion as a neutral description of a position, barristers may nevertheless use the genre in order to rehearse the arguments for and against a particular stance. Therefore the particular pragmatic space (Leech, 1980) in which the barrister’s opinion is located is fluid, depending on individual action.
Indeed, one of the barristers in this study likened a portion of the text to a ‘skeleton argument’ intended to ‘justify that view to the judge’ (B1, Interview). This justificatory function, similar to a legal judgment in nature (Maley, 1985), should be seen as an important subsidiary purpose of the barrister’s opinion (Tessuto, 2006). As I shall demonstrate later (Section 6.3), maintaining an impartial tone while considering the strengths of opposing arguments can present a considerable pragmatic challenge.

In summary, the interactional context of the barrister’s opinion is complex, with the barrister drawing upon multiple texts and discourses in order to construct the opinion. While the opinion is primarily authored by the barrister, the solicitor plays an important mediating role in supplying the barrister with knowledge of the client’s situation and relevant documents. Barrister’s opinions may be put to a wide variety of uses and so the barrister writing an opinion must consider a potentially wide range of audiences. In composing the opinion, the barrister appears to be playing two potentially conflicting roles:

1. neutral arbiter;
2. problem-solving advisor.

In keeping with these roles, the purpose of the barrister’s opinion may be seen as two-fold: 1) to provide an objective assessment of the lay client’s legal position; and 2) to provide (subjective) advice on the steps to be taken to solve the lay client’s problem.

6.2 Exploratory genre analysis: Generic structure observed

In this section I report the generic structure observed in professional texts, as well as analyzing the purpose of genre moves and sub-moves identified. A sample analysis of one text (B4) is provided in Appendix F, and the reader may refer to this in order to gain an overview of the genre. I have chosen this text because it is a relatively short instantiation, and illustrates the majority of the genre moves observed in the opinions. As a general observation, opinions can be divided into two sections, the backsheets and the opinion proper. As with many litigation documents, a backsheet is
conventionally attached to an opinion in order to provide essential information about
the text, including: 1. the matter referred to; 2. the kind of text (i.e. opinion or
advice); 3. other details such as instructing solicitor’s address, barrister’s address,
date and so on. Here, I am primarily concerned with the opinion proper, rather than
the formalities related to the backsheets. I first provide an outline of the generic
structure observed, then examples of the moves and sub-moves of the genre. The
structure observed can be summarized as in Figure 6.2 below:

Figure 6.2 Move structure of barrister’s opinion

1. Heading
2. Opening
   2a. Identifying key issues
   2b. Identifying material facts
   2c. [Limiting the scope]
3. Discussion
   3a. Raising an issue
   3b. [Stating the law]
   3c. [Providing authority]
   3d. [Applying the law to the facts]
   3e. Providing a conclusion/opinion
4. Conclusion/opinion
5. [Giving advice]
6. [Closing]

(Moves and sub-moves in square brackets are optional)

This analysis confirms and expands upon the basic 3-move structure found by
Tessuto (2006). Four obligatory and two optional moves were identified in the
Conclusion/opinion consistently occurred in the sequence outlined above, except in
one opinion where the Conclusion/opinion preceded the Discussion. In the following
pages I examine each of these genre moves and sub-moves identified in order to
describe their textualizations with reference to their communicative purpose.

1. Heading
The purpose of the Heading move is to identify the subject of the professional
communication, and its precise nature (as a legal opinion). The Inns of Court (2007,
Chapter 6: Genre analysis: Results

p. 36) suggests that the Heading include the title of the case as it appears in the solicitor’s instructions, thereby creating an intertextual chain of reference between the two texts. This title may take the same form as the title of a case, naming the parties to the dispute (see also Inns of Court School of Law, 2007; Tessuto, 2006). Other forms observed in this study were the name of the lay client and the name of the property under dispute, e.g. ‘Basement, New Wave World, Nathan Road, Tsim Tsa Tsui, Kowloon’ (B1, Opinion). This title is followed by a characterization of the text as either ‘OPINION’ or ‘ADVICE’, typically in capital letters and conventionally in ‘tram tracks’ (horizontally ruled lines above and below the word).

Of the five opinions analyzed, all had headings, although in two cases the heading consisted simply of the word ‘Opinion’ or ‘Advice’ without a title. Whether or not a barrister’s opinion is characterized as an ‘opinion’ or an ‘advice’ depends upon its precise function, although even barristers will disagree among themselves as to the exact distinction between these two forms (Inns of Court School of Law, 2007, p. 36). Such disagreement is reminiscent of the more general difficulty in pragmatic terms of precisely distinguishing these (and other) pragmatic values in context (see Candlin & Lucas, 1986; Silverman, 1997 on discourses of counseling). In this study, barristers used the terms ‘opinion’ and ‘advice’ interchangeably to refer to the texts that they had produced. Three of the barristers (B1, B2, B3) labeled their opinions ‘Advice’ while the other two (B4, B5) used the term ‘Opinion’. This is in spite of the fact that some of these barristers were responding to the exact same set of instructions. Two of the barristers commented on the difference between opinions and advices with one (B2) commenting that the distinction is difficult to maintain. B1 distinguished opinions from advices in the following manner:

[In an opinion] the issues are essentially legal ones where you’ve got to come to a conclusion rather like a judge and give your view, because that’s all a judge does on legal points is that he expresses his opinion. But normally you’re asked to give advice which is, that’s wider than an opinion and means in effect that you’re giving tactical procedural advice and instead of, or as well as, the legal stuff. (B1, Interview)

This characterization of opinions as more concerned with legal matters and advices as more concerned with procedural or practical matters is consistent with the
‘traditional distinction’ described by Inns of Court (2007, p. 36). As already noted, in practice this conventional distinction does not appear to be rigorously applied.

2. Opening
The Opening move frames the opinion by referring the text back to the originating instructions and by highlighting the material facts and key issues according to the barrister’s understanding. Of the five barristers participating in the study, three began by highlighting issues (e.g. ‘I have been instructed to advise whether…’) and the other two by highlighting material facts (e.g. ‘Instructing solicitors act for…’). From this sample, it appears that the sequence of these two sub-moves is not particularly important. Subsequently, the barrister may limit the scope of the opinion by highlighting gaps in the solicitor’s instructions and making explicit any assumptions that they have adopted as a consequence. Thus, three sub-moves are identified in the Opening move: Identifying key issues, Identifying material facts and Limiting scope. These moves may be sequenced as illustrated in Figure 6.3:

<table>
<thead>
<tr>
<th>Sequence 1</th>
<th>Sequence 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifying key issues</td>
<td>Identifying material facts</td>
</tr>
<tr>
<td>Identifying material facts</td>
<td>Identifying key issues</td>
</tr>
<tr>
<td>Limiting scope</td>
<td>Limiting scope</td>
</tr>
</tbody>
</table>

I consider the textual features of this move in more detail below.

2a. Identifying key issues
The Identifying key issues sub-move states the key questions that the barrister will answer by giving the opinion. The purpose of this move is to raise the legal and factual questions that must be resolved in order to satisfactorily dispose of the legal problem. There are two different possible realizations of this move. Firstly, the barrister may refer to instructions and restate the solicitor’s questions. It is important to note that all of the barristers made use of this strategy, which suggests that identifying the key issues in the context of the originating instructions is extremely important. Some variation on the form I am instructed to advise (+noun/whether+clause) was common. For example:
(1) I am instructed to advise on the enforceability of a tenancy agreement between lay client, Hair Flair Limited (“Hair Flair”) and New Wave Limited (“New Wave”). (B3, Opinion)

(2) My instructions are to advise generally and in particular as to whether there is an enforceable agreement for a lease between the landlord of the above premises, New Wave Limited, and the lay client and would-be tenant, Hair Flair Limited. (B1, Opinion)

The second possible realization of the Identifying key issues move involves adopting a more impersonal and objective stance, distanced from the instructing solicitor’s instructions. For example:

(3) The issue is whether this agreement is binding upon the landlord. (B1, Opinion)

Where such an objective statement of issues was observed, it always followed an initial reference to the solicitor’s instructions as illustrated by (1) and (2). It would appear that the initial reference to the solicitor’s instructions is a very important component of the genre, serving as a frame of reference for the entire opinion. As one barrister put it, ‘outlining the instructions… focuses the mind of both, both my mind and also the reader’ (B2, Interview). It therefore seems likely that the form exemplified in (3) can only be adopted if some clear reference to the solicitor’s instructions has already been made.

2b. Identifying material facts

The next sub-move, Identifying material facts, serves to highlight a number of the legally material facts, which will prove to be important in the subsequent legal analysis. The identification of material facts in the Opening is typically brief, sufficient to indicate the nature and kind of legal problem. Because of the clear similarities between the barrister’s opinion genre and the legal judgment, one might expect barristers to provide a description of the factual background to the case in the same way that judges do when writing their opinions (Bhatia, 1993; Maley, 1985). However, barristers differed in the amount of factual background which they considered necessary to provide at this point, which may be anywhere from no information to a short narrative of events. At one end of the scale is the strategy adopted in (4) and (5) below to refer the reader back to the instructions, and to
decline to provide a background summary of the facts of the case. In this study, two of the barristers adopted this strategy:

(4) The facts and correspondence are summarized in my instructions. (B1, Opinion)

(5) I will not repeat the background facts which have been set out in the instructions sent to me together with the relevant correspondence. (B5, Opinion)

This strategy explicitly contemplates that the intended reader is familiar with the facts of the matter. By taking this approach the barrister acknowledges that the opinion cannot be interpreted independently of the instructions, but rather must be read in conjunction with them or knowledge of their contents. Similarly, if the barrister does describe the material facts, they frequently do so with reference to the instructing solicitors, the instructions, or the lay client. This practice also reinforces the intertextual links to other documents. Some examples are:

(6) Those instructing me act for Mr. George Tan (“Mr. Tan”) and Mrs. Mary Tan (“Mrs. Tan”), the purchasers of Flat 6A, Village Rouge, 32 Guildford Road, the Peak (“the Flat”), who had entered into a written sale and purchase agreement with Mr. John Ho (“Mr. Ho”), the vendor of the Flat on 6th January 2006 (“the Agreement”). (B4, Opinion)

(7) According to lay client and the correspondence between the parties, Hair Flair and New Wave came to an agreement for the lease of the Premises in March 2005 through their respective directors Thomas Tung and Larry Lee. (B3, Opinion)

One barrister (B2) took the approach that it was the barrister’s responsibility to set out the material facts in somewhat greater length. For the most part this was expressed as a simple narrative, with one reference to the instructions and a request for clarification (see below, move 2c). The barrister in question commented that this approach is preferred because it gives the opinion a better sense of unity and ensures that gaps in the barrister’s understanding of the facts can be found by the solicitor. According to B2:

You shouldn’t have to look elsewhere [i.e. outside the opinion] anyway, and to sort of draw it all together, so it’s useful to have the facts recorded there and also to, for the reader to ensure that I have understood and ascertained the facts correctly. (B2, Interview)
This concern to ensure that the facts have been correctly understood is also at the core of the next move, ‘Limiting the scope’.

2c. Limiting the scope

The purpose of this move is to limit the scope of the advice, by making salient any assumptions that the barrister makes about the facts of the lay client’s case. In this move, the barrister refers to the facts provided in the instructions, and indicates perceived gaps in the information provided. This may lead to a request for further information from instructing solicitors, explicit statement of an assumption in relation to those facts, or both. The rationale for this move is to resolve any potential uncertainty about the facts, and to clarify to instructing solicitors how such uncertainty has been resolved by the barrister for the purposes of the present opinion.

One example involving a pattern of highlighting a gap and stating an assumption can be observed below:

(8) I am not informed of any issue of the respective director's capacity to enter into a lease on behalf of the companies. … Unless the other side raises this issue in due course, I believe it would be safe to assume that this is the case [i.e. the director had authority to make a contract on behalf of the company]. (B3, Opinion)

In the following example, the barrister signals uncertainty about the facts of the matter and then asks for clarification from instructing solicitors:

(9) However, Mr and Mrs Tan were under the impression that the panels were included in the sale, presumably because they thought that they were fixtures. I would be grateful if those instructing me would clarify with Mr and Mrs Tan the reason why they thought that the silk panels were included in the sale. (B2, Opinion)

In some cases, the barrister simply stated assumptions made about the facts, without explicitly drawing attention to a gap in information. It seems likely that the act of stating an assumption is itself in certain circumstances sufficient to indicate such a gap in information to instructing solicitors (cf. Grice, 1975).

With regard to some of this problematic factual information, two of the barristers (B3 and B4) volunteered that they would at least consider contacting the instructing
solicitor in order to clarify facts before they went ahead with composing the opinion. Barristers must balance whether on the available facts and documentation they are able to provide ‘the most important basic advice’ (B1, Interview), or whether the perceived gaps in the information prevent them from doing so. Whether to further involve the instructing solicitors appears to be a matter for personal professional judgment. The following quotes from interviews illustrate two different perspectives of barristers:

I like to base my opinion on what I’ve been given, unless the instructions are wholly inadequate and it’s necessary that you see this, that or the other thing. (B5, Interview)

I would like to see the panels [the object of the dispute]. I would like to see pictures of them and how they are … how they’re being hanged onto the wall. It’s quite different unless we really see that. So I’ll at least expect some pictures. (B4, Interview)

The possibility of involving the instructing solicitors after the brief has been given highlights the co-constructed nature of the barrister’s opinion genre, as described in Section 6.1. In order to interpret the legal position of the lay client, the barrister draws on a variety of texts (documents and instructions) supplied by the instructing solicitor and lay client. Furthermore, where questions about these texts need to be addressed, the solicitor may be consulted for clarification.

3. Discussion

In terms of sheer length, the Discussion move represents the bulk of the opinion. The important questions have been set out in the Opening, and the Discussion move is where the barrister provides reasons for the final Conclusion/opinion which they reach. Very similar generic structures have been identified in judicial discourse (Bhatia, 1993; Maley, 1985) and the pedagogical genre of legal problem question (Howe, 1990). One barrister (B1) characterized this as the ‘analysis’ or ‘discussion’ of the lay client’s problem, noting ‘that’s where the substance is’ (B1, Interview). The characterization of this process as a discussion is apt, as it is necessary for the barrister to consider and discuss a variety of competing claims (both factual and legal) before these can be resolved by arriving at a conclusion on how a court would rule on a particular issue. A total of 5 sub-moves can be identified. These are:
(a) Raising an issue;
(b) Stating the law;
(c) Providing authority;
(d) Applying the law to the facts;
(e) Providing a conclusion/opinion.

It should be noted that these moves appeared in a variety of sequences. Typical sequences observed can be summarized as follows:

**Figure 6.4 Possible sequences of sub-moves in Discussion move**

<table>
<thead>
<tr>
<th>Sequence 1</th>
<th>Sequence 2</th>
<th>Sequence 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue (Any of Law, Auth, Appn)(^a)</td>
<td>Issue Conclusion (Any of Law, Auth, Appn)(^a)</td>
<td>Issue (Any of Law, Auth, Appn)(^a)</td>
</tr>
<tr>
<td>Conclusion</td>
<td>Conclusion</td>
<td>Conclusion</td>
</tr>
</tbody>
</table>

\(^a\) Law, Auth, Appn sub-moves are all optional and may be iterative

The law, authority and application sub-moves function to provide reasons for the barrister’s conclusion (cf. Howe, 1990; Maley, 1985). Thus, as illustrated in Figure 6.4, one or more of these sub-moves was observed either before or after the conclusion, or occasionally in both positions. For the purposes of this exposition I have adopted the first sequence identified. This sequence makes intuitive sense to lawyers as it mirrors the steps involved in the legal problem-solving process (Vandevelde, 1996, p. 2). Furthermore, variations of this structure are frequently suggested as a logical organization in the literature on legal writing (e.g. Calleros, 1990; Enright, 1995; Neumann, 2005).

**3a. Raising an issue (of law or fact)**

There are obvious similarities between this sub-move and move 2a: Raising key issues. The purpose of this sub-move is to raise a question or issue of fact or law that the barrister must decide in order to provide an opinion on the legal position of the lay client. Two possible ways of raising the issue were observed in the opinions analyzed: explicitly and implicitly. Thus, barristers may explicitly raise an issue by posing a direct or indirect question. Alternatively, the barrister may expect the reader
to recognize the various issues that are implicitly raised as the barrister’s argument unfolds. Examples of these textualizations are provided below.

Explicit textualization:

(10) Therefore the question which arises for consideration is whether, in the absence of any express agreement, the silk panels are fixtures and accordingly pass with the land, or whether they are fittings, and as such are the personal property/chattels of Mr Ho, which he is entitled to remove and take with him on the sale of the Property. (B2, Opinion)

Implicit textualization:

(11) There are indications in the documents from New Wave Ltd that the landlord regarded the terms as not being binding until there was a formal lease. (B1, Opinion)

As can be seen from the examples, the explicit issue statement clearly raises the issue in the form of an indirect question. However, the implicit textualization reads more like a tentative opinion (in this case on the facts of the matter). Here the barrister anticipates the possible stance of the other party and in so doing raises a question about the nature of the agreement (‘did the parties intend the terms to be immediately binding, or only binding when a formal lease had been executed?’). Another very common strategy for implicitly restating key issues, was to write them in the form of a heading: e.g. ‘Conditional Agreement?’ (B1, Opinion). The heading serves as a reference to the full issue raised in the statement of key issues (move 2a), and is answered by the discussion which follows.

3b. Stating the law

The purpose of this sub-move is to interpret the law as it relates to the lay client’s case as the barrister understands it and as they believe it will be interpreted at trial. It is helpful at this point to pause and consider briefly the nature of legal rules in general. Maley (1985, p. 164) sums it up as follows: ‘Rules of law are characteristically general and normative (Hart, 1961, p. 114; Stone, 1968, p. 179), declaring principles of conduct as to what may or must be done or not done.’ Furthermore, it is important to understand that such rules of law may be derived from statute, or from the common law (i.e. judge-made law or precedent, following
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dectrine of *stare decisis*, which in basic terms states that the courts are bound to follow their prior decisions). Rules which are derived from the common law may require some time to acquire the general, normative character that Maley refers to above, only acquiring this character once they have become well established and accepted in the courts. With novel situations arising all the time, this process is never truly complete. Rather lawyers survey the case law on a given point of law and attempt to synthesize a representative, general principle (Vandevelde, 1996).

Given this background, when barristers discuss the law, two general strategies can be observed. Firstly, the barrister may state a general rule of law if that rule is well-established (for example, a respected precedent or a statutory provision). This involves the statement of an abstract, general rule of law which is applicable to a range of cases. By deductively applying this legal rule to the facts of the lay client’s case, the barrister will be able to evaluate the lay client’s legal position. Secondly, the barrister may describe legal precedents which they feel are sufficiently analogous to the lay client’s case. This involves a description of one or more prior cases, with particular reference to the legally material facts in those cases, the judge’s decision and reasons. By a subsequent process of reasoning by analogy, the barrister will then be able to evaluate the likely legal position of the lay client. Examples of these two strategies are provided below:

**General rule:**

(12) Whether or not a chattel becomes a fixture will depend upon the intention with which the chattel was brought onto the land. In ascertaining the owner’s intention two tests will be applied: (i) the degree of annexation and (ii) the purpose of annexation, and more recent authorities suggest that the purpose of the annexation is now of first importance: *Hamp v Bygrave* (1983) 266 EG 720. (B4, Opinion)

**Precedent:**

(13) In *Leigh v Taylor* [1902] AC 157, some tapestries had been affixed to the walls of the house and they could be removed without doing any structural damage. The House of Lords held that the tapestries were not fixtures, since they were affixed only for the purpose of adornment and enjoyment of them as tapestries. (B4, Opinion)
In the above examples, both from B4, we can observe the difference in textualization of a statement of general rule (example 12) as opposed to a description of precedent (example 13). Although both statements are derived from case law, the general rule is formulated primarily in present tense, indicating its general application. By contrast, the precedent uses past tense and perfect aspect, indicating that the description is limited to one case. These linguistic features underscore the different approach taken: a general rule synthesized from the authorities and presented as applicable to all cases versus an analogous case presented as binding precedent for the present case.

In addition to this distinction between general rules and precedent, a further distinction is observed in the textualization of rules in barrister’s opinions. The distinction is between rules that are formulated in the more generalized, abstract manner characteristic of legal rules and rules which are deliberately formulated so as to focus on the facts of the case. An excellent example of this distinction can be seen by comparing the text below (example 14) with (12) above.

(14) In other words, in the case of the silk panels we must consider the method and extent to which the silks have been attached to the walls of the house, and whether they can be removed without causing damage to the house and/or the silks; and also the purpose for which they were attached to the walls of the house, whether for the permanent improvement of the house or for a temporary purpose e.g. the temporary adornment of the walls. (B2, Opinion)

In this second example (14), the barrister has used a number of linguistic techniques in order to make the rule less abstract, more concrete and personal. In particular, general references (e.g. ‘a chattel’, ‘a fixture’) are replaced by particular references to the facts of the case (e.g. ‘the silk panels’); the passive voice (‘two tests will be applied’) is replaced by the first person plural ‘we’ and active voice (‘we must consider’); a more nominal style (‘degree of annexation’) is replaced by a greater reliance on finite verbs (‘whether they can be removed’). The first rule (example 12) may be considered ‘explicit’ in the sense that the normative nature of the rule is explicit: it clearly applies generally. The second rule (example 14) may be considered ‘implicit’ because the rule is discussed strictly in relation to the given facts and any understanding of its normative nature must be implied. On analysis, surprisingly few of the statements of rule are presented in the implicit style just
described (see example 14) - only two in the whole corpus - although on the whole
the opinions analyzed all display a clear interplay between fact and law.

In some cases, the law is so clear-cut that it need not be stated at all. Inns of Court
comments that ‘there is no need to set out basic principles of law with which
instructing solicitors will be familiar’ (2007, p. 47). In the present study, only a few
clear examples of legal principles being assumed in this way were found. In one
opinion, the barrister raises the issue ‘are the terms of the contract sufficiently
precise for the parties to have reached an agreement?’ When discussing this issue, a
basic understanding of the law of contract is assumed, as in the following extract:

(15) Sufficiently precise terms?
6. The “Memorandum of Understanding” lists the most important terms
of the lease, including the most basic matters: the parties, the premises, the
term (including its commencement date) and the rent. Provision is also
made for management charges, rates, a deposit, fitting out, legal costs and
stamp duty. The other terms are to be those of New Wave Ltd’s usual form
of lease for lettings at the New Wave World development. (B1, Opinion)

Note that there is no statement of law which describes the circumstances under
which a court will rule that a contract has failed for uncertainty or incompleteness:
rather, the barrister has assumed that his audience has an understanding of these
principles. The relevant law may be summarized as follows (Fisher & Greenwood,
2007, p. 64): ‘Attempts to reach agreement will not amount to contracts if there is
uncertainty as to whether the parties have reached a final agreement or as to the
precise nature of its terms’ (emphasis added). In the opinion above, the discussion of
the facts is oriented towards these legal principles, as the barrister attempts to
establish, as a matter of fact, that the agreement contained ‘the most important terms
of the lease’.

The writer of this opinion (B1) sees the willingness to make assumptions as a sign of
experience and seniority, as evidenced by the following quote from an interview:

I suppose as you get more senior, you get more confident about leaving
things out. When you’re starting, or uncertain, then you tend to put things in
when you’re not quite sure whether they should be in or not. I think also it’s
quite noticeable because I’ve read lots of other barristers’ opinions over the
years as well that the more senior someone is, the reader he is, or she is,
to go straight to the heart of the matter. In other words, they don’t mess

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around with the facts, or even with the issues particularly, that they just go just straight into the discussion and reach a conclusion. (B1, Interview)

This comment suggests that established barristers are more likely to take liberties with the genre, bending it to meet the overriding goal of ‘reaching a conclusion’. It is interesting to note that in this process even the statement of law, essential to a student’s problem question (Howe, 1990), can be dispensed with under the right circumstances.

3c. Providing authority
Following Howe (1990) the purpose of the Providing authority sub-move is to provide the necessary support for a proposition of law described in the statement of law. It must therefore occur with a statement of law. In the small corpus studied, three different sources of authority were observed: ordinances (i.e. statutes), cases, and legal texts. According to Howe (1990), when statute law is used it is common for the reference to the statute to precede the statement of law and for both to be found in the same sentence. An example of this from the present study is:

(16) According to s. 3 (1) and (2) of the CPO [Conveyancing and Property Ordinance], it is not possible to convey an equitable estate in land... (B5, Opinion)

However, it was also possible to make parenthetical references to the empowering Ordinance, as in the following example:

(17) Generally, a contract may be made on behalf of a company by one of its directors, as a director would qualify as a person acting under a company’s express or implied authority (Companies Ordinance (Cap 32) section 32). (B3, Opinion)

Swales (1982) identifies three categories of case references: ‘parenthetical’, ‘locative’ and ‘marked’. All three kinds were evidenced in the present study. Parenthetical references can be defined as brief references to the case authority, often but not always using parentheses. An example from the present study is below (as it happens none of the barristers in this study used parentheses):

(18) However, the court will refuse to grant a preservation order if damages would be an adequate remedy for the plaintiff: Feng Loy Chuen v Lim Yong Lin [1977] HKLR 471. (B4, Opinion)
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Locative references are used where the writer wishes to simply provide the facts of the case and show how they relate to the legal decision reached. They are typically introduced by the preposition ‘in’. This form was used rather frequently in this study, in order to introduce precedents in the manner described above (3b. Stating the law). An example is:

(19) In *Chan Yat v Fung Keong Rubber Manufacturing* [1967] HKLR 364, the fact that the plaintiff (the landlord) had stopped trying to let the premises, completed the building of the factory, permitted the defendant to install machinery and drill a well, and paid the cost of electrical installation, were part performance. (B3, Opinion)

Marked references are those in which the writer explicitly marks the relationship between the case and the surrounding discourse. In the opinions in this study, the following pragmatic functions were identified:

Showing confirmation:

(20) This was the approach adopted by Macdougall J in a case in which… (B1, Opinion)

Ascribing prominence:

(21) The generally accepted test… was laid down in the case of *Hellowell v. Eastwood*… (B2, Opinion)

Marking relevance/authority:

(22) Similarly, in the *Hong Kong* case of *Yu Yiu Kong Samuel v. Kobylanski Stephen Andre*… (B2, Opinion)

3d. Applying the law to the facts

This sub-move is a discussion of the relevant facts in view of the client’s legal problem. The barrister may have one of two slightly different purposes. The first of these, as described by Howe (1990) is to apply relevant law to the given fact situation in order to ascertain the likely legal outcome. The second possibility, which has received little attention in studies of legal discourse, is to determine the likely
construction of the facts for the purposes of trial. Let us consider these two possibilities in turn.

Firstly, the barrister may wish to discuss the lay client’s situation with respect to the relevant legal rules and principles. As noted by Howe (1990) at least two different functions can be identified: exophoric reference to the facts, and reasoning which signals the logical connection between the legal principle and the conclusion arrived at. A typical example of this move from the opinions analyzed is provided below:

(23) Applying the second part of the test: the purpose of annexation, I consider that the silk panels were placed against the walls and within the wood paneling for temporary decorative purposes. I consider that the silk panels are comparable with a picture which is affixed to the wall, or wooden rail, by a hook. This is by contrast to wall paper which is affixed to the wall by glue and would inevitably be damaged or destroyed in the course of removal. (B2, Opinion)

Typically, at this point, the barrister applies the general rule described earlier (move 3b: Stating the law) to the particular facts of this case. Based on this application it will be possible for the barrister to draw a legal conclusion about the lay client’s position.

The second possible function of this move is to determine the likely construction of facts at trial. As mentioned above, in the analysis of legal discourse generally, the significance of the facts of the problem has tended to be overlooked. This may have to do with the fact that in commonly studied genres such as appellate judgments (e.g. Bhatia, 1993; Maley, 1985) or legal problem questions (e.g. Beasley, 1994; Hafner, 1999; Jensen, 2000; Langton, 2001, 2002) the facts have been decided and are no longer at issue. However, in the case of the barrister’s opinion, the facts are often unclear or in dispute. The outcome of the case may vary considerably depending on how the facts are finally agreed or decided. This poses a unique problem for the barrister, who is not only required to make legal judgments but also judgments about how a court might rule on matters of fact. The essential problem is summarized by Scheppelle:

...behind every description of facts, there are many other versions, equally true but differently organized. Changes in emphasis, alternative points of view, different symbolic contexts, varying background assumptions all have
Barristers therefore attempt to explore some of these variables, for example by interrogating the facts as conveyed in the instructions in order to understand what alternative constructions they are capable of, and how they might be construed by the other party to the dispute.

In the current corpus drawn on in this thesis there is only one extensive discussion of a factual issue, in the opinion by B1. The question to be decided is whether the agreement contains sufficiently precise terms to constitute a contract. The barrister sets about deciding this issue by exploring relevant facts, which fall into three categories:

1. facts which are certain;
2. facts which are not certain;
3. facts which are missing (and therefore require that assumptions be made).

Facts which the barrister considers to be certain are simply listed using present tense, for example:

(24) The "Memorandum of Understanding" lists the most important terms of the lease, including the most basic matters: the parties, the premises, the term (including its commencement date) and the rent. (B1, Opinion)

Facts which are not certain require consideration from a variety of perspectives. This interrogation of the facts is textualized in the following way in this passage:

(25) Although Hair Flair's letter of 16th July 2005, under which this lease was returned, asserts that “the lease does not refer to the agreed rent free periods, details of which are set out in the Memorandum of Understanding” in fact the memorandum does not expressly stipulate the rent-free periods. It does state that the term starts on 1st December 2005 and that the first payment of rent is to be made on 1st March 2006 (and likewise with the initial payment of management fees) from which we may deduce that probably the initial three months of the term were to be the free period but there is a slight danger that a court may think that such an important matter should have been explicitly dealt with in the memorandum and that without it the memorandum is too imprecise. (B1, Opinion)
Here, a potential conflict in the facts is signaled by metadiscourse (for a recent treatment of metadiscourse see Hyland, 2005): the contrastive ‘although’ and ‘in fact’, and the emphatic ‘it does’ which also serves to mark the contrast. Metadiscourse is typically used to demonstrate a high degree of authorial control (Fairclough, 1992, pp. 122-123) and so it is significant that such language is employed at this point in the text, precisely where the barrister needs to marshal uncertain facts into a certain order. Furthermore the proposition that ‘the initial three months of the term were to be the free period’ cannot be unequivocally granted: instead it is strongly hedged (Hyland, 1998) by a variety of modal operators, and qualified by the issue of imprecision.

Facts which are missing are handled in a similar way to the gaps in the facts in move 2c Limiting scope.

3e. Providing Conclusion/opinion

The purpose of this sub-move is to state the barrister’s position on a legal issue or sub-issue, in the course of developing the opinion. In this sense the purpose is subtly different from move 4: Conclusion/opinion which provides a summary of the barrister’s opinion. As barrister’s conclusions must be reached with a great deal of caution, these conclusions were usually hedged using a combination of epistemic modality (e.g. ‘it is unlikely that a court would’) and epistemic lexis (e.g. ‘in my view’, ‘I consider’). Consider the following examples:

(26) Although our case is less strong, I believe that there is a reasonable chance that Hair Flair can demonstrate that the fitting out plans sent by Hair Flair and approved by New Wave (documents ix and x), constituted sufficient part performance. (B3, Opinion)

Not all of the conclusions required this kind of hedging (see example 27), and in one case (example 28) the barrister used boosters to mark certainty:

(27) The agreement was not itself a tenancy but was an agreement for a tenancy to be granted and taken in the future. (B1, Opinion)

(28) The two documents can definitely be read together under the joinder of documents rule. (B5, Opinion)
Such variation in hedging was also found by Tessuto, in the ‘final opinion’ move (2006, p. 301). It would appear that barristers need to choose their words carefully in order to reflect appropriately the degree of confidence that they feel in a particular position. Individual professional judgment and preference appears to play a role in this choice: in the present study, one barrister (B5) gave noticeably more confident conclusions than the others, as a matter of conscious choice. Reflecting on the process of development as an opinion writer, this barrister notes:

But one thing that I did learn perhaps, and that I had to work on is that I've always been a very opinionated person, and I'm opinionated when I'm writing opinions … I would use such expressions as ‘I'm firmly of the view’, ‘there's absolutely no question’, these types of expressions which I would put in my opinion were invariably deleted by supervising partners for the simple issue of liability… I still have strong opinions, and I think I still write strong opinions now... (B5, Interview)

4. Conclusion/opinion

The purpose of this move is to summarize the barrister’s opinion on the lay client’s legal position. Four out of the five barristers participating in this study chose to summarize their opinion at the end of the text, but one integrated this move in the Opening, in the form of an ‘executive summary’ of the opinion, as follows:

(29) Having perused the correspondence between the parties, I believe that there is an enforceable tenancy despite the lack of a written lease. My reasons appear below. (B3, Opinion)

In her study of students’ problem questions, Howe (1990) found that Opinion moves could appear in a forecast position in this way, and this has been confirmed in subsequent studies (Beasley, 1994; Hafner, 1999). In addition, the practice of providing the conclusion first followed by reasoning is encouraged by legal writing manuals because it is thought to be more direct and easier to follow (Inns of Court School of Law, 2007; Neumann, 2005). According to one barrister (B1) ‘very often, people put the conclusion at the beginning, and that’s perfectly alright because the people you’re writing it for are not just the solicitors, but also the lay client, and he’s usually a busy businessman, and he doesn’t want a load of discussion’ (B1, Interview). Thus, in this position, the Conclusion/opinion functions as a kind of advance organizer, an executive summary intended to make the opinion as a whole more reader-friendly.
A noticeable feature of this summary for a number of the barristers is their reference to the act of researching and composing the opinion, in particular that ‘all circumstances have been taken into account’. Below I have reproduced extracts of the barristers’ Conclusion/opinion moves:

(30) I have taken into account all the circumstances… (B4, Opinion)

(31) Having taken all the circumstances into account… (B2, Opinion)

(32) Having perused the correspondence between the parties…. (B3, Opinion)

(33) In the premises, I would answer the first two questions put to me in the affirmative… (B5, Opinion)

(34) In summary my views are that… (B1, Opinion)

It is interesting that barristers in (30), (31) and (32) choose to emphasize that they have considered the circumstances or the correspondence (while it is not really clear what exactly B5 is referring to in (33)). This reference to the process of deliberation acts as an appeal for authority in a disciplinary culture which is to a large degree based on the premise that ‘there is no such thing as a right answer’. Lawyers accept that there will always be differences in opinion and interpretation, and this notion is an integral part of their belief system. By claiming to have taken all factors into account, the barrister boosts the credibility of their opinion, and attempts to elevate it from the status of mere opinion to an authoritative account of the lay client’s legal position. At the same time, other textual elements, described above (3e. Providing Conclusion/opinion) limit the opinion by suggesting that it is merely the barrister’s subjective interpretation. This is entirely in keeping with the conflicting purposes outlined at the outset (Section 6.1), to provide an authoritative objective account on the one hand, and subjective problem-solving advice on the other.

5. Giving advice
The purpose of this move is to provide practical advice to the solicitor and lay client which will frequently be of a strategic legal tactical nature. It is distinguished from move 4: Conclusion/opinion in that the focus is on future action rather than an assessment of the lay client’s legal position. In the present corpus only one of the barristers' opinions included this move. In all likelihood this is because the questions
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asked elicited more of an opinion on legal position than advice on legal strategy. An extract from B3’s opinion is produced below:

(35) My advice is that instructing solicitors should:
   (1) immediately register the Memorandum of Understanding and Hair Flair’s letter dated 28 April 2005 with the Lands Registry as an estate contract...
   (2) check the registry to see if there are already defeating interests; and
   (3) if lay client decides to initiate legal proceedings, proceed speedily.
   (B3, Opinion)

6. Closing

As with other forms of correspondence, barrister’s opinions require a brief Closing move. The purpose here is at a minimum to sign the opinion, and optionally to invite instructing solicitors to further discuss the case. Of the five barristers participating, four included such an invitation. An example Closing is provided below:

(36) I trust this advice is helpful and would be pleased to advise further if so instructed. (B4, Opinion)

This is followed by the date, name and address. Reflecting on this Closing the barrister concerned first remarked upon its formulaic nature, saying ‘I stole that line from my pupil master’ and ‘we can’t think of anything to say’. The barrister further noted that the formula acknowledges the ongoing nature of the professional relationship: ‘it’s because this case is carrying on, the possibility of you being instructed to advise again is still here.’ (B4, Interview)

In summary, in this Section I have described the typical rhetorical structure, lexical and grammatical realization of opinions constructed by expert barristers. In the following Section I compare this expert writing with samples of writing produced by students.

6.3 Comparative genre analysis

According to the analysis thus far a number of tensions may be observed in the barrister’s opinion genre. As has been mentioned, an important role of the barrister is to act as an expert who provides an objective account of the lay client’s legal position. In so doing, the barrister must give a clear opinion and commit to a
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particular legal outcome. However, it is difficult for the barrister to commit with certainty because the ultimate authority lies not with the barrister, but with the court, and many factors can influence judicial decision-making. As a result, much of the opinion is devoted to managing this balancing act between the need for certainty and the reality of doubt in the barrister’s conclusions. This problem was highlighted by B1, who when questioned about the extensive development of one argument in his opinion, commented: ‘I think it’s fair to say it’s the area of my opinion where I am least certain… but I can’t say to the solicitor, ‘I’m not sure’ because he’s paying me to give a view, as long as I caution him about it I think that’s fair enough.’ (B1, Interview) The pragmatic challenge that such underlying uncertainty poses in terms of writing is how to provide an opinion which accurately reflects the risks as the barrister perceives them.

The Inns of Court highlights this challenge for law students in the following terms:

> It is very rare that you will be able to say yes or no, win or lose. But what the practitioner cannot do is say, 'I can give no answer'. There may be no definite answer, but there must always be an answer. (Inns of Court School of Law, 2007, p. 27: emphasis in the original)

Interviews with students confirm that the process of reaching a definite opinion on the legal problem in question is considered by students to be one of the more challenging aspects of this kind of legal writing. Commenting on the difficulties of opinion writing, one student notes: ‘The most difficult task is to apply the law to a certain set of facts’ (S17, Focus group 3). This difficulty in reaching a conclusion may in turn be exacerbated by an inability on the part of the student to manage their own feelings of uncertainty through appropriate discursive resources, including appropriate appeals to authority, hedging devices and argument structure. Where such discursive resources are poorly exploited, lawyers would likely say that the student has failed to express their opinion clearly.

In this section, I compare expert writing and student writing in two areas. Firstly, I compare the way in which experts and students appeal to legal authority in order to support legal claims and analysis. Secondly, I consider the way in which both expert and student writers draw on discursive resources in order to manage sources of doubt
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inherent in the barrister’s opinion. It should be noted that this analysis is not intended to be exhaustive or conclusive of textual differences between expert and novice writers, but rather exploratory and suggestive of the kind of problems that students are likely to encounter in writing the barrister’s opinion genre. Such an analysis has the potential to confirm possible areas of difficulty for students emerging from the exploratory genre analysis (Section 6.2) and to expand upon them.

6.3.1 Appeals to authority

As was mentioned in Section 6.2, appeals to authority in this genre consist mostly of references to cases and statutes, and are used primarily in order to support legal principles which the writer introduces (see move 3c Providing Authority). It was expected that students would use appeals to authority in a manner that is more consistent with an academic style of writing learned at university, while expert barristers would use such appeals more consistently with a practical style. In order to explore the difference between student and expert writers, one may investigate the number of appeals to authority by students and experts. We can count both the number of unique authorities referenced and the total number of appeals to authority per opinion. In the following figure, when counting ‘unique appeals to authority’, cases or statutes referenced more than once were counted as one appeal. However, if an authority was later re-introduced by the writer, this was counted as a ‘repeated appeal to authority’.

<table>
<thead>
<tr>
<th></th>
<th>Unique appeals per opinion</th>
<th>Unique appeals per 1000 words</th>
<th>Repeated appeals per opinion</th>
<th>Repeated appeals per 1000 words</th>
<th>Total appeals per 1000 words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students</td>
<td>7</td>
<td>2.8</td>
<td>0</td>
<td>0</td>
<td>2.9</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>8.1</td>
<td>11</td>
<td>2.4</td>
<td>10.7</td>
</tr>
<tr>
<td></td>
<td>10.8</td>
<td>4.4</td>
<td>6</td>
<td>4.4</td>
<td>6.8</td>
</tr>
<tr>
<td>Experts</td>
<td>4</td>
<td>2.7</td>
<td>0</td>
<td>0</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>11.3</td>
<td>6</td>
<td>2.8</td>
<td>11.3</td>
</tr>
<tr>
<td></td>
<td>8.8</td>
<td>6.3</td>
<td>2.2</td>
<td>1.3</td>
<td>7.6</td>
</tr>
</tbody>
</table>

Figure 6.5 Number of appeals to authority in student and expert text
A word of caution is necessary in interpreting the figures in this section, as in both
the student and expert groups there was considerable variation in appeal to authority,
as can be seen from the large range of appeals per opinion recorded for each group
(students: 7-21 instances; experts 4-14). A comparison of mean scores tends to
obscure this variation. Secondly, the figures are based on small groups making it
difficult to arrive at firm conclusions about general patterns of behaviour. Further, it
should be noted that on average, students’ opinions were longer than expert
opinions, with an average of 2452 words compared to an average of 1716 words.

Figure 6.5 shows that per 1000 words, students as a group tended to use fewer
unique appeals to authority than expert writers. This is interesting as it was expected
that students would in fact use more, writing in a more academic style. Another
interesting feature is that the number of repeated appeals per 1000 words is much
higher in the student text (by, on average, more than 3 times). Finally, if the unique
appeals and the repeated appeals are combined, then the difference between the two
groups appears to disappear, with the expert writers making on average only slightly
more frequent appeals to authority. However, this quantitative measure neglects
important differences in the quality of student and expert writing, as I shall
demonstrate.

Chief among these qualitative differences is the tendency, found in both corpora but
far more common in the student text, to re-incorporate appeals to authority in the
flow of the writer’s reasoning. The reader will recall that the typical function of the
Providing authority move is to provide the necessary support for a statement of law,
as exemplified in the following extract from a student:

(37) However, a vendor may limit his obligation to give good title by inserting a
limiting clause into the Agreement and thereby safeguard himself against
liability, as was stated in Re Holmes (W&R) and Cosmopolitan Press Ltd’s
Contract [1944] Ch 53 (S27, Opinion)

When authority is re-introduced, it is often in order to further discuss a point of law
at a later stage in the opinion, as in the following example:

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Chapter 6: Genre analysis: Results

(38) The Court in Jumbo ruled that the purchaser in that case was not misled since both the purchaser and vendor must have known of the possibility that the cocklofts were unauthorized. (S11, Opinion)

Such examples account for a little more than half of all instances of repeated appeals to authority. In the following examples from students, the writer appeals to authority to strengthen claims in the Applying the law to the facts (example 39) and Conclusion/opinion (example 40) sub-moves:

(39) Clause 11 in the present case includes all the provisions of Clause 18(e) in the Jumbo King case except the vendor’s disclaimer of responsibility for the demolition or removal of any unauthorized building works… (S22, Opinion)

(40) Thus, following the reasoning in Jumbo, I am of the view that both the Purchaser and the Vendor would have known of the possibility that the balcony was unauthorized, and that the Purchaser was aware of the risk that clause 11 imposed upon him. (S11, Opinion)

In example 39, the writer highlights similarities between the case at hand and an influential precedent, with a view to arguing that the precedent will apply. In example 40, the writer justifies the conclusion on the basis of that same precedent. Such repeat appeals to authority were also made with a view to ‘distinguishing’ precedents, in other words arguing that on the present facts a particular precedent would not apply:

(41) Thus the Vendor shares the same information with the Purchaser unlike the facts in the case in Wah Ying Properties. (S26, Opinion)

Such reasoning is not unique to students, however compared to expert writers what is remarkable is the extent to which students re-introduce authority for the purpose of supporting their reasoning. When authority was re-introduced in the expert texts, out of eleven instances, nine were part of a Stating the law move, only one part of an Applying the law to the facts move and one part of an Opinion/conclusion move.

There are two possible reasons why students feel compelled to re-introduce appeals to authority in this way, one textual, one interpersonal. Firstly, in contrast to the experts, many students provided a lengthy exposition of the law relevant to legal issues identified, before beginning an analysis of the factual situation. Thus the strategy adopted was to first discuss the legal principles in abstract then apply those
Chapter 6: Genre analysis: Results

principles to the fact situation. This difference between student and expert texts can be illustrated by observing the maximum amount of space which the writer devotes to a discussion of the law. A simple, rough-and-ready way of doing this is to count the maximum number of uninterrupted paragraphs in a given opinion, as in Figure 6.6:

<table>
<thead>
<tr>
<th>Number of uninterrupted paragraphs discussing law</th>
<th>Students</th>
<th>Experts</th>
</tr>
</thead>
<tbody>
<tr>
<td>minimum</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>maximum</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>mean</td>
<td>5.63</td>
<td>3</td>
</tr>
</tbody>
</table>

a. The paragraph as a unit varies in length, but is considered to be an adequate unit for present purposes

Thus, comparing the student text with the expert text, a principal difference observed is the lengthy exposition of law in many student texts. Textually, this organization presents a challenge as many of the legal principles that are discussed in abstract must be re-introduced when the concrete fact situation is addressed. Expert writers tended not to adopt this strategy, choosing to relate the legal principles more closely to the fact situation throughout.

The second possible reason why students re-introduce authority in the manner discussed relates directly to their lack of expertise. As described and illustrated above, students sometimes refer to such authority in order to provide support for their analysis and even the final opinion that they reach. Just as in academic writing, appropriate appeals to authority may serve to support knowledge claims (Hyland, 2000) in the barrister’s opinion genre, legal claims can be similarly supported. This explains why students, who lack confidence in their own expertise and judgment, make more explicit references to the authorities which guide their legal judgment than do experienced barristers. Because every step in the argument can be challenged, students feel the need to reinforce the argument with appeals to authority. In fact, such appeals may be indicative of some underlying doubt in the writer’s mind. It is also possible that students want to display their knowledge in the manner that they are accustomed to doing when writing for their law professors, by
explicitly stepping the reader through the reasoning process which they have themselves navigated. Students are clearly aware that some form of legal argument is required in this genre, as illustrated by the following comment in an interview:

*I think a more in depth analysis of law is needed because the, the one who instruct the barrister is also learned in law. I think the, they may want to know more about a certain area of law so that a solicitor could advise their own client better. (S17, Focus group 3)*

However, it appears to be difficult for student writers to know how much they can take for granted when it comes to assumed legal knowledge and the disciplinary conventions of legal reasoning. Expert writers, by comparison, tend to be more confident in giving their opinions on the one hand, and assume more from their readers on the other.

Further qualitative differences in student and expert writers’ appeals to authority can be observed if one considers the range of appeals to authority in the texts, i.e. whether parenthetical, locative or marked (Swales, 1982), and what the source of the authority is (see Section 6.2, 3c Providing authority). This data is summarized in Figure 6.7:

**Figure 6.7 Range of appeals to authority in student and expert text**

<table>
<thead>
<tr>
<th></th>
<th>Parenth. authority</th>
<th>Non-parenth. authority</th>
<th>Cases</th>
<th>Statutes</th>
<th>Agreement</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>min</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>max</td>
<td>14</td>
<td>12</td>
<td>11</td>
<td>7</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>totals</td>
<td>73 (36%)</td>
<td>132 (64%)</td>
<td>105 (51%)</td>
<td>44 (21%)</td>
<td>44 (21%)</td>
<td>12 (6%)</td>
</tr>
<tr>
<td>Experts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>min</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>max</td>
<td>11</td>
<td>6</td>
<td>8</td>
<td>6</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>totals</td>
<td>24 (55%)</td>
<td>20 (45%)</td>
<td>24 (55%)</td>
<td>17 (39%)</td>
<td>0 (0%)</td>
<td>3 (7%)</td>
</tr>
</tbody>
</table>

a. Non-parenthetical authority includes both locative and marked authority

While both the experts and the students were writing in the same general subject area of Land and Property Law, the difference in the specific topic they were writing on had a clear impact on their choice of source of authority. The student topic (see Appendix D3: ‘Hibiscus Court’ case file) required interpretation of a clause of an
agreement, and therefore, the legal rights and duties of the parties could be derived from this agreement. The following kind of references to the agreement was therefore not uncommon:

(42) Clause 11 of the Agreement excludes the Vendor's liability in the event of any unauthorized structure being found on the Property. (S24, Opinion)

(43) Clause 11 of the Agreement ("Clause 11") provides that Mr. Wong will not raise requisitions in connection with any breach of the Buildings Ordinance or any subsidiary legislation ("BO"). (S16, Opinion)

On the other hand, agreements in the expert fact scenario played a less crucial role, and it was therefore not necessary for the expert writers to refer to them in this way.

The second point that can be made in relation to this data is that as a group, the students make use of non-parenthetical appeals to authority more frequently than the experts (64% of appeals compared to 45%). In light of the discussion so far, this is not surprising, as the non-parenthetical authority is an explicit reference to authority, as in the following example:

(44) The leading authority on the enforceability of limiting clauses is *Jumbo King Ltd v Faithful Properties Ltd* [1999] 4 HKC 707 (CFA) ["Jumbo"]. (S11, Opinion)

Thus, the use of non-parenthetical authority is entirely in keeping with the greater explicitness of student writing identified above.

In summary, comparing appeals to authority reveals a general pattern in student text that is consistent with a more academic analysis of the law. This manifests itself as a more extensive discussion of legal authorities, which are raised and re-incorporated more frequently than in expert text. The purpose of re-incorporating such appeals to authority appears to be two-fold: 1) to recontextualize a reference after a lengthy initial discussion of the law; 2) to directly enhance the status of the legal analysis and even the legal conclusions drawn. Based on this analysis it also appears that student writers are generally more explicit than their professional counterparts, possibly because they have been trained as law students to fully display their knowledge of the law.
6.3.2 Managing certainty and doubt

As I have already suggested, achieving a sense of certainty in a barrister’s opinion poses a challenge to student and expert writers alike. It is all the more challenging because of the numerous sources of doubt which arise in the course of the writing process. For example, the writer of a barrister’s opinion must exercise judgment about the facts of the situation, the adversary’s position and the law, all of which the writer has incomplete knowledge of. In Section 6.2, I referred to some of the strategies that barristers use in order to manage certainty and doubt. In this section, the focus is on a comparison of student and expert writers, in particular some of the problems that student writers may encounter. Two possible problems that students may encounter include highlighting gaps in information and the strategic resolution of uncertainty.

**Highlighting gaps in information**

There is a clear difference in the way that students and experts manage gaps in information provided in their instructions. As noted in Section 6.2, 2c Limiting the scope, barristers frequently make explicit reference to missing facts in the solicitor’s instructions in order to limit the scope of their opinion. Four out of five (80%) of the barrister’s opinions studied contained this move. However, of the 19 student opinions studied, only seven (37%) contain such an explicit move. In addition, student writers were not as successful in specifying how these gaps in information should be resolved (either by requesting further information or by making explicit their assumptions). Of the students who limited the scope, only three out of seven requested information or made their assumptions explicit, compared to all four of the expert writers. Compare the following examples, (45) from a student text, (46) from an expert text:

(45) I have been given a copy of the Agreement. I have not seen the surveyor’s opinion. (S14, Opinion)

(46) I am not informed of any issue of the respective directors’ capacity to enter into a lease on behalf of the companies… Unless the other side raises this issue in due course, I believe it would be safe to assume that this is the case. (B3, Opinion)
Comparing examples (45) and (46) the consequences of the missing information are explicitly dealt with in (46). By explicitly addressing the issue of the missing information in this fashion, the expert writer is able to resolve the issue and proceed. In contrast, many students either fail to raise such issues altogether, or fail to resolve them satisfactorily.

**Strategic resolution of uncertainty**

Although I have thus far portrayed the uncertainty inherent in barrister’s opinions as a problem to be overcome, such uncertainty is also used by some expert writers in a strategic manner as a discursive resource. For example, consider the following instance of raising an issue, taken from expert writing:

(47) New Wave Ltd does not give reasons for its contention that the agreement is not binding. We may speculate that its stance will be that the negotiations and correspondence were all, in effect, “Subject to Contract”, that is to say they were subject to a condition that nothing was to be binding until a deed or document of lease had been executed by both parties. (B1, Opinion)

Here, the barrister first acknowledges the unavoidable constraint of the genre that the barrister lacks information about the adversary’s position (‘New Wave Ltd. does not give reasons’). This is followed by an interpersonal hedge (‘we may speculate’), which has the effect of reducing the writer’s commitment to the proposition that follows (see Chapter 5, Section 5.3, for a discussion of interpersonal and propositional hedging). Interestingly though, the proposition which follows is consistently textualized using indicative form, indicating a high degree of certainty with regard to the legal issue. Thus the initial uncertainty introduced here acts as a discursive resource, which is exploited in order to raise a legal issue for discussion.

However, some students may lack the discursive resources to resolve uncertainty in appropriate ways. This can be demonstrated by comparing carefully selected texts from the student and expert corpora. Such a comparison allows us to gain further insight into the kind of discursive resources that are drawn upon by experts in the management of uncertainty, and the potential problems that a lack of awareness of these resources can cause for students. For the purposes of this study I have selected
two extended extracts (Text A and Text B), one from the expert corpus and one from the student corpus. The expert text (Text A) is illustrated in Figure 6.8, below:

**Figure 6.8 Text A (B1)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>The memorandum certainly contemplated the drawing-up of a formal lease but that alone is not sufficient to prevent the memorandum from being a binding agreement for a lease. It may be that all the terms had been settled and what was contemplated was merely their reduction into a more formal shape, in which case there was already a contract and the agreement was in no way conditional upon that reduction being carried out. Or it may be that what had been settled were only the main terms, or heads of agreement, and that what was to be executed was to embody further terms, in which case there was to be no contract until that had been done. These alternative constructions are postulated by Sargant LJ of the English Court of Appeal in <em>Chillingworth v Esche</em> [1924] 1 Ch 97 at 113. Which of these is correct is a matter of interpretation of the agreement, which in this instance is contained in the letters and the memorandum.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>14.</td>
<td>It seems to me that the memorandum provides for all the terms of the lease. The main terms are spelt out in the memorandum. The rest of the terms are to be those contained in the usual form of lease used by the landlord in respect of the development. Accordingly there was nothing left to be settled or negotiated: any further terms not stipulated in the memorandum could be found in the standard terms of the landlord. The memorandum sets out the terms of a concluded bargain between the parties. In the absence of any words of contingency or condition, the bargain is immediately binding. See the decision and approach of the Privy Council in <em>Elias v George Sahely Ltd</em> [1982] 3 All ER 801.</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>

Note: the generic structure is recorded on the right: sub-moves listed are part of move 3, Discussion and are abbreviated to Issue, Law, Authority (Au.), Application (App.), Opinion (Opn.).

One advantage of taking this approach is that it allows attention to be paid to discursive strategies which go beyond the sentence level and are often cumulative in nature. The extracts were chosen only after I familiarized myself extensively with the entire corpus (see Chapter 5, Section 5.5). The texts themselves are of some interest: Text A was written by the most experienced barrister participating in the study (B1), while Text B was identified as problematic by law school graders, being
awarded the lowest mark out of all the student texts in the student corpus (S14). The extracts demonstrate both a successful and an unsuccessful attempt to resolve uncertainty in the genre of barrister’s opinion.

In Text A, paragraph 13, the barrister considers the issue ‘is the memorandum a binding agreement for a lease?’ This is followed by two alternative possible interpretations of the law as applied to the facts of the situation. Here the barrister hedges the propositional content of the text by using the modal verb ‘may’ (line 3), clearly indicating both possibilities are uncertain and contingent. It is interesting to note the use of the appeal to authority (lines 9-10) which supports both of the interpretations offered, and leads into the following issue: ‘which of these interpretations is correct?’ While such appeals to authority can boost the argument, as argued earlier, overuse of such appeals in the Applying the law to the facts move may also signal a lack of confidence. Here, the appeal may actually reflect the underlying uncertainty which is summarized in this paragraph.

Paragraph 14 resolves the uncertainty introduced in the previous paragraph. This paragraph begins with a clearly worded opinion, ‘it seems to me that the memorandum provides for all the terms of the lease’. The effect of the initial interpersonal hedge is to reduce the writer’s commitment to the following proposition. However, in the context of the whole paragraph, one is left with the impression of a highly confident judgment, rather than a weakened one. Partly, this is because the propositional content of the opinion is not itself hedged, with ‘the memorandum provides for all the terms of the lease’ rather than ‘the memorandum may provide for all the terms of the lease’ or some such similar formulation. Furthermore, the opinion is supported by a series of factual statements, all expressed in indicative mood (‘the main terms are’, ‘the rest of the terms are to be’, etc.). The argument concludes with a principle of law, which doubles as a reinforcement of the barrister’s position: ‘In the absence of any words of contingency or condition, the bargain is immediately binding’. The manner in which law and opinion are combined in this one sentence make it rhetorically very forceful, as the opinion is both indistinguishable from legal principle, and supported by legal precedent. Furthermore, in discursive terms, the opinion has evolved from a hedged opinion at the beginning of the paragraph to an unhedged statement near the end.
Thus, while this expert writer clearly signals a degree of uncertainty, this uncertainty is skilfully resolved, in such a way that the barrister’s opinion appears not only clear but well argued. This is possible because of the skilful use of discursive resources such as generic structure, hedging, appeals to authority and discourse conventions of the genre.

**Figure 6.9 Text B (S14)**

<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
<th>Move</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>Applying to the present case, it is clear to me that the Vendor did not disclose to the Purchaser in the conversation or in the Agreement about the illegal nature of the Balcony. In Jumbo King, it was suggested that the limiting clause could have allowed innocent non-disclosure by the vendor. In the present case, it is a known fact that the Balcony existed when the Vendor bought the Property. But apart from this known fact, I do not have evidence regarding when the Balcony was erected, who erected the Balcony, and whether the persons who erected the Balcony obtained approval from the Building Authority for the erection. The absence of such evidence makes it difficult to establish the Vendor was innocent about the illegal nature of the Balcony.</td>
<td>3</td>
<td>Issue</td>
</tr>
<tr>
<td>13.</td>
<td>In light of the above, I must therefore take into account the circumstantial evidence for which the Vendor disclosed the information. The Vendor has been occupying the Property since 1998 suggests that the period of the Vendor’s occupation was long enough for him to have been aware of the possibility that the Balcony could be illegal. The Vendor knew a similar balcony was removed suggests that this incident would have at least put him on inquiry on the illegality of the Balcony. When the Vendor told the Purchaser that he did not notice any enforcement action against the Balcony, this clearly indicates the Vendor would have been aware the illegality of the Balcony. Putting all the circumstantial evidence in context, I do not support the argument that the Vendor was innocent about the illegal nature of the Balcony because the circumstantial evidence suggests to me that the Vendor ought to have known the Balcony was illegal as he has means to such knowledge.</td>
<td>3</td>
<td>Opinion</td>
</tr>
</tbody>
</table>

Note: the generic structure is recorded on the right: sub-moves listed are part of move 3, Discussion and are abbreviated to Issue, Law, Authority (Au.), Application (App.), Opinion (Opn.).
Let us now consider the student text, Text B, in Figure 6.9 above. Text B considers the issue of whether a vendor has misled a purchaser about the existence of an illegal structure on a property which is the subject of an agreement for sale and purchase. The state of knowledge of the vendor plays a role in the legal analysis, and this introduces an interesting element of uncertainty, as it is difficult to know for certain whether the vendor actually knew that the illegal structure (a balcony) had been built in contravention of the Buildings Ordinance.

The student here begins with a clear statement of opinion that the vendor in this situation has not disclosed information to the purchaser (lines 1-3). Subsequently Text B, like Text A, recognizes an uncertainty in the facts of the situation (‘I do not have evidence’ in lines 6-7). This uncertainty is portrayed as problematic: ‘the absence of such evidence makes it difficult to establish the Vendor was innocent’ (lines 9-10). Thus the perceived uncertainty raises the question ‘can the vendor be established as innocent?’ This issue must be resolved in the following paragraph, and in order to do so, the student must draw on effective discursive resources.

Paragraph 13 fails to resolve the issue raised in paragraph 12 largely because of the inappropriate use of hedging throughout. The paragraph is punctuated by a large amount of hedging (contrast this with paragraph 14 in Text A which is characterized by its one single interpersonal hedge). What is particularly striking here is that the writer makes use of predominantly propositional hedges, in contrast to the strategy employed in Text A. The effect of this is not just to reduce the writer’s commitment to propositions but to reduce the strength of the propositions themselves. In addition, the amount of hedging applied to a single proposition is in some cases extreme, with the writer weakening the following proposition three times:

(48) The Vendor has been occupying the Property since 1998 suggests that the period of the Vendor’s occupation was long enough for him to have been aware of the possibility that the Balcony could be illegal.

For the most part, the facts are treated as merely suggestive. It is not until lines 18-21 that the writer begins to use less tentative language (‘this clearly indicates the Vendor would have been aware’, line 20). However, the final statement of opinion is circuitous at best, beginning with a rebuttal of the vendor’s assumed stance (‘I do not
support the argument that the Vendor was innocent’, lines 21-22), before a hedged conclusion (‘the circumstantial evidence suggests to me’, line 23).

The student in this case apparently lacks the discursive resources to effectively manage the uncertainty inherent in the barrister’s opinion genre. In paragraph 13 in particular, the writer does not adopt appropriate discursive resources to the role of neutral fact finder, but appears instead to be adopting a style more characteristic of an advocate seeking to persuade (especially with the use of the verb ‘suggest’). The opinion put forward is tentative throughout (with the exception of lines 18-21), with heavy use of propositional hedging. Furthermore, in the conclusion the writer fails to clearly assert their own view but rather argues against the view of the Vendor. The overall effect of this writing is to leave the reader in considerable doubt about the writer’s position on this issue. I would argue that if the student had been in control of the kind of discursive resources described in Text A, the effect would have been very different.

6.4 Summary

In this chapter I have demonstrated an approach to genre analysis which is capable of illuminating the practices, generic structure, and textualization of a genre that law students taking the Legal Writing and Drafting course are required to learn. Furthermore, the analysis has highlighted some potential areas of difficulty for students, including those of making appropriate appeals to authority and appropriately managing certainty and doubt through discursive resources. Equipped with such an analysis it is possible to design effective consciousness-raising tasks of the kind discussed in Chapters 3 and 4, with a view to providing students with effective online support in their writing. In the following chapters I describe the empirical research carried out in order to evaluate students’ use of such online resources.
CHAPTER 7

Monitoring learner behaviour in LAWS
Epistemological and methodological issues

The empirical study reported on in Chapters 9 and 10 evaluates students’ online learning behaviour utilizing the LAWS resources. The study may be characterized as evaluative research of a computer-assisted language learning (CALL) artefact (Levy, 2001; Pederson, 1987). The main purpose of the present chapter is to describe the epistemological and methodological issues raised in the research design. The chapter begins with a brief discussion of the scope of CALL pedagogy and research in CALL, with particular reference to the various uses of technology in language teaching and learning. Here, I argue that a broad definition of CALL should be adopted, which includes diverse applications of technology in diverse contexts. Next, I review approaches to research in CALL, in particular comparative research, evaluative research and basic research. I consider the status of knowledge derived from basic (i.e. ‘experimental’) research and evaluative (i.e. ‘developmental’) research respectively, and argue that properly conducted evaluative research may contribute to the development of underlying theories of CALL. Finally, I consider methodological issues arising in the design of the research project. These include the epistemological assumptions informing the theoretical framework of the study; the methodological approach adopted in light of these assumptions; and relevant considerations of a procedural nature, which can be gleaned from the research in corpus consultation and strategy use in CALL environments. I will argue that for the present study, informed by a social constructivist theory of learning, a qualitative interpretive research paradigm which seeks to provide a participant-oriented account of the full range of social and contextual factors in the learning environment, appears appropriate.
7.1 The scope of CALL and CALL research

Initially, some clarification is necessary as to the precise scope of the term computer-assisted language learning, as I will use it in this thesis. CALL has been broadly defined as 'the search for and study of applications of the computer in language teaching and learning' (Levy, 1997a, p. 1). However, throughout the history of the development of CALL a large number of alternative terms have emerged in the literature to refer to the use of computers and technology in language teaching and learning. Examples include TELL (technology-enhanced language learning), ICT (information and communication technology) for language learning, WELL (web-enhanced language learning) and NBLT (network-based language teaching). Beatty (2003: 9-10) provides a list of 13 such terms 'peripheral to CALL', by no means an exhaustive list. The proliferation of cognate terms and associated perspectives reflects the rapid pace of technological change, which the field of CALL has been particularly subject to. For example, the emergence of the internet and associated computer-mediated communication technologies has had a tremendous impact on the way that technology is conceptualized and utilized. Such developments have in turn led researchers and practitioners to search for new labels which appear to more aptly describe current practices or particular focus interests in computer-assisted language learning (for an interesting discussion of this evolution in the context of CMC and language teaching see Lamy & Hampel, 2007, Chapter 1).

When new labels and categories are introduced in a field in this way, there is a danger that the field become fragmented, burdened by an excessive number of competing perspectives. This is especially true of a young, multi-disciplinary and rapidly evolving field such as CALL. While the new umbrella terms are helpful to the extent that they add a perspective, new perspectives must be viewed as complementary to, or constitutive of CALL, not in competition to it. Too often, it is assumed that the development of CALL as a whole has arrested at the point where the new perspective has been introduced. The following extract from the foreword of a volume entitled Technology-Enhanced Language Learning is typical in this sense:

Where [previous researchers] spoke of Computer-Aided Language Learning, or CALL, we speak of Technology-Enhanced Language Learning, or TELL. The difference stems from the fact that the computer has at the same time become less visible and more ubiquitous. (Bush, 1997, p. vii)
The author goes on to suggest that more recent innovations, such as multimedia and the Internet, belong in the realm of TELL. Consequently, one must assume from this position that the scope of CALL is limited to very early innovations, perhaps along the lines of discrete item behaviouristic drills, with the computer performing a tutor role (Levy, 1997a).

In fact, the many perspectives advanced in relation to language learning and technology can be reconciled. It should be clear that as technology has advanced, so too has the scope of CALL, and as new computer tools have been developed, CALL pedagogy has responded by developing methods for their exploitation. Reflecting the growing scope of the area of CALL, Warschauer and colleagues divide approaches to CALL into distinct historical phases, which roughly coincide with developments in technology (see, e.g., Warschauer, 2004; Warschauer & Healey, 1998; Warschauer & Kern, 2000). The continued refinement of these basic categories is illustrative of the rapid pace of technological change and pedagogical response. Most recently, Warschauer (2004, pp. 21-23) proposes the following three phases of approaches to CALL:

1. Structural CALL, associated with a structural view of language and behavioural tasks, for example vocabulary and grammar drills;
2. Communicative CALL, associated with a cognitive view of language and communicative tasks such as problem-solving and hypothesis testing;

This view of CALL implies a broad understanding of the term to include, among other things: the many different kinds of computer-mediated communications technologies which may be used for language learning purposes (Lamy & Hampel, 2007); the various uses of the computer as a tool in language learning (Levy, 1997a); and the more familiar dedicated language learning software packages. The division also highlights the important and relatively recent development of the ability of
Chapter 7: Monitoring learner behaviour: Methodology

language teachers and learners to use CMC over computer networks for interaction and community building.

Adopting such an inclusive perspective recognizes the broad range of pedagogical approaches and methods available to CALL practitioners. Taylor and Gitsaki summarize the typical CALL programs, computer, teacher and learner roles associated with different phases of CALL as follows (2004, p. 134):

**Figure 7.1 Summary of CALL programs and computer, teacher, learner roles**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>CALL programs</td>
<td>Drills and repetitive practice exercises</td>
<td>Text reconstruction, gap-filling, speed reading, simulation, vocabulary games</td>
<td>Email, web browsers, video conferencing, multimedia packages</td>
<td>Web-based materials for language learning</td>
</tr>
<tr>
<td>Computer</td>
<td>Mechanical tutor</td>
<td>Stimulus for talk</td>
<td>Tool for communication</td>
<td>Research tool, publisher, conduit for information exchange</td>
</tr>
<tr>
<td>Teacher</td>
<td>(no role)</td>
<td>Coordinator/planner</td>
<td>Facilitator</td>
<td>Researcher and framer</td>
</tr>
<tr>
<td>Learner</td>
<td>Passive recipient of language</td>
<td>Communicator</td>
<td>Active</td>
<td>Autonomous and creative</td>
</tr>
</tbody>
</table>

(Taylor & Gitsaki, 2004, p. 134)

The phases identified above by Taylor and Gitsaki are adapted from Warschauer and Healey (1998). Both the third and fourth phases identified here could be characterized as integrative CALL, adopting a socio-cognitive approach, as outlined above. Arguably, ‘21st century’ CALL is more learner-centered: according to the authors it is distinguished by an emphasis on collaborative research projects defined by student interest, with students publishing their projects to the web.
In my view, it is important to adopt a broad definition of CALL, which sees all of these different activities as part of the same general enterprise. There are two principal reasons for this. Firstly, I agree with the view put forward by Levy and Hubbard, who state that 'it is distracting and even confusing to invent new terms with every technological advance' (Levy & Hubbard, 2005, p. 148). This is particularly so where applications blend the approaches described above. For example, learners working on a web-based platform might collaboratively solve a multiple choice reading comprehension task in a facilitated computer laboratory session (e.g. Murphy, 2007). Such a task would provide learners with facilitated interactions with other learners as well as with the computer. Grouping learners together would likely provide them with opportunities to collaboratively co-construct meaningful responses to an otherwise unauthentic task (drill and practice). It might therefore be argued that the design of the CALL materials followed the structural approach outlined above, while the implementation integrated elements of the socio-cognitive approach, specifically an emphasis on collaborative meaning making. In such a pedagogic context, one should not have to argue whether the activity could be characterized as CALL or not.

There is a second, rather more important reason to adopt a broad approach. Conceiving of CALL as limited to its first tutoring applications prevents the positive development and evolution of the field through the interaction of its many strands as well as the cross fertilization of those strands with other, related fields. The many aspects of computer-assisted language learning that are being researched are considerably enhanced if they look to each other for support and inspiration. In a similar way, CALL as a field is enriched if it draws upon related fields such as educational technology and online learning for accounts of experience and insights into shared practical, pedagogical and research interests.

In sum, for the purposes of this thesis, I interpret the term computer-assisted language learning in a broad way, to include the full range of computer-mediated language teaching and learning applications, including the use of a variety of technologies in a range of contexts. CALL therefore includes other similar terms such as technology-enhanced language learning, information and communication technology for language learning, web-enhanced language learning, and network-
based language teaching. With this broad scope in mind, research into the development, implementation and evaluation of CALL should be highly instructive in developing a methodology for the evaluation of the LAWS resources.

### 7.2 Developing a CALL knowledge base: the status of evaluation and research in CALL

In the CALL research literature, a distinction is repeatedly made between ‘evaluative research’ and ‘basic research’, in order to distinguish practitioner-led, contextually sensitive evaluations of CALL applications from the construction of generalizable theories into how languages are learned through the computer medium. An early example of this is the review of research by Pederson (1987), who divides CALL research into ‘comparative research’, ‘evaluative research’ and ‘basic research’. Similarly, Levy and Stockwell (2006) refer to ‘evaluation’ on the one hand, and ‘research’ on the other. Elsewhere, ‘research’ is distinguished from ‘development’. (Davies, 2001; Dodigovic, 1998). Often such comparisons highlight the limitations of findings from evaluative research, which are considered to be constrained to the immediate context of inquiry. In general, basic research is not seen as limited in this way. Therefore, the question which I wish to address in this section is ‘how exactly can evaluative and basic research contribute to the CALL knowledge base?’

To begin with, it will be necessary to define terms more precisely. Pederson’s division of CALL research activities into ‘comparative research’, ‘evaluative research’ and ‘basic research’ appears to have been adopted in the wider community. The exception to this is that most commentators would appear to combine ‘comparative research’ and ‘basic research’ in a single category ‘research’, in the manner that Levy and Stockwell (2006) do. According to Pederson, (1987, pp. 104-108), comparative research studies are those that seek to establish the effectiveness of CALL by comparing CALL environments with non-CALL environments and evaluating learning outcomes in each case. Typically, in such studies it is hypothesized that learning in the computer-assisted environment will lead to better outcomes than in the non-computer-assisted environment. However, these studies have been repeatedly criticized for flaws in methodology (e.g. Burston, 2003; Felix, 2005; Pederson, 1987). Pederson goes so far as to say that this kind of research
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should ‘forever be abandoned’ (p. 125). This is reminiscent of the large scale 'comparative method' studies carried out in the 1970s which attempted to compare competing teaching methodologies and were ultimately abandoned (Allwright & Hanks, forthcoming). For present purposes, comparative research will be of peripheral interest only, and I therefore focus on evaluative research and basic research for the remainder of this discussion.

Pederson defines evaluative research as a form of applied research in CALL, designed to ‘achieve practical objectives (solve problems, for example) in a specific learning situation or with a specific set of learning materials’ (1987, p. 108). As characterized here, evaluative research is reminiscent of practitioner-led action research, with its focus on problem-solving in practice (Allwright & Bailey, 1991; Burns, 2005; Kemmis & McTaggart, 1988), as opposed to research aimed at theory building. Evaluative research is usually carried out in a clearly defined practical context, for example, the development of a CALL application for a particular group of learners, or the evaluation of courseware for a particular institution. Such research attempts to determine whether the courseware under investigation ‘fits’ with the specific learning context (see, e.g., Hubbard, 1992, 1996). Findings are considered to be specific to the context and not generalizable.

In contrast to evaluative research, basic CALL research attempts to build a general theory of how language learners learn through the computer medium. Pederson characterizes this enterprise as follows:

If a difference can be shown in favour of the way a specific coding capability of the computer can deliver instruction in a given circumstance for a given set of learners for a given learning task, then basic researchers should attempt to integrate what is already known about language learning into their discussion of how this new knowledge supports, refutes, or elaborates the theoretical base that already exists. (Pederson, 1987, pp. 110-111)

As described here, basic CALL research is an attempt to understand the relationship between CALL materials or resources, tasks, learners and learning processes, and outcomes. With intervening developments in technology (in particular, the proliferation of CMC), the scope of research in CALL has increased dramatically, as I have already reviewed. As a result, it is necessary to define ‘the delivery of
instruction’ and ‘coding capability’ in terms that are relevant to the particular context under investigation (see Figure 7.1). Unlike evaluative research, the findings of basic research are considered to have general application beyond the immediate context of inquiry.

The observation that CALL research can essentially be divided into evaluative and basic research reflects the blend of practical and theoretical orientations of CALL practitioners. As suggested above, findings from research conducted in the context of practical CALL development are considered to apply only in the immediate context of investigation. Such research is contrasted with basic research, which aims to elaborate theory applicable more generally. However, one must be careful to avoid the conclusion that simply because a study is conducted as part of a development project, it is incapable of illuminating theories about CALL.

In order to ascertain what role CALL development may play in the process of constructing a CALL knowledge base, it is instructive to consider how CALL development proceeds in practice. Levy (1997b) identifies two different approaches: formalist and proceduralist. Proceduralists take a bottom-up approach to the design and evaluation process, in which practitioners typically begin with a concrete teaching problem to be solved by technical innovation (e.g. Hémard, 2003; Hémard & Cushion, 2001). This approach tends to give priority to the practical learning context over any particular learning theory, and the CALL application is usually refined through an iterative process of design and evaluation, until the designer is satisfied that the desired learning outcomes are being achieved. In contrast, formalists take a more deductive approach which applies theories of second language acquisition to the design and evaluation of CALL resources (e.g. Chapelle, 1998, 2001; Garrett, 1991, 1998). This approach tends to give priority to the learning theory over the learning context, and assumes that if CALL resources and technology meet minimum theoretical benchmarks, then second language acquisition will follow.

Levy observes that from a proceduralist point of view, the practical evaluations in a design and evaluation cycle frequently lead to revisions of the theoretical assumptions underlying a particular CALL design. He notes that ‘though one may
begin with a theory, the theory may not be of sufficient power to sustain itself within the context’ (1997b, pp. 51-52). In this connection, Dodigovic argues that formative research in the context of development projects has an important contribution to make to the development of CALL theory overall:

Knowledge gained in the course of development may confirm or disconfirm various aspects of an underlying theory, thereby altering and improving the original theory itself. Clearly, the research process is far from complete when a theory is selected to serve as a basis for a CALL development project. (Dodigovic, 1998, p. 26)

Accordingly, I argue here that appropriately framed evaluative research into an application of technology to a language learning context can contribute to and even lead the development of underlying theories. As noted by Carroll (1991), this situation is not unusual in applied sciences: ‘Through history it is perhaps more common to see practical invention entrain scientific explanation than to see the reverse. Bridge building and use of pulleys, for example, were innovated, refined, and rendered routine in use long before basic physics elucidated their underlying principles.’ (Carroll, 1991, p. 1)

If we accept that theoretical insights can be gained from empirical observations derived from the design and evaluation process, we must nevertheless ask ‘what form must such observations take in order for them to be recognized?’ This is a crucial question and it is possible that CALL practitioners fail to address it adequately in reporting their findings to the community. As a result, some practitioners have expressed a concern that some research fails to meet the objective of building a principled knowledge base of sound instructional practices (Dunkel, 1991; Laurillard, 2002; Levy, 1999). In order for evaluations of CALL developments to make an effective contribution to the CALL knowledge base generally, it is essential that theoretical constructs related to language learning and technology are well defined. It is only by comparing clearly articulated theories of how learners are expected to learn through the computer medium with the practical processes and outcomes of such learning activities that the field can make progress as a whole. Provided that this condition is met, then it is of little concern whether studies of CALL environments originate as development projects or as carefully devised experiments testing theories of second language acquisition.
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In summary, we have seen that a broad distinction can be drawn between evaluative research and basic research in CALL. We have also seen that as a general proposition, findings from evaluative research tend to be regarded as more limited in their application than findings from basic research. However, I have argued that this perspective ignores the importance of knowledge gained in the process of CALL materials development. Appropriately framed evaluations of CALL applications can provide insight into the theories informing those applications’ design and use. In order to make effective contributions to the field as a whole, however, such evaluations must clearly state their motivating theoretical assumptions. Providing a clear description of the theoretical framework for studies of CALL and design of materials and resources is a necessary pre-requisite to a principled evaluation of learners’ usage. With reference to the present study, I address this question and related questions of methodology in the following section.

7.3 Methodological considerations

This section outlines relevant methodological considerations, including: the epistemological assumptions informing the theoretical framework of the study; the methodological approach adopted; relevant considerations of a procedural nature derived from the available body of work in corpus consultation and strategy use in CALL environments.

7.3.1 A theoretical framework for evaluating LAWS

For the purposes of this study, I draw on a social constructivist approach to language learning, drawing on the theory of situated learning (Lave & Wenger, 1991; Wenger, 1998) and socio-cultural theories of SLA (e.g. Lantolf, 2000b, 2000c, 2006; Lantolf & Appel, 1994; Lantolf & Thorne, 2006; van Lier, 2000, 2002). This approach views the law students in question in this thesis as apprentices to the legal community of practice, which they aspire to join through a process of legitimate peripheral participation (Lave & Wenger, 1991). With regard to the evaluation of learner behaviour in the online environment, I argue that it is necessary to construct the learning context in a holistic fashion and view the LAWS resources as an integral
part of a dynamic learning ecology. Furthermore, the LAWS resources are constructed in terms of the affordances (Gibson, 1979) that students perceive and draw on, in order to explain student behaviour in the online learning environment.

**Theory of learning**

A common starting point for much CALL research is a cognitive theory of second language acquisition, which relies on constructs such as comprehensible input, comprehensible output and negotiation of meaning (Gass, forthcoming; Krashen, 1982; Larsen-Freeman & Long, 1991; Pica, 1994; Swain, 1985, 1995). In particular, many CALL studies apply elements of the interactionist account of SLA (Levy & Stockwell, 2006). Chapelle argues that this account of SLA is particularly suited to the design and evaluation of CALL materials (Chapelle, 1997, 1998, 2001). According to this perspective, the analysis of interactions in learner discourse allows us to evaluate whether a particular interaction creates a favourable environment for acquisition. This would be the case where, for example, an interaction is modified so that learners focus on linguistic form or learners correct interlanguage forms. This cognitive account of SLA can therefore be used as an analytical tool to focus on learning opportunities present in the immediate learning environment, involving interactions between learners, their peers and the computer. A typical approach is to describe and evaluate the language encountered and produced by learners in the process of completing a CALL task (e.g. Blake, 2000; Chapelle, 1997).

In spite of its prevalence, the theoretical basis of such cognitively-oriented studies of CALL has attracted considerable criticism (Block, 1996; Lantolf, 1996; van Lier, 1994 and see especially Firth and Wagner 1997, 1998). Of particular relevance here is the critique that cognitive approaches do not explicitly account for the processes by which learners acculturate to communities of practice or speech communities. Warschauer sums this position up as follows:

...[the cognitive] perspective does not explain precisely how students use language-related collaboration for the following purposes: (a) to become competent members of a speech community (Hymes, 1972) or social group (Schieffelin & Ochs, 1986), (b) to gain important cultural knowledge (Kern, 1996) or content matter (Bayer, 1990; Wells & Chang-Wells, 1992), or (c) to develop literacy skills or critical thinking skills (Heath, 1983; Wells & Chang-Wells, 1992). (Warschauer, 1997, pp. 470-471)
Thus, according to its critics, the cognitive perspective of SLA fails to take into account many of the processes and competencies necessary for the development of literacies in specific academic and professional domains. In order to address these perceived shortcomings it is necessary, they argue, to adopt a constructivist theory of learning, which sees knowledge as socially and cognitively constructed. It is claimed that such a theoretical framework is capable of accounting for social and contextual aspects of language learning in a more sensitive manner.

In the present context we are concerned to understand the role of technology in the appropriation and management of legal genres by apprentice lawyers. This objective suggests that it would be appropriate to adopt a constructivist view of learning which draws on such social theories of learning as briefly adumbrated above. In particular, the process of students’ apprenticeship into the academic and professional discourse communities that they aspire to become members of is explicitly addressed by such social constructivist learning theories (e.g. Lave & Wenger, 1991) and, accordingly, such theories may be seen as being ideally suited to this study. In addition, sociocultural theories of language learning (Lantolf, 2000c; Lantolf & Appel, 1994; Lantolf & Thorne, 2006) address the question of how learning is mediated by cultural tools, including technological tools such as those provided by the LAWS resources. Such a theoretical position therefore provides a useful framework for the evaluation of learner behaviour in LAWS.

The theory of language learning which underlies the design of the study and of the LAWS resources has been outlined earlier (Chapter 3) but it is useful to recap its essence briefly here. The theory adopted takes the position that learners appropriate a discourse or genre through a process of guided participation 'in situations of joint involvement with other people in culturally important activities' (Rogoff, Mosier, Mistry, & Goncu, 1989, p. 209). This developing competence is culturally and socially mediated in the manner suggested by Vygotsky (1978). Meaning is first co-constructed by participants to an interaction and subsequently internalized by learners. In consequence it is held that learners realize their potential through collaboration with others and through the use of what has been termed ‘mediational means’ (Scollon, 2001; Wertsch, 1998) such as language, social and cultural tools.
As with the LAWS resources, technology may play a role in mediating learners’ process of guided participation by providing scaffolding (Donato, 1994; Wood et al., 1976) and facilitating authentic tasks in which the learner is already involved. In the present context, for example, law students were encouraged to refer to online tutorials and corpus tools for assistance with assignments required for their Legal Writing and Drafting Course.

The learning ecology

In this study, I take the position that learner use of the LAWS resources is subject to a complex variety of contextual factors. Moreover, in general the contextual factors at play in technological learning environments are becoming increasingly complex. Partly, this is because of increased integration of online learning into the language curriculum (see Section 7.1 and the characterization of CALL pedagogy as structural, communicative and integrative CALL). Partly, this increasing complexity is a consequence of the evolving nature of online discursive structures, in which multimodal, hypertextual forms of representation and ‘communicational action’ between users is made possible (Kress, 2003, p. 5). An example of such communicational action at work is the commenting function in a web blog (blog or online journal), which allows users to post replies and generate discussion. Through such enabling technology, users are empowered to participate in the co-construction of texts, as part of (more or less stable) online communities. Online learning now offers the potential for students to interact not just with their classmates and teachers, but with a global audience (through the kind of web projects described by Taylor and Gitsaki (2004), see Figure 7.1).

Because of the complexity of such a modern learning environment, van Lier (1998) argues for an approach to the evaluation of technology and language learning, in which all elements of the learning environment are seen to interact as part of a dynamic learning ecology. Such an approach ‘pays due attention to the people in the setting, focuses on the processes that are taking place, investigates the context in its totality, and takes place over significant period of time (i.e., longitudinally’) (1998 n.p.). Van Lier emphasizes that the technological learning environment must be construed with regard to relevant social and institutional factors and the ways in
which these interact in the learning process. The holistic approach adopted by van Lier in describing the technological learning environment as learning ecology, and his general approach to evaluating this environment, are adopted for the purposes of this study. In doing so I do not specifically adopt his elaborated theory of ecological linguistics (van Lier, 2000, 2002, 2004), although it should be noted that van Lier (2000, p. 253) sees his epistemology as compatible with the theory of situated learning which informs this research.

Thus, in the present study, the LAWS resources are viewed as part of a wider learning ecology which also includes instructors in the course, fellow students, institutional requirements and constraints (both with regard to technology and learning). With such a wide range of variables, it becomes appropriate, I argue, to take a holistic approach to the evaluation of learner behaviour in the online environment. Here I need to emphasize that my aim in evaluation is not to furnish ‘proof’ of effectiveness, which even in more constrained studies can prove to be a difficult task. Rather, the focus of evaluation in this study is to understand as comprehensively as I may the way in which learners interact with the learning environment in order to achieve their aims, and to understand how this behaviour may be influenced by the action of the learning institution, teachers and peers.

**Affordances in language learning**

In considering students’ online behaviour, it is useful to view the LAWS resources in terms of the construct of *affordance*. The term affordance was coined by the psychologist James Gibson in an approach to elaborating what he saw as an ecological approach to visual perception. Gibson originally defined affordance in the following terms:

> The affordances of the environment are what it offers the animal, what it provides or furnishes, either for good or ill. ...... [Affordance] implies the complementarity of the animal and the environment. (Gibson, 1979, p. 127)

Gibson explains that an affordance has both objective and subjective qualities. For Gibson an affordance is an object with real, physical properties, yet at the same time it is defined by its relationship with the actor in the environment. Accordingly, an
 affordance can be categorized in neither subjective nor objective terms, but rather ‘points both ways, to the environment, and to the observer’ (Gibson, 1979, p. 129). For example, a guitar affords playing, but it affords a different kind of playing to a two year-old child than it does to a skilled blues guitarist. The guitar affords picking and strumming strings, playing chords and scales, drumming and a variety of other acoustic effects all of which would be perceived and exploited differently by the two actors mentioned, if at all. In addition, different actors may perceive entirely different affordances. Thus, the guitar may afford drawing to the two year-old, and smashing to a punk rock musician in concert. Even though the qualities of the guitar are constant, the affordances of the guitar vary according to the manner in which it is perceived and drawn upon by the actors in their particular environments. Different actors perceive and act upon different qualities of objects in their relevant environments.

Van Lier adapts the concept of affordance in his theory of ecological linguistics, and describes the concept in the following terms:

A context in which language is part of the action provides an ambient array of opportunities for meaning making. An actively engaged participant is offered a myriad of opportunities for meaningful action and interaction, and these opportunities are called affordances (Gibson, 1979). Affordances are meaningful ways of relating to the environment through perception-in-action. They are neither linguistic objects that are received and taken into the processing mechanisms of the mind, nor are they linguistic objects that are retrieved from memory and packaged syntactically for output. (van Lier, 2002, p. 147)

Van Lier’s definition of affordances as ‘opportunities for meaningful action and interaction’ refines Gibson’s concept for applied linguistic purposes. Affordance as an opportunity highlights again the importance of perception: the actor must perceive linguistic affordances in order to be able to use them for linguistic action (van Lier, 2000, p. 252).

In summary, an affordance is an opportunity for meaningful action and interaction in a given linguistic environment. The kind of meaningful action that then becomes possible depends on the characteristics of the language learners and how the learners perceive and relate to their learning environment, including the meaningful content and tasks with which they are engaged, and the tools and resources they utilize in
interaction. Learners may at times be quick to perceive the affordances of technological tools, sometimes even surprising their teachers with their creativity. At other times, learners may fail to grasp the learning opportunities afforded by a technological environment and therefore require guidance from the teacher in how to take advantage of them.

In the present context, the construct of affordance is used in order to relate student action to the technological learning environment. The study investigates what affordances students perceive and act upon in the LAWS resources whilst completing legal writing tasks in the course of their PCLL studies. I have argued earlier that it is appropriate to adopt a social constructivist view of learning for the purposes of this study. Accordingly, the LAWS resources can be viewed as cultural tools which mediate students’ process of guided participation in the legal community of practice, by scaffolding the legal writing and drafting tasks with which students are engaged. I have further argued that the technological learning environment within which learners interact as they adapt technological tools and affordances to their needs can be viewed as a complex learning ecology, comprising a range of social and contextual factors. Given such a theoretical framework, it would appear appropriate and necessary that the research methodology adopted for this study be capable of taking into account relevant social and contextual factors in the learning ecology.

7.3.2 Methodological approach

A methodology which may serve to provide a contextually rich account of the programme under investigation is that of qualitative interpretive research (Erickson, 1986). This methodology is sometimes referred to as ‘qualitative research’ (e.g. Davis, 1995; Lazaraton, 2003), but the term ‘qualitative research’ has also been used to describe rather loosely any research that is not quantitative in nature. As we shall see, this sharp distinction is inappropriate as quantification may play a role in qualitative studies, and indeed, vice versa. According to Erickson, the key feature of qualitative interpretive research is its ‘central research interest in human meaning in social life and in its elucidation and exposition by the researcher’ (Erickson, 1986, p. 119). In this thesis I follow Richards (2003) in preferring the term ‘qualitative
Broadly, qualitative inquiry can be contrasted with research of an analytical nature, for example experimental or quasi-experimental research. In the context of CALL, experimental research is fairly common, because it allows the researcher to analyze aspects of the learning context and test hypotheses about particular design features or particular tasks. The study by Borras and Lafayette (1994) provides an example of this approach. The aim of this study was to investigate ‘the potential usefulness of subtitles for increasing learners’ oral communicative performance’ (1994, p. 62). Students were assigned to different treatment groups, and performed a multimedia listening task with or without access to subtitles. Students’ subsequent performance on an oral task was then compared. This design allowed the researchers to focus on the single variable subtitling and conclude that subtitling had a positive effect on students’ performance.

It should be evident that by its very nature, the design of the quasi-experimental study outlined above constrains the investigation to a few specified contextual variables. It can be argued that in so doing it fails to investigate significant elements of the learning context. For example, such a design provides no information about how students interact strategically with technological affordances, or more generally how such affordances foster the social interactions that occur over time as part of the learning process. As noted by van Lier, ‘a methodology adapted from cause-effect research in the physical sciences will not be sufficient [to understand the effects of technological learning environments on teaching], since it cannot deal with the multitude of rapidly changing contextual factors involved’ (van Lier, 1998, n.p.). By contrast, qualitative inquiry adopts an exploratory perspective, and attempts to gain an understanding of the meanings of actions from the actors’ point of view (Davis, 1995, pp. 432-433). Accordingly, typical methods employed include focus interviews, observation, content analysis of documents and archival records (Richards, 2003; Yin, 2003). Qualitative inquiry focuses on the in-depth description of a particular social milieu. Provided that the descriptions are sufficiently ‘thick’ (Geertz, 1973) understandings derived from the particular case will be capable of informing and possibly modifying existing generalizations (Stake, 1995, pp. 7-8).
Qualitative inquiry is often criticized because data is interpreted in an explicitly subjective manner (Stake, 1995, p. 45). Such criticisms are rooted in the perception that the procedures for validating claims made through qualitative research are not as well developed and standardized as those for research following a quantitative, analytical paradigm. However, the mantle of objectivity conferred by procedures in quantitative analytical research can be itself relatively thin. Much ‘quantitative research’ may only be apparently objective since its underlying constructs may be equally subjectively arrived at as are the interpretations derived from qualitative interpretive inquiry. Moreover the constructs used in the analysis of data may themselves be open to considerable question as to their determinacy. In the light of this, comments such as those of Lincoln and Guba that subsequent application of an analytic methodology is intended to ‘render the study beyond contamination by human foibles’ (Lincoln & Guba, 1985, pp. 292-293) need to be carefully evaluated. Researchers’ attempts to formulate quantitative methodologies which deliver value-free research findings have often been challenged. For example, when comparing quantitative and qualitative methodologies, Salomon finds that ‘explanations are involved in both cases, and the selection of variables, actions to be observed, and interpretation of findings can be similarly affected by the selection of theories, points of view, political agendas, and methods of analysis’ (1991, p. 11).

It should be evident, even from these brief references, that both quantitative and qualitative research paradigms face similar demands and challenges to validate findings. They differ however, in the way that they respond to this challenge. In qualitative interpretive inquiry, validity or ‘trustworthiness’ (Lincoln & Guba, 1985) is an issue to be attended to upfront and needs to be addressed through a process of triangulation of data sources, investigators, and methods (Stake, 1995). The validity of findings is considerably enhanced, it is argued, if the findings can be established by reference to multiple data sources, agreed upon by multiple investigators, or confirmed by multiple methods. Further, Richards (2003) describes three key validity checks for qualitative inquiry: member validation, constant comparison and negative evidence. Richards’ characterization of these validity checks is reproduced below (2003, p. 287):
Member validation: Seek views of members on accuracy of data gathered, descriptions, or even interpretations

Constant comparison: Keep comparing codings with other codings and classifications, looking for new relationships, properties, etc.

Negative evidence: Seek out negative evidence/cases and assess their relevance to interpretations

(Richards, 2003, p. 287)

These three validity checks provide analytical mechanisms which aid the researcher in keeping an open mind and remaining receptive to alternative interpretations of the data. As we shall see, in the present study, data was drawn from a wide range of sources, and continued interaction with the research site allowed for important initial findings to be informed by community members.

We see then that a broad distinction is characteristically made between qualitative inquiry on the one hand and quantitative research on the other, with the former seen to imply a more interpretive paradigm and the latter a more analytical paradigm. However, as noted above, the adoption of a quantitative research paradigm does not preclude a priori qualitative study. In fact, it must rely on it. Similarly, the adoption of an exploratory research paradigm does not preclude the use of quantitative techniques, where appropriate. As noted by Richards, ‘if occasionally more precise quantification has a contribution to make, it would be foolish to deny ourselves this resource on ideological grounds’ (2003, p. 11). Adopting a qualitative interpretive paradigm, the researcher is likely to approach quantitative data in an exploratory fashion, searching for themes which are seen to emerge from the data, in a grounded fashion (Glaser & Strauss, 1967). As we shall see, this point is of particular relevance to the present project, where a large amount of server-side logging data has been collected and explored in this way.

Another feature of qualitative inquiry that is of interest for the present study is the general tendency for such research to be cyclical and transformative in nature (Davis, 1995, p. 444; Richards, 2003). The approach assumes that as researchers collect and analyze data, their initial research questions will change and refocus, requiring the collection of further data, until ‘theoretical saturation’ is reached (Glaser & Strauss, 1967). At this point, new data collected ceases to illuminate the concepts under investigation. Furthermore, it is generally assumed that the dialogue
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of description and reflection established between researcher and participants may foster change in the research site, in a manner that is consistent with the role adopted by the researcher. Individual researchers will vary in the degree to which they perceive themselves as a ‘neutral’ observer or participant in the research site. However, qualitative inquiry will always involve intense engagement with the research site, and change and transformation may be actively promoted as a desirable outcome of the research (see, e.g., Sarangi, 2006; Sarangi & Candlin, 2001).

In the present study, a qualitative interpretive approach was adopted in order to provide a contextually rich account of student online learning activities. The data collected provides opportunities for both quantitative and qualitative data analysis, with a large amount of data of various sorts collected through server-side logs of web usage. The general approach taken to analysis is to use the data to establish a naturalistic description of student online learning behaviour. For the purposes of the present study, where the online learning environment offers a variety of different affordances including a set of online corpus tools, it is important to review approaches to the study of corpus consultation by students, and strategy use in CALL. By comparing the methods of established studies in these areas it will be possible to explore how the research methodology of such studies connects with the broader methodological considerations discussed in this section. This will in turn allow us to develop a specific methodology which is relevant to the current context.

7.3.3 Methods in corpus consultation

Research into students’ active use of corpus tools in language learning has studied the use of corpus tools using a variety of different pedagogical approaches. The studies demonstrate a clear concern to establish authenticity of task, in the sense that students interact with the corpus tools and resources to make meaningful discoveries about linguistic form and function. Such authenticity may be promoted in one or more of the following ways. Students may be involved in the construction and analysis of their own corpora (Gavioli, 2005: 84; Pearson, 2000; Seidlhofer, 2000), the formulation of their own research directions and communicating their discoveries with their peers (Bernardini, 2000; Chambers, 2005; Lee & Swales, 2006). Alternatively, students may be trained to use corpus tools as a reference resource to
discover appropriate language patterns in context, assisted by feedback from their teacher (Chambers & O'Sullivan, 2004; Gaskell & Cobb, 2004; Milton, 2006). The advantage of the latter approach is that it can more easily be integrated directly into the disciplinary activity of the students, for example, in writing term papers or undertaking other such academic tasks. It should however be noted that in practice students are often withdrawn from their academic environment and focused by a series of guided data-driven learning tasks, for example a proofreading task to be carried out for homework (e.g. Chambers & O'Sullivan, 2004; Gaskell & Cobb, 2004).

The pedagogical approach taken to the corpus tools in this thesis has been described in more detail in Chapter 4, but it may be helpful to remind the reader of the main points here. The corpus tools and resources were designed to integrate into the pattern of students’ disciplinary writing and associated specific purposes language learning. It was expected that students would refer to the LAWS corpus of legal text when they encountered difficulties in completing assignments for their PCLL Legal Writing and Drafting course. Students who were uncertain which lexical form to use in a particular context were expected to search the corpus for analogies. In this way the concordancer provides students with an affordance to learning how to construct legal discourse in the context of the authentic legal writing and drafting tasks provided on the PCLL courses. The present study examines student use of corpus tools, in particular the way in which students utilize the tools and the affordances that they perceive in them.

Chambers and O’Sullivan note that ‘as studies involving corpus consultation by learners are few in number, there is as yet no clearly defined methodology on which one can rely’ (2004, p. 161). Nonetheless, by reviewing the studies that have been conducted to date it is possible to gain a sense of the methods that have been employed and the methodological issues that are raised. Here I consider the principal issues of methodology and exemplify these with studies from the field, relevant to this thesis. For a more exhaustive review of studies in this area, the reader is referred to the recent meta-analysis by Chambers (2007).
In general, these studies aim to evaluate the effectiveness of corpus tools in language teaching, whether this be from the point of view of the learners, instructors, or in terms of learning outcomes. A common approach is to rely on student perceptions of the corpus consultation task. In the study by Yoon and Hirvela (2004) the researchers collected data using a survey instrument and follow-up interviews. Using this methodology, the researchers were able to gain insights into the usefulness of the resource for language learning, and into difficulties students have in using the corpus tools. Although the survey questionnaire was developed in ‘consideration of the specific use of the corpus in the classes serving as research sites for the study’ (Yoon & Hirvela, 2004, p. 266), there was no systematic observation of the students performing corpus consultation tasks. Therefore, the researchers’ findings are limited to students’ reports of their beliefs, attitudes and perceptions of the corpus task.

Case studies of classroom applications of corpus consultation techniques are also common in the literature (e.g. Bernardini, 2000; Lee & Swales, 2006; Seidlhofer, 2000). Bernardini’s study is one which is frequently cited. In it she describes an eight-week seminar ‘Using the BNC as a language learning and research resource’. The study involved learners in a corpus-based project presented in class and reported on learners’ experiences of the project. The study is rich in insights related to student use of corpus tools but it appears to rely primarily on the outcomes of student projects and on student reports of their experience. Again there is no direct observation of students using corpus tools, except perhaps for the kind of ‘over-the-shoulder’ observations that might occur in classroom concordancing sessions. Other case studies tend to take a similar approach. That is, in order to establish the effectiveness of corpus tools, they rely on the findings of students’ corpus-based projects and related presentations and reports. Yet such evidence is only indirectly related to the strategic action carried out by the students, as they perform the task. The research focuses on the learning product rather than the learning process.

Studies which systematically capture direct evidence of the way that students use corpus tools are comparatively rare. Recent examples include Sun (2003), Gaskell and Cobb (2004), and Chambers and O’Sullivan (2004). The study by Sun used think-aloud protocol in order to determine what learning processes and strategies
students use when engaged in corpus consultation, as well as what factors influence student learning outcome (Sun, 2003, pp. 602, 604, 607). The other two studies used observation methods in combination with questionnaires in order to judge whether students were able to use corpus tools to correct their writing errors and in order to solicit student evaluations of the procedures used (Chambers & O'Sullivan, 2004, pp. 161-162, 168; Gaskell & Cobb, 2004, p. 307). In addition, the study by Gaskell and Cobb attempted to determine whether correcting with concordances reduced errors in free production and whether learners continued to use concordancers independently following training. All three studies raise interesting methodological issues in attempting to answer these questions.

The basic design of all three studies was quasi-experimental. All involved some kind of proofreading task with different kinds of observation techniques employed. The proofreading task used by Sun was a list of eight sentences with different kinds of grammatical errors, while both Chambers and O’Sullivan and Gaskell and Cobb used the students’ own work with errors highlighted. In the study by Sun, students met individually with the researcher and performed the proofreading task, with reference to corpus tools. The researcher provided a variety of interventions to facilitate the eventual success of the corpus consultation task (Sun, 2003, pp. 610-611). In the study by Chambers and O’Sullivan, students met for a two-hour computer-lab session and corrected errors identified in their work with reference to corpus tools. In the study by Gaskell and Cobb, the students corrected their work from home, referring to corpus tools by following pre-cast links (with search terms already defined) which had been inserted into their work by their instructor. This research proceeded over a period of 15 weeks during which time students completed 10 assignments. In the latter two studies, researchers asked students to fill out a log of their searches and discoveries. The aim was to determine whether students had been able to make changes based on the concordance output.

It is important in research of this nature to recognize that the interventions used may have some effect on the students’ corpus consultation processes. For example, in the study by Sun, the researcher scaffolded the corpus consultation task by providing students with various forms of guidance to complete the task. In the studies by Gaskell and Cobb, and Chambers and O’Sullivan the task was implicitly scaffolded
by requiring students to fill in a log which included the search term used, results of concordance and discoveries (in the case of Gaskell and Cobb, the search terms were initially selected for students). By using such a log these researchers imposed a particular order on the corpus consultation task and may therefore have biased the observation to a particular pattern of behaviour. Indeed, the use of the log discloses a set of (albeit reasonable) processes which learners are expected to follow, and as a result the processes that occur to students naturalistically become obscured by the investigation. In order to overcome this difficulty, it would be necessary to develop less intrusive methods. Computer tracking and screenrecording tools (discussed below and in the following section) would facilitate such methods considerably.

A related problem that arises in the studies of Gaskell and Cobb, and Chambers and O’Sullivan is the lack of a control group, to control for the effect of the corpus tools on the task. Gaskell and Cobb acknowledge this explicitly (p. 316) and Chambers and O’Sullivan appear to be aware of the issue as well: with regard to basic errors they note that ‘given that the errors involved here are of a very basic nature, it is impossible to prove that the students could not have produced the correct version simply by looking at the word or phrase’ (p.164). These studies therefore need to limit their conclusions to a description of the conditions under which the use of corpus tools is effective, and stop short of making claims about the effectiveness of corpus tools in general. Such a description has the potential to provide valuable information about the affordances of corpus tools as used in a particular context. As was noted earlier (Section 7.2) this is in any case the approach to be preferred, as comparative approaches to the evaluation of CALL have yielded relatively little insight into how to implement particular technologies for language teaching purposes.

As alluded to above, another issue that arises in the context of these studies is that of tracking technology. Tracking technology has greatly enhanced the ability of researchers to monitor student behaviour (Garrett, 1991, 1998), however this technology has for the large part been ignored in the case of corpus consultation studies. As noted earlier, in previous studies students have been asked to keep a log of their search results and changes (Chambers & O'Sullivan, 2004; Gaskell & Cobb, 2004). The burden of this task could be significantly lightened if computer tracking
tools were developed to record some of this data, in particular what searches were made, at what time, by which learners. Gaskell and Cobb (2004) use a server-side log for this purpose, asking their students to supply them with the IP addresses of commonly used computers and then associating students with those computers. This is a step in the right direction, but cannot account for unknown computers (including public computers, for example, networked in a library). Gaskell and Cobb recognize this limitation and comment on the need to ‘develop a finer grained tracking system for a follow-up that would match learners and behaviours more precisely. (2004, p. 316)

A further point that should be noted in relation to the use of tracking tools is that they facilitate the use of a naturalistic mode of inquiry. While systematic, direct observation of student use of corpus tools is in any case valuable, a problem that one encounters is a lack of authenticity of task. The difficulty here is that students performing tasks in controlled observations cannot be said to be using the corpus tools for their own purposes, in response to their own needs and goals. In order to collect data, it is necessary to set up conditions rather like a user test (Hémard, 2003) of the corpus consultation task. Typically, this would involve inviting students to a computer laboratory to perform the concordancing tasks for observation. In contrast, using tracking technology, one is able to glean insights into how students use corpus tools in a setting of their own choosing, for their own purposes and on their own chosen tasks.

In summary, studies in corpus consultation often rely on data sources which are indirectly related to learner behaviour in the concordancing environment. It is common to rely on student reports in order to evaluate corpus techniques and structured, direct observations of learner behaviour are less common. Where observation techniques are used, they tend to have been set up following an experimental design which constrains the student behaviour under investigation, in spite of the fact that tracking technology would easily facilitate unobtrusive, naturalistic observation of learners’ online concordancing behaviour. Furthermore, the use of techniques which either explicitly or implicitly scaffold the corpus consultation process may hinder researchers from providing a detailed account of the process from the students’ point of view. Corpus consultation studies rarely go far
enough to understand the corpus tools as part of an interacting learning ecology in the manner mentioned in the previous section. It follows that methods used for corpus consultation need to be expanded upon, diversified and amplified in order to serve the purposes of this thesis.

### 7.3.4 Methods in studying strategy use in CALL environments

The study of language learning strategies has a relatively long tradition in research in language education. Two strands of research can be distinguished. First, a series of studies conducted in the seventies and early eighties sought to highlight the qualities of what came to be known as the ‘good language learner’ (Naiman, Fröhlich, Stern, & Todesco, 1978; Rubin, 1975; Stern, 1975). These studies relied primarily on observation and catalogued or listed the behaviour of individuals identified as effective language learners. A second body of research emerged concurrently from the field of cognitive psychology, concerned with the cognitive processes involved in learning tasks. Within this framework, learning strategies were identified as complex cognitive skills to be acquired (Anderson, 1980). This second approach provided the theoretical backdrop for the second language acquisition research into language learning strategies. It has been adopted by theorists in the field who have sought to categorize learning strategies using the constructs offered by it. This has led to the positing of three general categories of learning strategies: metacognitive, cognitive and social/affective (O'Malley & Chamot, 1990 and see also Oxford, 1990 for a more elaborate classification).

Briefly, metacognitive strategies are those strategies which regulate cognition, for example planning, monitoring, and evaluating a learning activity. Essentially, it is argued, students draw on meta-cognitive strategies when co-ordinating their learning. Cognitive strategies are strategies specific to a given learning task, requiring ‘direct analysis, transformation or synthesis of learning materials’ (O'Malley & Chamot, 1990, p. 99). An example of such a cognitive strategy is inferencing while reading. Students draw on cognitive strategies when engaging in particular learning tasks. Finally, social/affective strategies involve interaction with another person or regulating affect in some way, for example asking for clarification or explanation from teachers or peers, or reducing anxiety through self-talk.
(O’Malley & Chamot, 1990, p. 45). Learners draw on social/affective strategies when collaborating on learning tasks or reassuring themselves about the learning task.

A key difficulty in researching language learning strategies is that only a few learning strategies are directly observable: for example, asking for clarification or note-taking. Other strategies, such as inferencing or self-monitoring, are less accessible to observers. Rees-Miller (1993) highlights the problem: ‘it is questionable whether they [cognitive language learning strategies] can be specified in terms of observable, specific, universal behaviours that could be taught to or assessed in students’ (p. 681). Researchers have attempted to address this problem by developing a variety of methods in order to elicit the conscious and unconscious thought processes that learners engage in as they strategically perform language learning tasks. In this section I highlight some of the methodological issues arising, with specific reference to work that has been carried out in CALL. For a more detailed consideration of methods in studying language learning strategies the reader is referred to O’Malley and Chamot (1990: Chapter 4) and Cohen (1998: Chapter 3).

Typical research methods used in order to investigate learning strategies include class observations, student interviews, questionnaires, journals, talk-aloud and think-aloud protocols. As suggested above, a difficulty with the observation method is that it captures only overt behaviours. A further problem is that it is difficult to know how typical or idiosyncratic a learner’s behaviour is in a particular observed session. In order to address these concerns, it would seem desirable to supplement observational data in some way, for example using verbal reports. Cohen (in Cumming et al., 1994) defines such a verbal report as follows:

Such verbal reports include self-reports, in which the learners describe what they do in generalized statements about their learning behaviour (e.g., ‘I tend to be a speed listener’); self-observation, in which learners inspect their specific language behaviours introspectively or retrospectively (e.g. ‘What I just did was skim through the oral text as I listened, picking out key words and phrases’); self-revelation, in which learners think aloud while they perform a learning task, providing a stream-of-consciousness disclosure of the information they pay attention to (e.g. ‘Who does the “they” refer to here?’; or some combination of these. (Cohen, in Cumming et al., 1994, p. 679)
The purpose of moving beyond self-report into self-observation and self-revelation is to allow the researcher to establish the cognitive processes in play at the precise moment that they occur. Even within the category of self-observation one can distinguish those which involve *immediate retrospection* and those which involve *delayed retrospection* (O'Malley & Chamot, 1990, p. 90). It is thought that *simultaneous introspection*, as with self-revelation, minimizes interference from the conscious mind and gives direct access to the sub-conscious processes at work (Cohen & Hosenfeld, 1981; O'Malley & Chamot, 1990, pp. 90-91).

There are however some difficulties with the implementation of this method. For example, participants may be confused as to what to report, how often to report it, how much to report, and indeed, how such reports should be couched. Accordingly, it is thought necessary to provide participants with training, addressing these issues (Cohen, 1998, p. 52; O'Malley & Chamot, 1990, pp. 91-92). O’Malley and Chamot (1990) comment that ‘the advantages in training are to familiarize informants with the data collection procedures… and to ensure that all informants are using the same verbal report procedure’ (p. 92). Furthermore, in order to ensure that the information provided is sufficiently complete and specific, participants may need to be prompted in the course of their verbal reports. According to Cohen (1998) ‘anyone who has been faced with analyzing transcriptions of *undirected* verbal report protocols has seen how such data are likely to be too general and incomplete’ (p. 51: emphasis in the original). Clearly, training and prompting must be done sensitively in order to achieve the goal of standardization without biasing the results of the verbal reports.

The verbal report method assumes that participants are able to report on unconscious, cognitive processes. However Seliger (1983, p. 189) criticizes this assumption, arguing that conscious verbal reports cannot be taken as direct representations of internal processing. Even if we accept that students are capable of verbalizing psycholinguistic processes, there may be difficulties with the reliability of such verbal reports. Think-aloud procedures (i.e. simultaneous introspection) may interfere with the task to such an extent that the thought processes of the participant are systematically distorted, and the participant uses different strategies in order to cope with the cognitive burden of reporting. For example, Stratman and Hamp-Lyons (1994) found that participants reporting on revision strategies made more...
Furthermore, Brown et al. (1983) suggest that requiring a subject to think about verbalization slows down the processes involved in completing learning tasks. The participant appears to spend additional time thinking about the mechanics of the learning task and this added reflection allows them to contemplate the exact grammatical or pragmatic rules that assisted them in performing the task. As a result, the report may be an elaboration of the unconscious cognitive processes employed. According to Boring (1953, p. 174) it may take up to twenty minutes to report on one and a half seconds of mental processing. What begins as an introspective examination quickly mutates into a retrospective one.

In light of these observations it is clear that the potential of verbal report in identifying language learning strategies must be carefully evaluated. The advantage of this method is that it provides a direct means to study students’ strategic activity, which would not be available otherwise. Researchers can gain valuable insights from verbal report data if they understand the constraints on its production, and design methods and analytical procedures accordingly (Ericsson & Simon, 1980, 1993). The literature suggests that we must be cautious in interpreting verbal reports. Introspection and retrospection do not so much inform about unconscious psycholinguistic processes as they do about the conscious strategic choice of learners engaged in problem-solving tasks. As such, verbal report is better suited to the investigation of metacognitive strategies (requiring conscious planning and organizing), than to cognitive strategies (which are more procedural in nature). It may well be, as Seliger (1983) suggests, that the real value of this method lies in its hypothesis generating ability rather than its hypothesis testing ability. Accordingly, the foregoing considerations must be taken into account when using verbal report for the purposes of studying strategy use in language learning.

In the context of CALL there has been considerable interest in how students use optional resources, for example glossaries, dictionaries, expert help and so forth. Such reference behaviour can be operationalized as evidence of the use of resourcing (Chapelle & Mizuno, 1989; Liou, 2000), a strategy which involves using print or
non-print resources to understand and produce language (Oxford, 1990, p. 44). Unlike studies of corpus consultation, the studies of strategy use in CALL regularly make use of a variety of tracking tools such as computer logs and screenrecordings (e.g. Chapelle & Mizuno, 1989; Liou, 2000; Pujolà, 2002). These studies provide a useful example of methods that can be employed to put tracking tools to use in order to capture the strategic activity of students using technology for language learning purposes. In order to offer an illustration of such relevant research, I focus on two studies in particular: Liou (2000) and Pujolà (2002).

Liou (2000) used a log file to record student activity in a video multimedia lesson designed as a comprehension exercise. Amongst other things, the log detailed when students paused or rewound the video, accessed the English or Chinese script, performed word and idiom searches, requested repetition of the sentence or utterance, or requested gist help (a text summary of the video). Reviewing the log allowed the researchers to review student activity and explain it in terms of resourcing strategies employed to overcome difficulties in comprehension. Liou summarizes the advantages of logging techniques over traditional data collection methods as follows. In essence, logging: 1. is reliable and consistent; 2. records observable learner behaviour; 3. records students performing actual learning tasks, as opposed to hypothesizing about imagined situations (Liou, 2000, p. 67). The concomitant disadvantage of the technique is that the computer is only able to capture certain kinds of data, as specified by the kinds of interactions designed in the CALL program under investigation. Another disadvantage is that logs do not record student explanations of their strategic processes (Liou, 2000, p. 75).

The method employed by Pujolà (2002), outlined below, makes for an interesting comparison, as it substantially addresses these limitations (although in so doing, the high degree of reliability mentioned by Liou (2000) is reduced, for reasons that should become apparent). Pujolà used a variety of techniques to investigate strategy use by students using a web-based multi-media CALL program. The study investigated the kind of optional help that the students accessed, including: ‘Dictionary, Cultural Notes, Transcript, Subtitles and Play Controls, Feedback and an Experts module specifically designed to provide the language learner training component of the program’ (Pujolà, 2002, p. 235).
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Of particular interest here is Pujolà’s use of screenrecording technology to track student activity. Unlike a log, which catalogues specified interactions as and when they occur, screenrecording software captures all activity on the screen and saves it in video format. The fact that more contextual information is captured presents both advantages and disadvantages. The primary advantage is that the recording presents a very clear record of how the student completed the task. Some contextual information is still missing as the recording is limited to the screen only, although there is some software now available which is also able to make a simultaneous digital recording (audio and video) of the student performing the task (e.g. TechSmith, 1995). A major disadvantage is that the procedure is extremely resource hungry (creating large video files) and requires client-side software (i.e. installed on the students’ computer). As a result, it is necessary to invite students to trial the software under test-like conditions. In contrast, standard server-side logs can record web site activity as it occurs ‘in the wild’, which provides a more naturalistic data set (see Section 7.3.3 above and also Section 7.5.2 below for more on server side logging). A second disadvantage is that data obtained using screen recording is less standardized and consistent than data from a log. Therefore, coding procedures must be used in order to categorize and describe the activity of groups of students.

In the study by Pujolà, the screen recorder was used to track students working on the multimedia CALL program. Immediately after the task, students were interviewed about the task in a form of retrospection. By combining observation (the screen recording) and retrospection in this way, the researcher is able to gain access to interesting data that would not be accessible through a log. For example, with regard to items looked up in the dictionary an extensive description of use for each student is created, including the following information: whether students read the whole entry; whether they checked the context; which definition students selected; why they looked up the word; what students did subsequently (Pujolà, 2002, p. 246).

In summary, a review of the literature suggests that in studying strategy use in CALL a combination of traditional methods (e.g. interviews) and computer tracking can be used to effectively judge students’ strategic use of computer resources. Computer tracking can be used as a means of providing observational data. In
addition, students can provide retrospective accounts of their strategy use, provided that the constraints of this method are adequately recognized. Such an approach would considerably enhance the methodological basis of studies in corpus consultation outlined in the previous section.

7.4 Summary

In this chapter I have argued that a broad definition of the term ‘computer-assisted language learning’ should be adopted for the purposes of this thesis, in order to include a range of applications of technology to a range of contexts. I have reviewed a variety of approaches to research in CALL, including basic CALL research, evaluative research and comparative research. In particular, I examined the assumption that findings from evaluative research in CALL may not be generalizable to other contexts, and concluded that nonetheless appropriately framed evaluations of CALL applications can make significant contributions to our understanding of CALL theory. I have outlined the theoretical framework adopted for the empirical study reported on in Chapters 8 to 10, and suggested an appropriate methodological approach. As I have already reviewed, the study is informed by a social constructivist theory of learning, which views the law students in question in this thesis as apprentices to the legal discourse community. In order to explain learner behaviour, the LAWS resources are seen as part of a dynamic learning ecology, and are constructed in terms of the affordances that students perceive and act on. I have suggested that in light of this theoretical framework, an appropriate research methodology for this study is that of qualitative inquiry. Finally I have reviewed methods adopted in studies of corpus consultation and learning strategies in CALL in order to lay the foundations for the development of the detailed research design in the next chapter.
CHAPTER 8

Monitoring learner behaviour in LAWS
Research design

I have argued that for the present evaluative study of online learning behaviour, a qualitative interpretive approach to the research is necessary and appropriate in order to reflect the complexities of the learning context. According to this approach, research is a cyclical process, in which questions are posed, data collected and analyzed, leading iteratively to the formulation of new questions and new analysis. As suggested in the previous chapter, the application of multiple methods and sources of data strengthens the findings of studies in this tradition. In the present chapter, I detail the procedures adopted in the research process. The chapter begins with an overview of research questions and the research design adopted in the empirical study. This is followed by a detailed description of the data collection procedures and analytic methods used. As we shall see, three conceptually distinct studies can be identified for purposes of analysis: these include a general case study of online learner behaviour drawing on data collected from server logs; a focused case study drawing on interviews with students and learning journals; and a user test drawing on screenrecordings of student activity, delayed retrospections by students, and students’ ‘proofreading logs’.

8.1 Research questions and research design

8.1.1 Research questions

The LAWS resources are designed to provide scaffolding for students engaged in authentic legal writing and drafting tasks (Chapter 4). The design is informed by a socio-cultural view of SLA which sees specific purpose language learning as part of a process of legitimate peripheral participation in the legal professional discourse.
community (Chapter 3). Given this background, the evaluative research reported here is guided by the following question for inquiry:

What affordances do students perceive and utilize in the technological resources and do these match the goals and objectives of such student learners in an ongoing and dynamic fashion?

This question underlies and informs the evaluative research as a whole. In the course of investigation, the following more specific questions emerged:

**Question two:** What are students’ preferences in selecting particular online learning activities, affordances and modes of online learning?

**Question three:** What affordances do students perceive in corpus consultation?

  a) In closely-monitored corpus consultation tasks?

  b) In loosely-monitored, independent corpus consultation, for their own purposes and on their own chosen tasks?

**Question four:** What strategies do students employ to exploit corpus tools as an affordance in proofreading legal writing?

**Question five:** How intuitively accessible are concordancing technology, output and methodology in the context of academic and professional practice?

**Question six:** How effectively do concordancing procedures introduced in academic settings dovetail with professional discourse community practices, so that the procedures fostered may extend beyond the academy, as a form of lifelong learning?

In the following sections, I elaborate the research design and methods used to address these questions.

### 8.1.2 The research design

The basic design of this research involved designing, implementing and evaluating a suite of tools and resources for the development of legal writing skills. As such, the
research can be divided into a number of distinct phases. Phase 1: Instructional design; Phase 2: Implementation and data collection (year 1); Phase 3: Preliminary data analysis, feedback and modifications to curriculum; Phase 4: Implementation and data collection (year 2). Phase 5: Final data analysis. The research was cyclical in nature, with preliminary results from the initial evaluations feeding back into changes in design and curriculum. These changes were minor because the design and implementation of the resources was constrained by existing institutional curricula and structures.

The initial instructional design (Phase 1) lasted a little over a year, from March 2004-August 2005. It included meetings and interviews with stakeholders (primarily law students and lecturers) which were conducted as part of a needs analysis. It also included technical development and materials design, carried out by a project team which included language and legal experts at the City University of Hong Kong. During this phase, the team drew on material from a previous project (Candlin & Bhatia, 2002). In Semester A, 2005-2006 the resources were implemented in conjunction with the PCLL Legal Writing and Drafting course (Phase 2). In order to familiarise students with the resources I visited a number of Legal Writing and Drafting lectures and gave a brief demonstration (about 20 mins). Concurrently with the implementation of the resources a programme of large-scale data collection was begun in order to provide evidence for the evaluation of those resources. Both large- and small-scale data collection methods were used, as described below (Section 8.2).

The data was examined (Phase 3) and initial results showed that students tended to make greater use of online tutorials than of the corpus tools provided. As a result of these findings, additional learner training was provided in year two, and the support provided was changed from a 20 minute teacher-fronted demonstration to a 1 hour hands-on tutorial. This change was negotiated with colleagues from the School of Law, including administrators and the co-ordinator of the Legal Writing and Drafting course. In year two, Semester A 2006-2007 further data was collected in order to continue the evaluation (Phase 4). All five phases of the research design and associated activities are summarized in the figure below.
### Figure 8.1 The five phases of the research design

<table>
<thead>
<tr>
<th>Phase</th>
<th>Research activities and data sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Phase 1</strong></td>
<td>Needs analysis</td>
</tr>
<tr>
<td>Instructional design</td>
<td>Meetings and interviews with stakeholders</td>
</tr>
<tr>
<td></td>
<td>Technical design and piloting</td>
</tr>
<tr>
<td></td>
<td>Corpus design</td>
</tr>
<tr>
<td></td>
<td>Materials design</td>
</tr>
<tr>
<td><strong>Phase 2</strong></td>
<td>Demonstration of resources</td>
</tr>
<tr>
<td>Implementation and data collection (year/coh...</td>
<td>General case study (all students)</td>
</tr>
<tr>
<td></td>
<td>Server logs (103 students)</td>
</tr>
<tr>
<td></td>
<td>Background information data (35 students)</td>
</tr>
<tr>
<td></td>
<td>Focused case study (4 students)</td>
</tr>
<tr>
<td></td>
<td>Semi-structured interviews</td>
</tr>
<tr>
<td></td>
<td>Learning journals</td>
</tr>
<tr>
<td></td>
<td>Samples of legal writing</td>
</tr>
<tr>
<td></td>
<td>Course documentation</td>
</tr>
<tr>
<td></td>
<td>Background information data</td>
</tr>
<tr>
<td></td>
<td>User test of corpus tools (4 students)</td>
</tr>
<tr>
<td></td>
<td>Screen recordings</td>
</tr>
<tr>
<td></td>
<td>Proofreading log</td>
</tr>
<tr>
<td></td>
<td>Delayed retrospection</td>
</tr>
<tr>
<td></td>
<td>Background information data</td>
</tr>
<tr>
<td><strong>Phase 3</strong></td>
<td>Data analysis</td>
</tr>
<tr>
<td>Preliminary data analysis</td>
<td>Reflection and feedback</td>
</tr>
<tr>
<td></td>
<td>Revision of curriculum, instructional practice</td>
</tr>
<tr>
<td><strong>Phase 4</strong></td>
<td>Demonstration and learner training of resources</td>
</tr>
<tr>
<td>Implementation and data collection (year/coh...</td>
<td>General case study (all students)</td>
</tr>
<tr>
<td></td>
<td>Server logs (91 students)</td>
</tr>
<tr>
<td></td>
<td>Background information data (61 students)</td>
</tr>
<tr>
<td></td>
<td>Focused case study (5 students)</td>
</tr>
<tr>
<td></td>
<td>Semi-structured interviews</td>
</tr>
<tr>
<td></td>
<td>Samples of legal writing</td>
</tr>
<tr>
<td></td>
<td>Course documentation</td>
</tr>
<tr>
<td></td>
<td>Background information data</td>
</tr>
<tr>
<td><strong>Phase 5</strong></td>
<td>Coding of interviews, journals</td>
</tr>
<tr>
<td>Final data analysis</td>
<td>Analysis of logs</td>
</tr>
</tbody>
</table>
As evident in Figure 8.1 above, there was considerable interaction with the research site in the process of carrying out this research. The LAWS resources were developed in response to the needs of students and lecturers at the School of Law and directions for research were informed by practice in this pedagogical context. At the same time, research findings fed back into instructional practices, and this led to modifications in the orientation of the research. My own involvement as a lawyer-linguist teaching on the Legal Writing and Drafting course facilitated this process considerably. Analysis was informed by the perspectives of other lawyers with whom I was working, and I was also able to draw on my own knowledge as community insider.

8.2 Data collection and methods

In evaluating the LAWS resources, data was collected from multiple sources, using a variety of different techniques, as illustrated by Figure 8.1. The figure also shows that data was collected in two distinct phases (cohorts 1 and 2) and using both large- and small-scale techniques (e.g. server logs compared with focus interviews). Collecting data from multiple sources over a lengthy period of time in this way makes it possible to provide a rich description of students’ online learning behaviour (see Chapter 7). As we shall see, the procedures adopted (e.g. semi-structured interviews) were designed in such a way that student usage of the resources could be situated in the context of the broader learning environment. The aim was to explore how students perceived and utilized the LAWS resources as an affordance for learning professional legal writing skills, and the extent to which this was integrated with existing legal writing tools and practices. In this section, I provide details about the selection of participants, the sources of data that were accessed and explain the methods used for the collection and analysis of data.

8.2.1 Participants

General case study

Upon registering for the LAWS web site all students were informed that their activity could be electronically tracked and the data used as part of an ongoing research project. Extensive logs of student activity were kept, relating to their access
to the site, their use of quizzes, their use of the corpus tools, and their use of the MS Word download. Students had their own individual account, and each was required to log on at the beginning of each session. As a result, it was possible to distinguish among individual student accounts (and therefore presumably students), if desired. Students were self-selected, being those that wished to use the resource. Student identity was protected by assigning participant identity numbers (e.g. S1, S2), and by reporting all findings in de-identified form, focusing on large groups and trends only.

In addition to the data mentioned above, a small amount of student background information was collected using a short questionnaire. The questionnaire, based on one designed by Payne, Lee and Sharma (2005), asked students to report their IELTS score and self-assess their proficiency in English language, computer skills and web searching ability (see Appendix C4). In year one, the questionnaire was administered manually, but in year two it was administered electronically as part of the registration process for the web site. The background information data obtained in this way was cleaned to remove results which appeared implausible or intentionally silly, for example where a student reported a high IELTS score but rated their English proficiency 1 out of 10 (Dörnyei, 2003, p. 105). Figure 8.2 summarizes the self-reported proficiency ratings for the two cohorts.

**Figure 8.2 Participants’ mean self-reported proficiency ratings by cohort (general case study)**

<table>
<thead>
<tr>
<th>Mean results by cohort</th>
<th>IELTS&lt;sup&gt;a&lt;/sup&gt;</th>
<th>English proficiency&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Computer proficiency&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Search engine proficiency&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>cohort 1 (68 responses)</td>
<td>7.8</td>
<td>8.0</td>
<td>6.8</td>
<td>6.6</td>
</tr>
<tr>
<td>cohort 2 (88 responses)</td>
<td>7.3</td>
<td>7.6</td>
<td>6.9</td>
<td>6.7</td>
</tr>
</tbody>
</table>

<sup>a</sup> Self-reported IELTS score out of 9  
<sup>b</sup> Self-assessment out of 10

Little difference was observed between the two cohorts, although the second cohort recorded slightly lower mean IELTS scores and self-reported ratings of English proficiency. Note that this comparison should be treated with some caution as the data were collected using slightly different methods – one using a paper-based questionnaire, the other an electronic questionnaire.
Chapter 8: Monitoring learner behaviour: Research design

Focused case study
In order to gain deeper insights into student attitudes towards the LAWS resources and perceptions of the learning environment, two related qualitative studies were carried out. In year one, students from my Legal Writing and Drafting tutorial classes were invited to volunteer for a longitudinal case study of their use of LAWS in the context of their legal writing practices. The aim of this longitudinal study was to gain a deep understanding of student practice. For this reason, I felt that it was appropriate to select students from my own classes. The additional contact that I had with the students as their teacher allowed me to gain insights into their motivations and practice that I might not have had access to in my capacity as researcher. In the event, four out of 20 students volunteered to take part in the longitudinal case study. Although this group cannot be said to be representative of the cohort as a whole, nevertheless it provided an interesting range of ages, language and computer ability, educational and professional backgrounds.

In year two, an additional five students were interviewed for comparative purposes. These interviews focused especially on the use of the corpus tools by students. This time there was no attempt to monitor students’ progress over the course of the semester. Logging data were reviewed late in the semester and a number of students were identified as potentially interesting participants for interview (based on amount of concordancing activity, both in the training session and independently during the semester). Students were contacted towards the end of the semester and invited to an interview. Again, students volunteered to take part. Only one of the students in this study was in my Legal Writing and Drafting class. While the initial case study sought to explore the possible role of the LAWS resources in broader patterns of student behaviour, this study focused particularly on student use of the concordancer, such use explained by the students themselves.

Students participating filled out a background questionnaire similar to the one used for the general case study (see Appendix C3). Of the nine participants in these focused case studies, five were women and four were men, ranging in age from the low twenties to over forty years of age. As one would expect, the participants in these focused case studies were all highly educated, with two thirds of them holding at least two tertiary qualifications. Six of the participants had been overseas for some
part of their education, to places like New Zealand, Australia, Canada and the UK. However, all of the participants identified Cantonese as their first language, and typically listed English and Mandarin under ‘other languages spoken’. The majority of the participants (7) had had some kind of law-related work experience, and roughly half of them (5) had had full time work experience in some occupation or another. Such a profile is typical of students in the PCLL program, including as it does students from quite diverse backgrounds, many of whom are already accomplished professionals in their own field.

In general, participants in the second cohort interviews reported greater confidence with using computers, greater experience of computer use, and a greater range of web-searching strategies (which we might take as an indicator of their familiarity with search engines in general). These students had been selected because their logs of concordancer access were high. It is therefore perhaps not surprising that these students were overall relatively confident in using computers. Figure 8.3 below summarizes students’ self-reported proficiency ratings for the two groups:

<table>
<thead>
<tr>
<th>Mean results by cohorta</th>
<th>IELTSb</th>
<th>English proficiencyc</th>
<th>Computer proficiencyc</th>
<th>Search engine proficiencyc</th>
</tr>
</thead>
<tbody>
<tr>
<td>cohort 1 (case study)</td>
<td>7.9 (7.8)</td>
<td>7.8 (8.0)</td>
<td>5.8 (6.8)</td>
<td>6.5 (6.6)</td>
</tr>
<tr>
<td>cohort 2 (interviews)</td>
<td>7.6 (7.3)</td>
<td>7.6 (7.6)</td>
<td>8.0 (6.9)</td>
<td>8.4 (6.7)</td>
</tr>
</tbody>
</table>

a Results from the entire cohort (large scale questionnaire) are in brackets
b Self-reported IELTS score out of 9
c Self-assessment out of 10

As evidenced by Figure 8.3, there is a marked difference in how participants from the two small-scale studies rate their abilities with computers and search engines, with the second group on average displaying far more confidence. On average this latter group was also more confident than other members of their cohort. On the other hand, participants in the first cohort case study rated themselves low in computer proficiency and web searching proficiency, even compared to other students from their cohort.
Furthermore, when participants were asked about their habitual computer search strategies, participants from the second cohort reported greater frequency of use and, on the face of it, made use of more varied strategies. Figure 8.4 summarizes their answers to the background questionnaire.

**Figure 8.4 Students’ reported computer use habits**

<table>
<thead>
<tr>
<th>Question</th>
<th>First cohort (case study)</th>
<th>Second cohort (interviews)</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>On average, how often do you use a search engine to search the internet?</td>
<td>0</td>
<td>0</td>
<td>Once a week</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>More than once a week but less than once a day</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>Once a day</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>More than once a day</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>On average during term time, how often do you search a legal database?</td>
<td>2</td>
<td>2</td>
<td>Once a week</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>3</td>
<td>More than once a week but less than once a day</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>Once a day</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>More than once a day</td>
</tr>
<tr>
<td>How do you use search engines (for the internet and legal databases)?</td>
<td>I use simple searches with a few search terms to find information</td>
<td>I use advanced functions to combine words and terms to narrow or widen a search</td>
<td>First cohort (case study)</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

Figure 8.4 shows that the two groups report approximately the same amount of use of searching legal databases. However the second group tends to search the internet more often. In addition, three out of the five students in the second group report using advanced functions, combining words and terms when searching for information on the internet, compared with none from the first group. At a glance it appears that this group has evolved more sophisticated strategies for searching the internet.

Taken as a whole, the two groups comprise a range of individuals of varying ability and confidence. As such, the perspectives offered by participants afford considerable insight into general issues relating to the use of the LAWS resources in this context.
Ethical considerations
Similar ethical considerations applied to the collection of data as described earlier, in Section 5.5.1. Following the precepts of the Macquarie University Ethics Committee, informed consent was obtained from students participating in the case studies described here (see Appendix E). Participants were informed of the aims of the study, the extent of their commitment, possible benefits to them, steps that would be taken to protect their identity in publications, that they could withdraw from the study in future, and that participation would have no effect, positive or negative, on their grades for the course.

8.2.2 Data sources and methods
In this section I describe the methods used to collect and analyze the data described above. The section is divided into three main parts: general case study; focused case studies, user test.

General case study
The primary source of data for the general case study was the computer logs, which recorded student online activity. Logging student online activity amounts to an unobtrusive observation of students performing online learning tasks. In the present study a server-side log of student online activity was kept, as summarized below:

Figure 8.5 Summary of data collected through log files

- Access log: User account name, Date and time accessed, Web page accessed (url)
- Quiz access logs: User account name, Date and time accessed, Correct or incorrect, Number of attempts, Feedback requested
- Concordance access log: User account name, Date and time accessed, Referring page, Search query, Corpus or sub corpus searched
- MS Word access log: User account name, Date and time LAWS accessed from MS Word, Name of document, Time of first and last visit
Note that for the purpose of this study, attention was focused on the access log, concordancer access log, and quiz access logs.

The use of computer logs as tracking tools has been discussed in Chapter 7: I review here the methodological issues as they relate to server-side logs like the ones used in this general case study. The principal limitations of such logs are two-fold. Firstly, it is not possible to discern important contextual information relating to how the student is using the resources. On their own or in collaboration? In combination with other resources or stand-alone? Secondly, the logs record no information regarding students’ goals and motivations. While some limited inferences can perhaps be made, other methods such as user testing, user surveys and focus interviews are better suited to investigating the rationale for patterns of usage in greater depth (Anderson, Willard, Creech, & Bakker, 2001, p. 23).

It is instructive to review the process that leads to the generation of a server-side log file. The following summary is a useful starting point:

If users follow a link to a home page, their browser will send a request to the server hosting the page asking for the page in question. If the page contains graphics, separate requests are sent to the server for each graphic file. If users navigate to other pages, new requests are sent to the server for each page and each graphic. Each request sent to the server is recorded in a log file. (Anderson et al., 2001, p. 9)

Importantly, the server-side log file consists of requests for information concerning web pages stored on the server. Anderson et al. draw a distinction between a ‘hit’ and a ‘page request’, where a hit is a single request for information, such as a graphic, and a page request is ‘any collection of hits that successfully retrieve content (i.e., a single web page viewed)’ (Anderson et al., 2001, p. 33). Because of this distinction, server logs typically require considerable processing before they can be analyzed in a systematic manner to reflect the user experience.

The process of data analysis that was followed in the present study was similar to the process adopted in exploratory data mining studies of web usage. Data mining of the web, also referred to as web mining, has been defined as ‘the process of discovering
actionable and meaningful patterns, profiles and trends by sifting through your (website’s) data using pattern recognition technologies such as neural networks and machine-learning and genetic algorithms’ (Mena, 1999, p. 42). Such web-mining has the potential to provide detailed information about how students use e-learning resources, including: which resources students use, whether students access the resources in the manner expected, which students access which resources (see Romero & Ventura, 2006 for an interesting collection exploring the potential of data mining in e-learning). In the current study principles of web-mining were only broadly applied, as there was no automated pattern recognition phase (instead, the exploratory data analysis was performed manually). Nevertheless, the web mining literature was a useful source of information for the method developed in the current study. The process of data mining is typically divided into three stages, which were applied in this study: 1. Data pre-processing; 2. Pattern recognition; 3. Pattern analysis (Cooley, Mobasher, & Srivastava, 1997; Srivastava, Cooley, Deshpande, & Tan, 2000).

**Data pre-processing**
According to Srivastava et al. ‘pre-processing consists of converting the usage, content, and structure information contained in the various available data sources into the data abstractions necessary for pattern discovery’ (2000, p. 14). In other words, the data is converted to a format that will allow for investigation using statistical tools (in this case, I used Microsoft Excel and SPSS). Cooley et al. (1997) identify three different kinds of data pre-processing. They are data cleaning, user identification and transaction identification.

In the data cleaning stage, the aim is to eliminate irrelevant entries from the server log. In this study any entry that did not reference a live student account was deleted from the server log. These included ‘anonymous’ entries, presumed to be web-crawlers or bots, administrator accounts, developmental test accounts, guest accounts, and designated user testing accounts. Furthermore, any activity that was known to occur as part of either a training session or an interview was also removed. The aim was to focus the investigation on independent student web usage.
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The reader will recall that a number of different log files (access, concordancer access and quiz logs) were created for the purposes of this study. Each had to be pre-processed in a slightly different manner. Of these, the access log required the most cleaning. The aim was to interpret the log so that data in the log represented actual page views by the user. The following kinds of data were considered to be uninteresting and removed from the access log: incomplete urls, invalid urls, urls representing error messages, urls representing quiz interactions (a separate log was kept for quiz activity). Frequently it was difficult to interpret data, for example because a url was incomplete or unrecognizable. In such a situation, the item was interpreted in light of surrounding user behaviour, and the behaviour was replicated if possible in order to understand what the access log referred to. This procedure aided interpretation considerably.

An example of raw data is provided below:

An example of raw data is provided below:

<table>
<thead>
<tr>
<th>Occurrence</th>
<th>Date and time</th>
<th>User</th>
<th>URL</th>
</tr>
</thead>
<tbody>
<tr>
<td>48218</td>
<td>2005-09-18 17:05:49</td>
<td>Anonymous</td>
<td>Login/index</td>
</tr>
<tr>
<td>48219</td>
<td>2005-09-18 17:06:13</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Professional_writing.html</td>
</tr>
<tr>
<td>48220</td>
<td>2005-09-18 17:06:16</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Letter_of_advice.html</td>
</tr>
<tr>
<td>48221</td>
<td>2005-09-18 17:06:20</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Learning_plan/LA_Learning_plan.html</td>
</tr>
<tr>
<td>48222</td>
<td>2005-09-18 17:06:23</td>
<td>xxyxyxyxy</td>
<td>test/quizGetCache</td>
</tr>
<tr>
<td>48223</td>
<td>2005-09-18 17:06:24</td>
<td>xxyxyxyxy</td>
<td>test/startLog</td>
</tr>
<tr>
<td>48224</td>
<td>2005-09-18 17:06:41</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Planning_revising/LA_Planning_revising.html</td>
</tr>
<tr>
<td>48225</td>
<td>2005-09-18 17:07:04</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Planning_revising/LA_pr_prewriting.html</td>
</tr>
<tr>
<td>48226</td>
<td>2005-09-18 17:09:27</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Planning_revising/LA_pr_postwriting.html</td>
</tr>
<tr>
<td>48227</td>
<td>2005-09-18 17:09:50</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Audience_purpose/LA_audience_purpose.html</td>
</tr>
<tr>
<td>48228</td>
<td>2005-09-18 17:10:05</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Audience_purpose/LA_ap_language.html</td>
</tr>
<tr>
<td>48229</td>
<td>2005-09-18 17:10:12</td>
<td>xxyxyxyxy</td>
<td>publish/Prof_writing/Letters/Audience_purpose/LA_ap_lan_formalregister.html</td>
</tr>
<tr>
<td>48230</td>
<td>2005-09-18 17:10:14</td>
<td>xxyxyxyxy</td>
<td>test/quizGetCache</td>
</tr>
<tr>
<td>48231</td>
<td>2005-09-18 17:10:16</td>
<td>xxyxyxyxy</td>
<td>test/startLog</td>
</tr>
</tbody>
</table>

This extract from the log shows approximately 5 minutes of online activity by one single user. The student’s ID number has been deleted and replaced with xxyxyxyxy. Note that the page request at the login page is recorded as ‘Anonymous’ because
users cannot be identified before they have logged in. Subsequently the log records the path which the user has taken through the online materials and also records some quiz activity (e.g. occurrences 48222, 48230: test/quizGetCache). As mentioned above, the anonymous entries and entries related to quiz routines were cleaned from the file.

Subsequently, the remaining access urls were categorized according to their intended use (Srivastava et al., 2000, p. 14). This was a relatively simple procedure – each web page could be assigned to a particular genre or skill focus (see the conceptual design in Chapter 4). For example, the following url was assigned the tags below, so that similar web pages could be grouped for analysis:

<table>
<thead>
<tr>
<th>URL</th>
<th>publish/Prof_writing/Letters/Structure/LA_Structure.html</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Base url</th>
<th>Skill focus</th>
<th>Genre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letters/structure</td>
<td>structure</td>
<td>letter of advice</td>
</tr>
</tbody>
</table>

The tags assigned allowed this web page to be identified as belonging to the category of genre ‘letter of advice’ or skill focus ‘structure’ or if a finer analysis was required, skill focus ‘structure’ within genre ‘letter of advice’. The tags were adapted slightly for resources like the concordancer which did not fit the classification scheme exactly. These tags were used to generate summary usage patterns related to the genre or skill focus of pages viewed. A similar procedure was followed in preprocessing the concordancer access log, where searches were classed according to their focus on lexical phrases or their focus on legal documents.

For the purposes of this study user identification posed no great problem. Students were required to create user accounts and were required to login in order to access the materials. As already noted, this allowed individual students to be associated with a particular session of online activity. A potential disadvantage of this technique however, is that access to the web site becomes more difficult, and this in turn can have an effect on the overall web usage. This limitation was considered to be minor, especially considering the limited application of tracking techniques in studies of corpus consultation (see Chapter 7).
A further pre-processing task is the identification of transactions in the server logs. The most convenient transaction to identify is a user session, which refers to ‘all of the page references made by a user during a single visit to a site’ (Cooley et al., 1997, n.p.). Identifying sessions can provide information about how long students spend browsing the web site and how many visits they make, where they enter and exit the site and so forth. Therefore, collected page views were coded with session ID numbers. However, because users often leave the LAWS web site running while attending to some other task, and because this is how it is intended to be used, it is difficult to establish session boundaries. It was therefore decided to follow convention, and adopt a 30 minute time-out rule for the purposes of analysis (Catledge & Pitkow, 1995; Srivastava et al., 2000). Wherever there was a break of longer than 30 minutes between page views, the time-out rule was applied and a new session was started.

For the purposes of this study, the session data was used to perform basic path analysis, having regard to students’ destination page, and the number of topics that students initiated during each session.

Pattern recognition and pattern analysis
Stages two and three consisted of a phase of exploratory data analysis where different relationships were hypothesized and tested in the data. Expected patterns of behaviour were based upon my understanding of the learning environment, conversations with students or understanding of relevant literature. Patterns were then confirmed or disconfirmed and in the course of this analysis other patterns of behaviour were noticed as well. Once patterns of behaviour had been recognized in the data, it was necessary to go through a process of pattern analysis, consisting of the selection and evaluation of significant patterns, again based on my understanding of the learning context.

An initial problem in pattern recognition is identifying an appropriate unit of analysis by which to measure student behaviour. An obvious candidate is the number of page requests recorded in a given period of time, based on the assumption that a
higher number of page requests reflects a greater affordance provided by that page. However, the number of page requests can be inflated by a small number of very enthusiastic users who bias the results in unpredictable ways. Furthermore, the measure actually depends on the way in which information is distributed throughout a web site. If information is presented on one very long page, then it can all be accessed with one single page request. However, if the same information is broken down and spread across a number of shorter pages then the user must access all of the shorter pages in order to access all the information. Depending on the mode of presentation, a user would record either one single page request or several page requests.

In the present study, the aim was to compare usage of different sections of the LAWS web site, some of which had been composed as a single page (such as the Example) and some as a series of short pages (e.g. the Language section). Using the measure of page requests would have had the effect of biasing the outcome according to the design of the resources.

As a result, the measure adopted was the number of unique users accessing a particular page or section at a given time. This measure tells us how many students have perceived an affordance in the resource in question at least once. Using this measure, a user’s activity is counted once only, and as a result it is not possible for individual users to bias the results in the way that they can with page requests. Comparing the usage of different sections of a web site is a matter of comparing how many users visited each section. Therefore the issue of information structure raised above does not arise. However, this measure does not account for return visits and so tells us little about whether users perceived an affordance on an ongoing basis. (One way to obtain information about return visits is to refer to the number of sessions a user records). Nevertheless, the measure of number of unique users appears to offer a more reliable means to compare different sections of a web site than the measure of page requests.

Thus, for summary purposes the number of page views could be referred to. However, for comparative purposes, including comparisons over time and between cohorts, it was necessary either to combine the measure of number of page views
with the measure of number of unique users, or simply refer to the number of unique users visiting the web site and utilizing different affordances.

Another data source which can be drawn on in the pattern recognition and analysis phase of web mining is background information about the users of the web site. Such information can be extremely informative as one may notice relationships between certain background characteristics (e.g. high language proficiency, low language proficiency, frequent users, infrequent users) and preferred resources (e.g. corpus tools, example pages etc.).

**Focused case studies**

The primary data source used in the focused case studies was learning journals and focus interviews. Learning journals and focus interviews can provide a useful research tool to provide an account of the learning experience where direct observation is not possible. Journals are qualitatively different to interviews because the student generally has more time to reflect. By contrast, in an interview, the researcher can probe for more information and follow interesting leads. In the present context journals and interviews were used for the focused case studies, in order to elicit accounts of students’ legal writing practice with a specific focus on the LAWS resources.

The year one case study was a longitudinal case study with four students. These students were followed over a period of roughly four months. The students kept a learning journal, attended a briefing session about the LAWS resources (including training about how to use the corpus tools) and were subsequently interviewed every 4 to 6 weeks about their experience of using LAWS in their legal writing.

The students were provided with a template to focus their learning journals (Appendix H). The purpose was to elicit a narrative of students’ legal writing practice and how this related to the LAWS resources. Students were instructed to allow 20-30 minutes per week for writing learning journals. However, because of the demands of their course, students only managed to complete learning journals about once a month.
Chapter 8: Monitoring learner behaviour: Research design

In year one, I met with students approximately every 4 to 6 weeks to conduct focus interviews. The interviews were semi-structured, with two participants in each interview. The questions for interview are attached in Appendix G3. The purpose of these focus interviews was to expand on the narratives provided in the learning journals and explore how participants in the case study were making use of the LAWS resources.

The year two case study included 5 carefully selected participants who were interviewed once only (three individually, one group of two). The interview focused on the corpus tools as an affordance, while seeking to compare the practice and attitudes of students from one year to the next. In order to facilitate a comparison between groups, students were asked to comment on quotes taken from participants in the previous year’s case study. The interview questions and prompts used for these interviews are reproduced in Appendix G4.

![Figure 8.7 Identifying and organizing themes in qualitative data](image)
The approach taken to data analysis was data-driven, aiming to explore the key issues arising in the journals and interviews. All interviews were audio- and video-recorded and interview data was transcribed. The data was analyzed using qualitative data analysis software (QSR NVivo (QSR International, 2006)). The coding process can be illustrated as in Figure 8.7, above. As illustrated in the figure, all data were coded according to themes which emerged during the transcription and in multiple readings of the data. Once the initial coding was completed the themes were examined, where redundancies were noted themes were merged, and finally themes were grouped according to conceptual categories.

In the final report, conceptual categories were confirmed by combining with observation data (e.g. from logs and screenrecordings) in order to ensure greater reliability.

**User test**

Initial findings from the case study and logs demonstrated that student usage of the LAWS corpus tools was disappointingly low, yet suggested no clear reason for this low use. More precise information was required about the potential of the corpus tools to be applied as envisaged in the present context. As a result, a user test (similar to the user walkthrough procedure described in Hémard, 2003) was designed to understand in detail students’ strategic use of the corpus tools when performing proofreading tasks. This user test involved the four students who took part in cohort one of the focused case study (see Section 8.2.1 for a description of the selection procedure). The user test was conducted at the conclusion of the case study, at the beginning of semester B, 2005-2006 (see Figure 8.1). The reader will recall that students were expected to independently refer to the corpus tools in the ordinary course of their legal studies, in particular when they encountered difficulty with their legal writing and drafting. Such a use of corpus output as an assistance in proofreading written work may be constructed as a metacognitive strategy, with the student engaged in monitoring their language output (O'Malley & Chamot, 1990). As such it is interesting to investigate in detail the strategies that students employ to exploit corpus tools as an affordance in proofreading.
With the exception of Sun (2003), previous studies of students proofreading with reference to corpus tools have tended not to focus in detail on this strategic aspect. Rather, they have sought to evaluate the effectiveness of the corpus consultation task, for example by classifying errors according to linguistic category and evaluating whether such errors could have been corrected using traditional means or not (Chambers & O'Sullivan, 2004). Such an analysis provides useful insights into the potential uses of corpus consultation in proofreading tasks but does not attempt to describe in detail how learners approach this task, nor the particular affordances that learners perceive at various stages in the process. Sun’s (2003) study provides a more detailed description of the processes involved in corpus consultation and serves as a valuable point of departure for more focused research in this area. However, as noted earlier (Chapter 7) the study describes a scaffolded interaction, where the learners concerned are guided through the task by ‘teacher interventions’. It would be of fundamental interest to understand how learners manage the task in an unassisted context. Thus, the user test designed as part of this case study sought to explore in detail the strategic processes undertaken by students independently searching the corpus with the purpose of retrieving concordance output to facilitate the correction of errors in their legal writing.

There were two main parts to the user test: an observed laboratory session, and delayed retrospection by the student (O'Malley & Chamot, 1990, p. 90). During the laboratory session students completed three corpus consultation tasks, ranging from convergent gap-fill tasks to a divergent proof-reading task. All of the on-screen activity was recorded using a screen recording program (Autoscreenrecorder (Wisdom-soft, 2005)). During the delayed retrospection session students were required to introspect with reference to the screen recordings. As mentioned earlier (Chapter 7, Section 7.3.4), the delayed retrospection method has a number of advantages over similar methods such as the think-aloud protocol. In particular, it intrudes less into the task, yet nevertheless provides an additional source of data about students’ strategic action. The disadvantage of the method is that it lacks immediacy and consequently students may not be able to provide a detailed account of their actions and rationale at a given moment in time.
Chapter 8: Monitoring learner behaviour: Research design

The laboratory session was one hour long, divided into a 10 minute orientation, 10 minutes for task 1 (collocation gap-fill task), 10 minutes for task 2 (paragraph gap-fill task) and 30 minutes for task 3 (proof-reading task). All of these tasks were completed on the computer. Samples of the tasks are provided in Appendix I. The aim of observing students working on gap-fill tasks was to ascertain whether students were able to manipulate the corpus tools technically. By contrast, it was hoped that observing the students working on a proofreading task would provide insight into the strategies that students employ when using the corpus tools independently, to proof-read their legal writing assignments.

Tasks 1 and 2 (gap-fill) were constructed with specific searches and specific responses in mind. Students were instructed to continue searching the corpus until they had found the exact word or phrase that the task called for. For task 1, students were instructed that they must use the corpus tools. For task 2, students were given an option to attempt the task unassisted, identify the prompts they needed assistance with and then refer to the corpus tools at that point.

Task 3 (proofreading) drew on examples of the students’ own legal writing. Areas of the text that contained errors were highlighted using Microsoft Word. As far as possible, the highlighting was done in such a manner as to identify a portion of the text but still challenge the student to find the lexical or grammatical problem. The portion of text highlighted ranged from a lexical phrase to a full clause including subject, verb and complement, depending on the nature of the error. Each error was numbered, for reference purposes, as in the example below:

**Figure 8.8 Example of a highlighted error in proofreading task**

```
I have enclosed the retainer letter setting out the basis that our firm can work for ESE in this case. [1] We appreciate that you can arrange [2] the signing and returning this retainer letter to us at your earliest convenience.
```

(S3, Annotated proofreading task, User test)

Students were then instructed to proofread the text and were given the option of referring to the corpus tools for assistance. Students made their corrections by
editing the Word file. As they proofread, students filled out a paper ‘proofreading log’ (see Figure 8.9) which provided supplementary information about whether they found the searches that they did helpful to their proofreading or not. Students simply ticked the appropriate column before continuing their proofreading.

**Figure 8.9 Proofreading log template (extract)**

<table>
<thead>
<tr>
<th>Passage</th>
<th>The concordancer helped me to correct an error</th>
<th>The concordancer was not helpful and I moved on to another error</th>
<th>The concordancer was not helpful but it was a simple error so I corrected it anyway</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

After the laboratory session the screen recordings were reviewed and annotated using specialized qualitative data analysis software for video recordings (Transana (Fassnacht & Woods, 2002)). The aim was to arrive at a preliminary analysis of student strategy use which would inform the delayed retrospections. The delayed retrospections took place one week after the original laboratory sessions and varied in length from 59 minutes to 74 minutes. These sessions were audio-recorded, video-recorded and subsequently transcribed. At the beginning of the sessions the delayed retrospection procedure was modelled to students. Students were shown the screen recordings of their laboratory session task and were asked to reflect on it as it unfolded, describing what they were doing and why. Students who found the retrospection task difficult and were unable to provide a consistent quality of self-report were prompted in order to facilitate the process (see Chapter 7, Section 7.3.4 for a full discussion of issues related to this procedure). Because of time constraints, students were asked to comment on selected extracts from the screen recording, rather than the recording in its entirety. This method provided a useful stimulus for reflection on the strategic choices made by students in their use of the corpus tools as an affordance to correcting their written work.

The data collected was analyzed according to the kind of changes that students made in proofreading their work. Every error identified was categorized based on whether the student had made a change or not, whether the change had resulted in
improvement, and whether the student had found the corpus tools to be helpful in making a change. Furthermore, specifiable observable behaviours were also recorded, based on the screen recordings (for example, whether or not the student’s search disclosed that the target language error had been correctly identified). These categories provided an initial structure within which to sort and analyze the data. A number of interesting cases emerged through this initial analysis which called for detailed study by reference to the screen recordings and transcripts of delayed retrospections. In addition to this analytical strategy, the entire corpus of delayed retrospections was thoroughly analyzed with reference to the screen recordings in order to reconstruct as much as possible the strategic process that students had employed in the course of completing the task. This analysis was conducted using qualitative data analysis software (QSR NVivo (QSR International, 2006)), coding and grouping emerging themes into conceptual categories (see above: Focused case studies). The results of these two analytical methods were compared in order to increase the reliability of findings.

8.3 Summary

In this chapter I have outlined the research questions motivating the empirical study of student online learning behaviour. I have provided an outline of the data sources referred to in the evaluation of the LAWS resources and described the methods used for the case study and user test.
CHAPTER 9

Monitoring online learning behaviour

Results

In the present chapter, I report students’ online usage patterns, relating students’ online behaviour to the legal writing and drafting tasks that they are engaged in. Here, I draw on data from both general and focused case studies and rely on server logs, student learning journals and interviews with students (refer to Chapter 8, Figure 8.1 for an overview of the research design and data sources). The primary question under investigation is:

*Question two:* What are students’ preferences in selecting particular online learning activities, affordances and modes of online learning?

The study reported on in this chapter aims to establish, record, and understand students’ online usage patterns, in order to appreciate how students exploited the LAWS resources to achieve their goals. The study explores a number of dimensions related to learner behaviour in the online environment:

1. Patterns of access over time
2. Preferred online learning activities of students
   a. Activities/tasks selected/focused on
   b. Genres selected/focused on
   c. Skills and competencies (defined below) selected/focused on
3. Preferred learning path/browsing behaviour (goal-directed/exploratory)
4. Student background

In order to explore these dimensions, two principal kinds of data have been collected. The first provides information directly related to the online behaviour of
students, for example tracking data in server logs, or screenrecordings of students performing online learning tasks. This data is used to answer the question ‘how do students behave in the online learning environment?’ The second kind of data collected acts as necessary background information in order to aid in the interpretation of the primary data, and consists of course documentation, case study interviews, student journals, or the results of background information questionnaires. This data provides further insights, especially into the question ‘why do students behave as they do in the online environment?’

The reader will recall that data from two separate cohorts were investigated, after a change in instructional strategy, informed by the first phase of data collection and analysis (see Chapter 8, Section 8.1.2). Preliminary results at this stage indicated that students tended to make greater use of online tutorials than of the corpus tools provided on the web site. As a result of these findings, additional learner training with respect to the corpus tools was provided to students in year two of the study. This included the addition of a hands-on session to train students in the use of the corpus tools. The impact of this change can be evaluated by comparing students’ selection of online tools and resources from one year to the next. It is further evaluated in Chapter 10 by investigating in detail students’ use of the corpus tools.

9.1 Variation in access patterns over time

9.1.1 Findings from server logs

Considering that the LAWS resource is a voluntary self-access resource, it is interesting to observe trends in access patterns by students over time. This gives an indication of whether interest in the resource is sustained over the course of the semester, or whether other pressures and demands on student time detract from accessing the resource.

It is further interesting to compare access patterns over time from one year to the next. As mentioned above (see also Chapter 8, Section 8.1.2), there was a significant change of emphasis in the learner training for LAWS from year 1 to year 2. In summary, the learner training was expanded from a 20 minute teacher-fronted
demonstration as part of a regular lecture to a one-hour hands-on computer laboratory session, in which students attempted a number of tasks using corpus consultation techniques. It is therefore instructive to consider whether students in the first and second cohorts showed any differences in their access patterns, which could be attributed to this change. Figure 9.1 compares general access patterns, documenting the number of page views over time for each cohort.

The overall access pattern for both cohorts is similar: both begin with relatively high levels of access in September, which declines markedly by the month of December when it reaches a low. This is likely to be because students are studying for examinations in other non-skills-based subjects at this time. For both cohorts, levels of access to the resources pick up (dramatically in the case of the first cohort) by mid January, when a document writing assignment became due. The late surge of interest seen in the usage of the resources for the first cohort did not occur to the same extent in the second cohort. This difference was unforeseen but can be explained by the different manner in which the resources were presented to students from year to year. While the resources were still under development in year one, new material was released in January and students were informed of this development by email. No such reminder email was sent in year two. The email, which highlighted the relevance of the resources for an upcoming assignment in the Legal Writing and
Drafting course, appears to have had considerable success in exciting students’ attention. Most page views recorded after the email was sent were to the particular section of the resources (‘Documents’) referred to in the email. The email was sent on Monday January 4, 9:53 am and on the same day 18 students decided to visit the Documents section, the first one at 10:19 am. Prior to this, no student had accessed the resources for almost 4 days, and no student had accessed the Documents section since week 8.

We can also see from the comparison above that there appears to have initially been significantly greater activity in the second cohort than in the first. This could be explained by the change in learner training referred to, which appears to have led to greater active experimentation with the resources among students. However, we must be cautious when considering only the number of page views recorded as this measure can be skewed by a small number of very active students. It is therefore instructive to view the number of individual students who visited the resources each month. These data are summarized in Figure 9.2:

**Figure 9.2 Number of individual students per month for each cohort**

![Figure 9.2](image)

Considering Figure 9.2, it is apparent that the number of students accessing the site per month is consistent with the number of page views per month (Figure 9.1). Taken as a whole, the data indicate that at the beginning of the semester more
students from cohort two used the resources than students from cohort one. At the same time a larger number of page views are recorded for cohort two. However, this pattern reverses over time and the higher level of usage is not sustained by students. Students from the second cohort appear to be more actively engaged in exploring the resources at the beginning of the semester. This activity may be as a result of greater exposure to the resources with the addition of the hands-on learner training session. Conversely, in cohort one the greatest amount of usage occurs in January, shortly after students have received a reminder email informing them of the availability of new resources on the LAWS platform.

9.1.2 Findings from interviews and learning journals

The data described above show that student usage of the resources diminishes over time. Students interviewed about the resources gave two different reasons for this decline in use: forgetfulness on their part, and growing confidence in their legal writing competence. According to one student, course demands cause students to forget about the resources:

*I think they [students] don't remember... They just caught up with many different type of activities, many different courses and often enough they probably just forgot about this website, which was introduced to us in the beginning of the year.* (S8, Interview, Cohort 2)

Thus, from this perspective, as time passes students’ enthusiasm for the resources diminishes because they are ‘caught up’ in other study activities. Alternatively, students grow in confidence to the point where they no longer need to use the resources, as reflected by the following comment:

*I think maybe at the beginning there are some wordings I'm not sure how to use or I'm not sure about the preposition of some of the words, however after that I think I may learn it already, so I didn't have to refer it to the LAWS much, as frequent as before, yeah. (S7, Interview, Cohort 2)*

Thus, as time goes by and students become more confident in their legal writing, they may rely on the LAWS resources less. It is possible that they rely on other reference sources instead, for example standard legal texts, lecture notes, tutor’s feedback and so forth.
9.1.3 Summary

The data indicate that student interest in the resources declines over time, either because the resources are not prominent enough to maintain students’ attention, or because students feel they have mastered the basic skills supported. Nevertheless the data further suggest that student interest is stimulated by simple measures such as information sessions, active training sessions, and reminder emails. Both the information session in year one and the hands-on training in year two had an effect in arousing student interest. Of these two measures, the hands-on session appears to have been more effective in the short term. In addition, the reminder email sent to students in year one appears to have had a significant effect on student usage of the resources. Therefore, it seems likely that students will perceive greater affordances in the resources if action taken by instructors encourages students to engage actively, is timely and highlights the relevance of the resource to student goals.

9.2 Preferred online learning activities

9.2.1 Findings from server logs

In this section I examine students’ preferred online learning activities. The principal learning activities that students can engage in using the LAWS resources can be characterized as: browsing online tutorials, completing tasks in online tutorials, and consulting the corpus. A brief definition of these terms is desirable. ‘Browsing online tutorials’ refers to any activity that retrieves content from the online tutorials. ‘Completing tasks in online tutorials’ means engaging in interactive tasks as part of the online tutorials. As tasks are embedded in the online tutorial content, it follows that a student who completes a task must also browse the tutorials in order to do so. However, the reverse does not apply: a student may browse the tutorials without completing any tasks. ‘Consulting the corpus’ refers to attempts to search the corpus of legal text. This study does not consider student use of other features of the LAWS resources, namely the MS Word download or commenting function, as these were still under development at the time that the study was carried out.
It is expected that students will prefer online learning activities which they perceive to be accessible, familiar and relevant, such as browsing the online tutorials. Comparatively less familiar and more demanding activities, such as consulting the corpus, are likely to be less frequently performed by students. Figure 9.3 below shows the preferences observed for each cohort. The numbers reported represent the number of unique users (i.e. students) who have engaged in a particular activity or behaviour at least once. This measure effectively conveys the number of students who have perceived a sufficient enough affordance in an online learning activity to attempt it. However, it does not convey whether or not students persisted with the strategy. In spite of this shortcoming it is probably the most reliable comparative measure available, because other measures such as the number of page views are easily skewed by unusual cases (see Chapter 8, Section 8.2.2 for a full discussion of this issue).

Comparing the two cohorts, it is firstly evident that a slightly smaller number registered in year two (the total number of students enrolled in the Legal Writing and Drafting course in each year was around 150). Secondly, of students who registered in year one, all but two browsed the online tutorials (these remaining two students simply registered, logged in and logged out). In contrast, there were 13 students in
year two who registered for the resources but did not browse the online tutorials. Of these 13 students, 7 used the resources only for corpus consultation purposes; the remaining 6 logged in and out in the manner described above. Thirdly, the number of students completing tasks in the online tutorials was higher in year one than in year two. Finally, running against the general trend, the number of students consulting the corpus was considerably higher in year two than in year one, rising from 22 (21% of registered students) to 36 (40%).

The fact that use of the corpus tools has increased from year one to year two, while all other learning activities have decreased, is extremely interesting. It suggests that students in the second cohort may have perceived the LAWS resources more in terms of a corpus resource and less in terms of a set of online, genre-based tutorials. This observation is supported by the fact that some students in year two used the resources uniquely for corpus consultation, a practice which was not observed in year one. If indeed students perceived different affordances in year two, this may be attributable to the additional provision of direct hands-on training in corpus consultation techniques (as described above). However, focusing learner training on the corpus tools may have had the unintended consequence of detracting from other aspects of the LAWS resources, such as the online tutorials. It is possible that students in the second cohort failed to perceive the affordances that LAWS offers as an online reference tool.

In summary, the data indicate clear preferences for online learning activities which students are familiar with, namely online tutorials. Comparing the data from year one to year two, it appears that increased training with the less familiar corpus tools has the effect of promoting usage among students.

### 9.2.2 Findings from interviews and learning journals

Interviews with students and entries in student learning journals offer some insights into students’ perceptions of the affordances of different kinds of online activities. It is apparent, for example, that students perceive a difference in the quality of support offered by the corpus tools on the one hand, and online tutorials and quizzes, on the
other. In general, students’ perceive that the corpus tools focus rather narrowly on
language in use, as reflected by the following entry in a student’s learning journal:

Concordancer helps me to resolve the use of language problems. (S3, Learning
Journal, Cohort 1)

Students tend to see the corpus tools as useful aids to using language in a
grammatically correct way, but tend not to see the tools as a means to exploring
appropriate language use in the legal context (this issue is explored in more detail in
Chapter 10). In contrast, students perceived the online tutorials and quizzes as
providing helpful examples of relevant legal genres, with useful comments about
their content, language and structure. The following comment typifies the kind of
affordance that students perceived:

I looked at the example as a reference and indication of the appropriate style and
content and what should be included in the affirmation. (S1, Learning Journal,
Cohort 1)

Therefore, one possible reason that students prefer to use the online tutorials and
quizzes is because they can more easily appreciate the relevance of the materials to
their own, real-world writing tasks. In addition, some (but not all) students
commented that they felt uncomfortable with the corpus consultation task because it
was unfamiliar to them. In the words of one student: ‘I forgot how to use it so forgot
how to find and do all the searches, so that's why I just mostly rely on this part,
professional writing [the online tutorials], for the structure instead of doing searches’
(S8, Interview, Cohort 2).

Students using the online tutorials and quizzes tended to use them as a reference
resource to assist with particular aspects of their own legal writing assignments. The
following observation, again from a student learning journal, is typical:

I found the quizzes (the clicking on the phrase to spot mistake task) was most useful,
particularly with editing my work as the task was helpful in identifying some
mistakes (or better ways of drafting) myself. (S2, Learning Journal, Cohort 1)

However, a number of students interviewed commented that they found the quizzes
to be too time-consuming to merit their attention. Such comments partly reflect the
demands of the PCLL course and the need for students to complete numerous assignments in a short space of time. On the other hand, they also reflect a desire to find and apply good models as quickly and easily as possible, as evidenced by the following suggestion: ‘I would prefer the database gave me the answer right away. And I used that answer and modified it and used it in my assignment’ (S6, Interview, Cohort 2). In summary, while students agreed that the LAWS resources provided a useful reference, more often than not they found the interactive quizzes too time consuming to benefit from them.

9.2.3 Summary

The data show that, on the whole, students preferred to use online learning activities with which they were familiar. Furthermore, students tended to prefer activities which required smaller investments of time and energy on their part. Students clearly perceived affordances in all resources, but apparently felt that the corpus tools were more narrowly focused on language use than the online tutorials and quizzes. The relevance of the material in the online tutorials and quizzes was perhaps clearer to students than the relevance of the corpus tools. Comparing the data from year one to year two, increased training in the corpus tools apparently had the effect of increasing usage among students. Nevertheless, some students still felt uncomfortable with the tools and there may be a need for more extensive training of some kind. Students’ use of the corpus tools are considered in greater detail in Chapter 10. In the following sections I will focus primarily (though not exclusively) on usage of the online tutorials.

9.3 Preferred online learning activities: genre focus

9.3.1 Findings from server logs

Within the online tutorials, students were able to focus on a number of different genres, according to what they perceived their needs to be. As noted in 9.2 above, some students reported using the online tutorials as a kind of reference resource, or scaffold for the writing process. It was therefore expected that students would access particular genres when required to write those genres as assignments for their course.
Figures 9.4 and 9.5 below show the number of page views for each genre described in the online tutorials, over the course of the semester.

**Figure 9.4 Page views by genre (first cohort)**

**Figure 9.5 Page views by genre (second cohort)**
The measure of page views over time allows us to appreciate how total usage varies as time passes. However, we must be cautious in our interpretation, as the measure can be skewed by the presence of a few highly active students. Comparing these two line charts, we observe some rather striking similarities in the website usage over time, by students from cohort 1 and cohort 2. In both years, there are clear peaks in usage in the sections devoted to letter of advice, defence and counterclaim, affidavits, and documents (though the use of this last section is modest in year 2). Furthermore, these peaks occur at about the same time in both years. This pattern can be explained by the timing of assessments in the Legal Writing and Drafting course. Students were required to hand in 7 assignments in both years, of which 4 were assessed: predictably, these are the four genres mentioned above. If we consider the assignment due dates in both years, it is clear that students were consulting the web resources directly before their assignments became due. Figure 9.6 sets out the due dates of assignments:

**Figure 9.6 Table of due dates for assessed and non-assessed assignments**

<table>
<thead>
<tr>
<th>Assignment (&quot;assessed&quot;)</th>
<th>Due date and peak in page views</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cohort 1</td>
</tr>
<tr>
<td></td>
<td>Due date</td>
</tr>
<tr>
<td>Letter of advice first draft</td>
<td>Monday, week 3</td>
</tr>
<tr>
<td>Letter of advice re-write*</td>
<td>Monday, week 5</td>
</tr>
<tr>
<td>Statement of claim</td>
<td>Monday, week 6</td>
</tr>
<tr>
<td>Defence and counterclaim*</td>
<td>Monday, week 8</td>
</tr>
<tr>
<td>Affirmation*</td>
<td>Friday, week 11</td>
</tr>
<tr>
<td>Opinion</td>
<td>In class, week 9</td>
</tr>
<tr>
<td>Document drafting*</td>
<td>Semester B (mid-January)</td>
</tr>
</tbody>
</table>
Chapter 9: Monitoring online learning behaviour

Note that the course schedules for both cohorts are attached (Appendices B1 and B2).

As demonstrated by Figure 9.6, peaks in usage correspond exactly to the assessment pattern of the Legal Writing and Drafting course. This suggests that students access the resources in a strategic manner, as a reference tool to assist with particular legal writing tasks, and focused on the achievement of course-related goals and outcomes.

It is further interesting to note that in both cohorts the statement of claim is visited considerably less than the other genres (excluding the documents genre, which I comment on below). This can be explained by the fact that the statement of claim assignment was not assessed, and so the stakes were comparatively low. As a result, it is likely that students would have spent less time researching, writing and editing their statement of claim. Nevertheless in year 1 there is a minor peak in the page views for the Statement of claim section around week 3, although the coursework assignment in Legal Writing and Drafting did not become due until week 6. This activity is unexpected as it does not appear to be related to the Legal Writing and Drafting coursework. Similarly, a number of students in cohort 1 accessed the Affidavits section during this week. Assuming that students use the resources in the strategic manner suggested above, then it is likely that they perceived affordances in the resources with regard to their other courses as well (including Civil Procedure, requiring the drafting of court documents).

Finally, there is a considerable difference between the two cohorts in terms of the number of page views to the Documents section. As suggested in 9.1 above, this is explained by a reminder email sent in year one and not in year two.

9.3.2 Findings from interviews and learning journals

The quantitative findings described in the preceding section are largely supported by the qualitative investigation. As noted earlier, students reported using the online tutorials as a reference guide for their writing, typically integrating their online activity with their legal writing in some way. Students report a range of learning purposes, such as obtaining examples of the target genre, understanding its structure.
and lexico-grammatical realization, and checking their own use of language by using the corpus tools. In recounting their experience of the online resources, students’ stories are typically refracted through the lens of the PCLL course, with a focus on the practical legal writing outcome (normally an assignment). The following comment captures to a degree the connectedness of the resources with course tasks, and the way in which students exploited this connectedness:

Most of the time I didn’t actually do it [the quiz] for the sake of doing the exercise but for the sake of getting the paragraphs in place and you can see it’s actually another example, like another precedent sort of thing [laughter]. (S2, Interview, Cohort 1)

The quiz that the student is commenting on here consisted of dragging and dropping text onto hotspots on the web page, with the aim of creating a correctly-formatted pleading. This student emphasizes that her purpose in completing the task was something other than the presumed learning outcome, which she assumes is to be able to format pleadings correctly. Rather her goal was to construct a sample which she could use in the service of the more authentic legal writing tasks that students faced as part of their Legal Writing and Drafting course. Other students also appeared to use the resources in this integrated fashion. It seems likely that students perceived value in the resources because the content was relevant to the authentic legal writing tasks that students were engaged in. From the student perspective, the LAWS resources constituted one in a number of tools and resources at their disposal, to assist with the legal writing tasks that they faced in their continuing development as apprentice lawyers.

Students also commented that the skills promoted on LAWS could be applied to their other courses as well. One student notes that:

[Legal Writing and Drafting] is such a core subject which is related or interrelated with all the other subjects... We have to prepare our arguments. For Civil Proceedings [sic] in particular, we have to prepare claims and counterclaims, application for summary judgment, all this you know we have to prepare. And for Legal Writing itself, again, we got to do legal writing. So, it seems to me it's all related. (S4, Interview, Cohort 1)

This comment supports the view arrived at in Section 9.3.1 above, that students were referring to the Statement of claim section for their Civil Procedure course. This
worked well in this instance, because a number of the genres taught in Legal Writing and Drafting were also required for coursework on the Civil Procedure course. The LAWS resources may have been less relevant to drafting tasks set for some other courses on the PCLL, where the writing practices fostered relied heavily on precedents provided by tutors. According to one student, ‘in LWD [Legal Writing and Drafting] we were thinking, how to say it, how to put it on paper, but in Conveyancing it’s sort of like which part should I copy it from, sort of technique. So I didn’t really thought of using the LAWS in Conveyancing’ (S1, Interview, Cohort 1).

### 9.3.3 Summary

The data reviewed here suggest that students use the LAWS resources in a strategic manner, as a reference tool to achieve course-related goals and outcomes. The resources were also capable of acting as a reference for some other courses, such as Civil Procedure. Interviews with students suggest that students perceived additional value in the resources because of the strong connection between the material and curriculum goals.

### 9.4 Preferred online activities: skills and competencies

#### 9.4.1 Findings from server logs

In this section I examine the skills and competencies that students choose to focus on when they are making use of the online tutorials in the LAWS resources. The reader will recall that each genre described in the tutorials is divided into the following broad sections (Chapter 4, Section 4.2):

- **Learning plan** Focuses on organizing learning
- **Planning/revising** Focuses on writing process and practice
- **Audience/purpose** Focuses on grammar and lexis, content, process and practice
- **Structure** Focuses on rhetorical structure
- **Language** Focuses on grammar and lexis as related to rhetorical structure
- **Formatting** Focuses on discourse conventions
Considering these section headings it is apparent that support for both higher order and lower order skills is provided. Figure 9.7 identifies the level of support in each section and exemplifies the skill with a focus question:

<table>
<thead>
<tr>
<th>Example section</th>
<th>Level of support</th>
<th>Focus question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning plan</td>
<td>Support for the learning process</td>
<td>How should I organize my learning?</td>
</tr>
<tr>
<td>Planning/revising</td>
<td>Support for the writing process</td>
<td>How should I approach the writing task?</td>
</tr>
<tr>
<td>Structure</td>
<td>Support for higher order, discourse competence</td>
<td>How should I organize my writing?</td>
</tr>
<tr>
<td>Formatting Example</td>
<td></td>
<td>What discourse conventions must I follow in order to realize this genre?</td>
</tr>
<tr>
<td>Audience and purpose</td>
<td></td>
<td>What legal content must I include in order to realize this genre?</td>
</tr>
<tr>
<td>Language</td>
<td>Support for lower order, grammatical competence</td>
<td>What grammar and lexis should I use to realize this genre?</td>
</tr>
</tbody>
</table>

With the approach adopted, there is considerable overlap between the higher level discourse competence and the lower level grammatical competence. Nonetheless, it was expected that students would perceive a greater need for support with higher level discourse competence (e.g. using the Structure section), and a lesser need for support with lower level linguistic competence (e.g. using the Language section).

Figure 9.8 shows the number of students accessing different sections of the online tutorials, divided by skill and competency focus, as described above. The assumption is that if more students access a particular skill development section, this indicates a preference in the group as a whole. The measure does not take account of the number of page views, which might also be considered relevant (number of page
views is not considered to be a satisfactory measure for reasons discussed in Chapter 8).

Expectations of student preferences for skill and competency development are at least partly borne out by these results. In particular, more students in both cohorts accessed the Example, Formatting and Structure sections, all focusing on higher order discourse competence. The patterns are similar from year to year, and preferences can be further summarized as in Figure 9.9:

**Figure 9.9 Preferred skills and competencies focus by year**

<table>
<thead>
<tr>
<th>Ranking of skill focus (number of students)</th>
<th>Year 1</th>
<th>Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Example (96)</td>
<td>1. Example (62)</td>
<td></td>
</tr>
<tr>
<td>2. Formatting (73)</td>
<td>2. Structure (53)</td>
<td></td>
</tr>
<tr>
<td>3. Structure (72)</td>
<td>3. Formatting (50)</td>
<td></td>
</tr>
<tr>
<td>4. Planning and revising (60)</td>
<td>4. Language (46)</td>
<td></td>
</tr>
<tr>
<td>5. Language (59)</td>
<td>5. Planning and revising (45)</td>
<td></td>
</tr>
<tr>
<td>6. Audience and purpose (44)</td>
<td>6. Audience and purpose (36)</td>
<td></td>
</tr>
<tr>
<td>7. Learning plan (35)</td>
<td>7. Learning plan (33)</td>
<td></td>
</tr>
</tbody>
</table>
These results suggest that students consistently perceive the greatest affordance in examples of target genres. This is followed by materials focusing on discourse level skills including how to format and organize legal writing (the Structure and Formatting sections). The next most frequently accessed materials are those related to the process of writing (Planning and Revising) and to the lower level lexical and grammatical realizations of genres (Language). Students accessed the Audience and purpose section (a mixture of pragmatic and grammatical competence) less, and referred to the Learning plan the least of all.

The heavy reliance on examples from the online tutorials reflects the general perception that samples available in LAWS provided useful models in terms of appropriate structure, form and discourse conventions. However, the practice raises a number of questions as to the kind of learning that students engage in through the tutorials. Specifically, to what extent do students engage critically with these examples and identify conventional, discursive features of the text? In an effort to encourage this kind of critical engagement, the examples were annotated with pop-up comments about the structure and purpose of each genre and genre move (accessed on mouse-over). The logs show that these comments were extensively accessed. Unfortunately, no reliable conclusions can be drawn as to whether students read the comments, as it was possible to accidentally access the comments (for example, while attempting to navigate the page). It is possible that students accessing the examples pages were carefully studying the comments available onmouseover. However, it is similarly possible that these comments were ignored and that students accessing the Example section did so in search of a form or precedent which they could copy to their own files.

Students’ preference to refer to sections such as Formatting and Structure shows that on the whole, PCLL students perceive a greater need to understand the way that discourse is organized, than how rhetorical functions are realized through grammar and lexis. It may be that these access patterns reflect the kinds of questions that students ask themselves as they engage in the writing process, for example, ‘how should I organize my writing?’ and ‘what content must I include to realize this genre?’ A knowledge of the appropriate discourse conventions is essential to answer these basic questions. It is possible that students found the resources helpful in filling
in gaps in their own knowledge at the discourse level, whilst at the same time they felt confident in their ability to write grammatically correctly and appropriately. This may not have been the case with all students, and I examine the question of whether less confident students used the lexical and grammatical resources more than more confident students below (Section 9.6).

Finally, the Learning plan was the resource referred to the least out of the skills or competencies consulted. This is perhaps not surprising as this resource focuses on providing students with a learning aid, allowing students to prioritize their learning needs and select from menus of suggested learning paths. It does not focus on developing legal writing skills as such, as is evident from the title ‘Learning plan’. Rather the focus is on metacognitive organization of learning. In this sense the Learning plan bears some resemblance to learning strategy help facilities sometimes provided in CALL materials and which some students describe as unnecessary or unhelpful (Pujolà, 2002, p. 257). Students may perceive such resources to be optional and unrelated to the primary learning task. In a crucial sense, the Learning plan is less flexible than the other materials provided in the online tutorials: it is not as readily integrated into the students’ legal writing processes. Instead, it provides students with a resource to manage learning opportunities supplementary to the writing process. In its current form, students appear to regard the Learning plan as peripheral to their legal writing.

**9.4.2 Findings from interviews and learning journals**

The overall patterns of usage described in the section above can be better understood if we consider students’ accounts of what they need from the LAWS resources and what sections they found useful. It was earlier established that students perceived the online tutorials primarily in terms of the examples of relevant legal genres provided, with commentary about content, language and structure. As mentioned earlier, students reported a range of learning purposes with the LAWS resources. Most frequently, students’ immediate concern was with discourse level features, such as rhetorical structure and discourse conventions (including any required legal formalities necessary to create documents with the intended legal effect). As noted by one student, ‘I usually just want the overall tone and structure mainly, like the
formality’ (S8, Interview, Cohort 2). Nevertheless, some students also perceived affordances in the lexical and grammatical support provided. For example, one student mentions that ‘the Language section is really good because it gives like examples of the sentences’.

In interviews, students commented on most of the skill areas described in the section above, and often commented on the usefulness of the Example. The following comment is particularly interesting for the issues that it raises in this respect:

*I am only try to find the sample, the sample. And I try to see whether that fits my assignment and then use it as a kind of framework.* (S4, Interview, Cohort 1)

The strategy described by this student is to use the example as a ‘framework’ for his assignment. Students give two reasons for referring to samples from LAWS (including samples of typical language in rhetorical moves). Firstly, students cite convenience: ‘it’s the quickest way to do it’ (S1, Interview, Cohort 1). Secondly, the examples provided in the LAWS resources are perceived to reflect the requirements and expectations of the various legal genres clearly and authoritatively. The requirement of the Legal writing and Drafting course, that students write in Plain Legal English (Asprey, 1996) undoubtedly played a role in this perception. Students appear to have felt that precedents from other sources did not meet the Plain Legal English standard. The examples in LAWS were perceived as reliable in this regard, probably because they had been created with the Legal Writing and Drafting course in mind. The following comment illustrates this perception:

*I have sort of seen precedents that are very, quite, that are relatively older, like old and then they use ... very traditional English language. And then you sort of think oh I don't write that way, and I would go into LAWS and see the stuff that they give and then try and adapt my writing to that style on LAWS and then start my own work.* (S2, Interview, Cohort 1)

The question remains as to how students apply samples of writing in their own work. Students interviewed felt that it would be impossible for them to copy any examples wholesale, for the purposes of their Legal Writing and Drafting course. The writing practice they described is summed up by one student as follows:
Students also felt that such a practice was consistent with legal writing norms, and suggested that it would be difficult for them to achieve necessary standards of legal writing without adopting such a practice. Students further report using a variety of sources to inform their writing, including other legal precedents and other sections of the LAWS resources (for example Structure, Language). One student reported making extensive use of the mouse-over comments in the LAWS examples, including printing them out for an open book examination (a minor achievement, requiring some technical know-how). By their account, the students interviewed appear to have used examples from the LAWS resources in an integrative and critical manner, to assist in the construction of their text.

9.4.3 Summary

In summary, students tend to focus their attention on higher level skills targeting the development of discourse competence. Students may be relying on the resources in order to fill in gaps in their own knowledge of the discourse, before they begin writing. However, students also perceive affordances in the lexical and grammatical support offered through the resources though to a lesser extent. Students relied heavily on the Example section, partly because it was convenient to do so, and partly because they saw the LAWS resources as an authoritative source. It is likely that students use the example as a ‘framework’ for their own legal writing, extracting generic structure and discursive features of the text in a critical manner.

9.5 Preferred student learning paths and browsing patterns

9.5.1 Findings from server logs

In order to establish patterns of online behaviour, I now consider some features of the paths that students took through the online tutorials. These patterns may in turn help us to understand how students prefer to approach online learning in the present context. The server logs are reviewed for each student and divided into sessions which can be subsequently analyzed. It is of interest to observe the last web page
visited in a given session, as we may infer that this represents the student’s destination or goal. This assumption will not always hold, especially for sessions where the student has a number of goals or destinations. Nevertheless the measure is interesting and informative. The information can also be combined with other statistics such as the number of topics viewed per session and the duration of sessions, in order to observe browsing tendencies in the student population.

As a general proposition, browsing behaviour varies from more focused and goal-directed 'search browsing' at one end of the continuum to more casual, random 'serendipity browsing' at the other (Cove & Walsh, 1988; Salomon, 1990). Of these different behaviours, it seems clear that search browsing (where the goal is clearly known) will result in the most efficient information retrieval. However, web users may still perceive utility in less directed browsing, as Marchionini and Shneiderman comment:

> End users, on the other hand, often browse despite accruing costs because they have long-term commitments to an area of research and may later benefit from extraneous information in that area. In other words, end users rationalize inefficient information-seeking strategies by hoping that incidental learning will have a beneficial cumulative effect. Browsing is an exploratory, information-seeking strategy that depends on serendipity. It is especially appropriate for ill-defined problems and for exploring new task domains. (Marchionini & Shneiderman, 1988, p. 71)

In this section, my aim is to discern some of the browsing patterns that students exhibited while using the LAWS resources, in particular the extent to which these patterns reflected exploratory behaviour. Drawing on these findings I address the question whether students’ online behaviour reflects a preference for a deductive approach to online learning or a more demanding discovery learning approach.

Firstly, I turn to the question of destination pages. Figure 9.10 below shows the ten most frequent urls appearing at the end of a student session in cohort 1 and cohort 2. A description of each url is also provided in the key below the table and screenshots are provided in Appendix J.
## Figure 9.10 The ten most frequent destination pages for year 1 and 2 (combined)

<table>
<thead>
<tr>
<th>Destination URL (abbreviated)</th>
<th>Number of sessions with this destination</th>
<th>Cohort 1</th>
<th>Cohort 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Affidavits/Examples/Aff_example.html</td>
<td></td>
<td>69</td>
<td>40</td>
<td>109</td>
</tr>
<tr>
<td>2. DefenceandCounterclaim/Examples/DC_example.html</td>
<td></td>
<td>70</td>
<td>37</td>
<td>107</td>
</tr>
<tr>
<td>3. Concordancer/results</td>
<td></td>
<td>39</td>
<td>44</td>
<td>83</td>
</tr>
<tr>
<td>4. StatementofClaim/Examples/SoC_Example.html</td>
<td></td>
<td>50</td>
<td>22</td>
<td>72</td>
</tr>
<tr>
<td>5. index/index.html</td>
<td></td>
<td>26</td>
<td>38</td>
<td>64</td>
</tr>
<tr>
<td>6. Documents/Examples/Doc_Example.html</td>
<td></td>
<td>34</td>
<td>25</td>
<td>59</td>
</tr>
<tr>
<td>7. Professional_writing.html</td>
<td></td>
<td>26</td>
<td>21</td>
<td>47</td>
</tr>
<tr>
<td>8. Documents/Documents.html</td>
<td></td>
<td>15</td>
<td>9</td>
<td>24</td>
</tr>
<tr>
<td>9. Letters/Structure/LA_Str_FIBRAC_structure.html</td>
<td></td>
<td>9</td>
<td>14</td>
<td>23</td>
</tr>
<tr>
<td>10. Letters/Formatting/LA_Formatting.html</td>
<td></td>
<td>12</td>
<td>9</td>
<td>21</td>
</tr>
</tbody>
</table>

**KEY**

1. An example affidavit including interactive, pop-up mouse-over comments
2. An example defence and counterclaim including pop-up mouse-over comments
3. The concordancer search page
4. An example statement of claim including interactive, pop-up mouse-over comments
5. The home page
6. An example employment contract
7. Index page for the Professional writing section
8. Index page for the Documents section
9. An example of a letter of advice, divided into rhetorical moves, with writing cues and links to the Language section
10. A task requiring students to format a letter correctly by dragging and dropping sections (the date, the body) onto hot spots

Looking at the figures here, it is immediately apparent that the destination page is very frequently an example, and this pattern is consistent from cohort to cohort. Even the Structure and Formatting pages listed here (9 and 10 on the list) contain examples, though in the case of the Formatting page, the example is in the form of a task and must be reconstructed by the student. The fact that the Example pages are so prominent as a destination is perhaps not surprising, given that so many students used the example as a resource (see above Section 9.4). However, it is interesting to note that in the second year, the concordancer page was the most frequently visited
destination. This reinforces the suggestion made earlier that students in the second cohort perceived the affordances offered by the web resources in terms of the concordancing tools rather than in terms of the online tutorials.

Examining the top 10 destination urls (as above) provides us with an interesting snapshot of the goals of students’ online behaviour. We may also obtain a broader view by grouping the destination urls for each session by their particular focus. This can be defined by students’ selection of a particular resource or learning focus (the concordancer or the online tutorials), and further refined by students’ selection of a particular skill area or competency. Thus Figures 9.11 and 9.12 (over page) summarize the most frequent student destinations, grouped by learning focus and skill area/competency.

Some interesting observations can be made about these figures, to the extent that they reflect the goal-directed browsing of students on the site. Firstly, when the data on destination pages is combined in this way, Example pages make up the most frequent destination for students in both cohorts. However, this goal is less pronounced in the second cohort. Students in the second cohort appear to focus more on language (with Language sections and Concordancer making up a total of 33% of destination page views, compared to 21% in the first cohort). Conversely, the focus on discourse competence (i.e. Structure and Formatting sections) is slightly higher in year one compared to year two (a total of 23% compared to 19% of destination page views). The data does not reveal why students used the web site differently from one year to the next. However, the greater focus on language and corpus tools as destination suggests that students perceived the resources as providing greater affordances in terms of language enhancement (in terms of functional lexical phrases) in year two.
The session destination data reviewed thus far suggests a general tendency for students to end their browsing at Example pages more frequently than elsewhere in
the online resources. However, this alone does not allow us to conclude that the only, or even primary, goal of such students, was to view an example. On the contrary, one would expect some students to have multiple, dynamically changing goals in a single session. Therefore, it is instructive to consider how directly students browse to their destination page. Does their visit consist of a quick information grab, or is it a more extended browse covering a variety of subject areas? In answering this question, the number of topics selected by the student proves to be a useful measure. A long session with many topics suggests an exploratory style, skimming but not reading in depth. Fewer topics sustained over a similar length of time suggest that the student is more engaged with the content of each topic. Finally, a short session with just one or two topics suggests a focused browse, directed at a clearly identified goal.

Here ‘topic’ is defined as the resource and subject area selected by the student, categorized according to online learning focus, genre focus, and skill/competency focus (see Sections 9.2, 9.3, 9.4). For example, consulting the concordancer is considered a ‘topic’ in contrast to browsing the online tutorials. Within the online tutorials, different topics are defined by their focus on genre and skill. Thus, if a student selects only Letter of advice/Language that selection is counted as one topic. Conversely a student who selects Letter of advice/Language - Letter of advice/Structure - Affidavits/Structure, has selected three topics. In the figures below, the number of topics selected in a given session are sorted by destination. In order to avoid skewed results (unduly influenced by a small number of individuals), one must remove destinations that did not record a large number of sessions. These are Audience and purpose, Learning plan, Planning and revising, respectively. Figures 9.13 and 9.14 below show the number of topics selected in sessions which ended at the destinations Concordancer, Example, Formatting, Language, Structure.
In terms of the number of topics selected, one notices a range of browsing patterns for all of the destinations studied. However, there is a clear bias towards a more goal-directed style, with only one topic browsed, when the destination is the Concordancer or the Example. Here we observe that in a large proportion of cases, students using the Concordancer or Example sections do not browse to any other part of the site. Again the data does not tell us why this is so. However, it seems likely that students browsing to the Example or Concordancer have a clear goal in
mind (e.g. to view a model, to search legally relevant lexis in context). This can be contrasted with the Formatting, Language and Structure sections, for which there are more signs of exploratory browsing (though clearly styles are mixed). The fact that students browsing these sections frequently browse one or more other topics as well suggests that they are operating in an information gathering mode, open to the possibility of incidental learning through discovery. This would lead them to cover a wider breadth of the resources, with a view to eliciting information that is relevant to their general interest.

9.5.2 Exemplar cases: data from server logs and interviews

The number of topics viewed provides interesting insights into student online behaviour. By reviewing the data from server-side log files we can see how directly students have navigated through a session, and this tells us how focused or goal-directed their use of the resources is. However, it is difficult to convey with a single measure the patterns of browsing observed in the logs. In order to build upon and enrich the insights gained thus far, I have extracted two exemplar sessions from the logs, and illustrated students’ browsing patterns in diagrammatical form. These cases are further explained by accounts from the students concerned.

Salomon (1990, p. 457) describes three different kinds of browsing and these categories are useful for present purposes as well.

1. Goal-directed search (the goal is known at the outset)
2. Goal-directed browse (the student discovers a goal in the course of browsing)
3. Casual browse (the student casually looks through the resources in search of helpful information)

The contrast between a goal-directed search for information and a casual browse which attempts to discover information can be illustrated with some carefully selected examples, as in Figures 9.15 and 9.16.
The total length of this session as recorded in the server log is only 38 seconds. Here, the student navigates directly to the example with one small deviation and the session ends after the student has briefly initiated two topics. The session appears to have a definite path with a clear goal, and one presumes that the student has retrieved the information that they were searching for upon reaching the example page. It would be interesting to know how long the student stays on the example page (the destination) and what the student uses the example for, but such information is not available from a server-side log record.
Figure 9.16 A casual browse

(S2, Server logs, Cohort 1)

Figure 9.16 provides an example of a ‘casual browse’. In this case, the session lasts 20 minutes 48 seconds. The student here begins at the Professional writing index page and then cycles through a number of other index pages, as though ascertaining where the relevant information is. She then reviews 5 different topics in the Defence and counterclaim section, ending her browsing at the Structure section. The student completes two matching tasks and appears to browse the interactive comments in the example extensively. By comparison to the goal-directed search, this strategy may appear less efficient: the student invests time and energy exploring the resources and engaging with tasks. It is likely that such an investment is made in the expectation that it will yield discoveries which a more goal-directed browse would not.

Indeed, the student in question was interviewed about her use of the LAWS online resources. She frequently described a strategy of completing tasks online, in order to
explore a variety of samples which she used to assist at various stages of the writing process. She describes this below:

[I do these tasks] because I found like when I sort of look at [my assignment], it doesn’t seem anything wrong with it, but then once you point on one of those [tasks] it tells you what’s wrong with them and how you could edit it better, so I thought that was quite useful because those are common mistakes that we could make. (S2, Interview, Cohort 1)

By exploring the resources in greater detail, this student hopes to discover information that will assist her in the revision of her assignment. This strategy relies less on direct information retrieval, more on casual browsing, exploring the resources and discovering information in a serendipitous fashion.

Comparing the goal-directed search with the casual browse we may also observe that the casual browser appears to be more extensively engaged in the online environment, though the purpose is not clear from the server logs. The data emerging from interviews with students suggest that students’ browsing patterns may change to suit their particular purpose at the time. Early on in the case study, one student characterized her experience of the LAWS resources in a manner typical of a casual browse:

Or maybe I should say, I don’t know what I want before I get into LAWS, before I login to LAWS, so basically what I wanted was just to get some background information about for example defence and counterclaim, but there is, there was no specific purpose of using the resources, so that’s why we just browsed through it, just to see what useful information we can get out of it. (S1, Interview, Cohort 1)

In this case the student attributed her lack of direction to an initial lack of familiarity with the resources. This required her to explore the resources with a view to discovering as much ‘useful information’ as possible. Approximately one month later, the same student articulates much clearer, goal-directed strategies when she describes her use of the resources:

First of all I looked at the planning strategy, to get an overview of what I should be doing, and then later on I just go straight into the Example and to see what I should include in my affirmation.(S1, Interview, Cohort 1)
Over time the student appears to have developed a more goal-directed approach to using the resources. According to her account, she refers to the Planning and revising and Example sections for assistance with her assignment.

9.5.3 Summary

Comparing student goals from year one to year two, it is evident that in year two there was a stronger focus on language in use, at the level of the functional lexical phrase. This may reflect a wider perception of the resources in terms of corpus tools, as discussed earlier (Section 9.2.1). General browsing patterns indicate that students prefer goal-directed searching as exhibited in heavily utilized resources such as the Example section. This in turn suggests that, on the whole, students using the online resources tend to prefer a direct search for information over a discovery-oriented approach. Given that the resource is primarily intended as a reference aid for legal writing and drafting, this tendency is perhaps understandable. Nevertheless it is important to note that there are exceptions to this general tendency. Browsing strategies were observed which were clearly integrated with legal writing and drafting tasks, yet more exploratory and discovery-oriented in nature.

9.6 Student background, preferred online activities and learning focus

The preceding sections have considered students’ selection of online activities, learning focus and browsing patterns viewed across the two cohorts monitored for this study. In addition to the data collected from server logs, a modest amount of background information was also collected from students using the resources (see the questionnaire in Appendix C4). This data was collected through the administration of a pencil and paper questionnaire in year one, and an electronic questionnaire which students completed upon registration for the web site in year two. The data from both cohorts were combined in order to improve the quality of the sample. The data was cleaned to remove any students who made no meaningful use of the resources (for example, only logging in and out), or who answered the questionnaire in implausible or intentionally silly ways (Dörnyei, 2003). The final sample size was 96 students, with 35 from year one and 61 from year two. Students
reported their IELTS scores, and rated themselves in terms of English proficiency, computer proficiency and familiarity with web search engines. In the following section, I explore whether these background factors play a role in students’ selection of online learning activity and skill focus.

Some reservations about the methodology should perhaps be stated at the outset. The background characteristics rated here are rather broad, and thus the results must be interpreted in terms of general language proficiency and general technical ability. In general, students entering the PCLL have a high level of language proficiency, having been through a rigorous and competitive selection process. Although PCLL students comprise a varied group with diverse backgrounds, it is not entirely clear that the IELTS scores and self-rated proficiency scores relied on here are sufficiently fine-grained to discriminate between students. Nevertheless, with this proviso it is instructive to review the data obtained in order to determine whether general language proficiency or technical ability are a factor in students’ selection of resources.

For the purposes of this analysis, students are considered to have selected an online activity or particular skill focus, even if they have used it only once. Such students have at some point perceived an affordance in the resource in question, but cannot be said to have adopted the resource over time. It could be argued that including such infrequent users in the study could bias the results and obscure the characteristics of students who perceive an affordance in the corpus tools on an ongoing basis. It is therefore instructive to initially compare the background of students who use the resources frequently with those who use the resources less frequently. The average number of sessions recorded for this sample of students was 6.8, with a standard deviation of 5.9 sessions. Of the 96 users surveyed, 26 recorded 9 or more sessions (high users) and 33 recorded 3 sessions or less (low users). These two groups are compared in Figure 9.17 below.
From the figure it appears that there is little difference between the high users and low users in terms of the four background measures. In addition we may observe that the language background of the high users and low users is around the average for the group of all students. Taken as a whole, the results suggest that the number of sessions a student completed was not a function of the background characteristics identified here. In other words, students who made frequent use of the resources had a similar background profile to those who did not. Therefore, the concern expressed above (including infrequent users could bias the results) appears to be unfounded.

I turn now to the question of online learning activities. The online learning activities considered here are browsing online tutorials, completing tasks in online tutorials and consulting the concordancer (see above, Section 9.2). The corpus tools were expected to appeal more to students with lower language proficiency, who would perceive a need for support with lexical and grammatical aspects of legal language. It was therefore expected that students selecting the corpus tools would have on average lower IELTS scores and self-rating of English language proficiency than others. On the other hand, it was also expected that the corpus tools would provide a greater affordance to students who were technically more able. Thus students
selecting the corpus tools would have higher mean self-ratings of computer-ability and web-searching ability. Figure 9.18 below, compares the mean background scores of students selecting different online activities, as well as the mean for the entire group.

As is evident from Figure 9.18 little difference was observed in the background of students selecting different online activities. The means for each group deviate very little from the mean for the group as a whole. This suggests that a similar cross-section of students attempted the three different online activities compared here. Thus, language proficiency does not appear to play a role in student selection of online activity. It was also found that students consulting the concordancer obtained slightly lower mean scores for self-rated computer ability and web searching ability. This finding was unexpected and suggests that perceived computer proficiency was not an issue for these students in making use of the concordancer.

I now turn to the skill focus selected by students. As described in Section 9.4, students were able to focus their learning on different skills and competencies, by turning to different sections of the online tutorials, namely: ‘Learning plan’,

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‘Planning/revising’, ‘Audience/purpose’, ‘Structure’, ‘Language’, ‘Formatting’ and ‘Example’. As explained in Section 9.4 (see Figure 9.7) these different sections target different orders of skills, ranging from lexical and grammatical competence (Language section), to discourse competence (Structure and Formatting sections) to metacognitive skills (Planning and revising, Learning plan). It was expected that the students perceiving an affordance in the Language section would be those with weaker language proficiency – and that this would be reflected in a lower IELTS score and self-reported language proficiency. Conversely, students focusing their attention on Structure and Formatting sections would be more proficient in language. Figure 9.19 compares the language measures for students selecting different sections of the online tutorials:

**Figure 9.19 Background of students by skill focus selected**

<table>
<thead>
<tr>
<th>Skill focus selected</th>
<th>Mean IELTS score</th>
<th>Mean self-assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>All students (96)</td>
<td>7.55</td>
<td>7.85</td>
</tr>
<tr>
<td>Learning plan (42)</td>
<td>7.48</td>
<td>7.76</td>
</tr>
<tr>
<td>Planning and revising (56)</td>
<td>7.52</td>
<td>7.71</td>
</tr>
<tr>
<td>Audience and purpose (46)</td>
<td>7.55</td>
<td>7.78</td>
</tr>
<tr>
<td>Language (60)</td>
<td>7.57</td>
<td>7.83</td>
</tr>
<tr>
<td>Structure (59)</td>
<td>7.53</td>
<td>7.75</td>
</tr>
<tr>
<td>Formatting (62)</td>
<td>7.52</td>
<td>7.73</td>
</tr>
<tr>
<td>Example (78)</td>
<td>7.62</td>
<td>7.96</td>
</tr>
</tbody>
</table>
Focusing attention on the Language, Structure and Formatting sections, it is clear from the comparison above that there is little difference between the students selecting these sections, the group as a whole and students selecting other sections. This suggests that a similar range of students (in terms of language ability) select these skill areas.

On the whole, these results suggest that students’ choice of online learning activity and skill focus is independent of the students’ general language and technical proficiency as measured for this study. These results were unexpected: it was initially felt that students with lower language proficiency and better technical skills would make greater use of the resource. Based on these results it appears that some other factors related to student background may be relevant, for example students’ perceptions of the affordances provided by the resources, and their understanding of how the resource meets their professional legal writing needs.

9.7 Summary and conclusion

This study set out to explore four dimensions related to learner behaviour in the online environment, and I reproduce these below:

1. Patterns of access over time
2. Preferred online learning activities of students
   a. Activities/tasks selected/focused on
   b. Genres selected/focused on
   c. Skills and competencies selected/focused on
3. Preferred learning path/browsing behaviour
4. Student background

Findings have been summarized in detail at various points throughout this chapter (9.1.3, 9.2.3, 9.3.3, 9.4.3). In essence, the findings can be summarized as follows.
Patterns of access over time

- Usage of the LAWS resources declines over time but simple measures such as information sessions, active training sessions, and reminder emails have a positive effect. Learner training or similar action undertaken by instructors should be timely, highlight the relevance of the resources to student goals and encourage students to engage actively with the resources.

Preferred online learning activities

- Students prefer online learning activities which they perceive to be familiar and relevant to the legal writing tasks that they are required to carry out for their course. In the case of less familiar resources such as the corpus tools, students both express a desire for, and respond to learner training.

- Students utilize the LAWS resources in a strategic manner, as a reference tool to achieve course-related goals and outcomes. Students appear to perceive added value in the resources as a result of the strong connection between the material and legal writing tasks.

- Students tend to focus on the development of discourse competence, using the resources as a means to fill in gaps in their existing knowledge of legal genres.

Preferred learning path/browsing behaviour

- General browsing patterns indicate that students prefer goal-directed searching over casual browsing, especially in heavily utilized resources such as the Example. This behaviour is consistent with the use of the LAWS resources as a reference guide.

Student background

- General language and technical ability were not found to play any systematic role in students’ selection of online resources.

Reviewing these findings, it is possible to identify some key threads running through the data. The findings strongly suggest that online resources and tools are likely to
be more effective if the technology, tasks and content chosen is both familiar to
students, and relevant to their real-world goals and objectives. Students are more
likely to perceive an affordance in a resource if they can mould that resource to their
particular purpose. From the point of view of design, this means that designers
should seek to create tools and resources that are malleable and can be easily
adjusted to a variety of student purposes or subjected to student inventiveness.
Furthermore, there is a need to integrate technological tools into an overarching
curricular framework, which provides students with an authentic space in which to
exploit them. This point is especially important considering that students tend to use
the tools and resources in a strategic, goal-directed fashion, to meet their academic
and professional legal writing needs. In the case of specialized technological tools,
which offer affordances that students may initially be unable to appreciate (e.g. the
corpus tools), a minimum amount of hands-on learner training is necessary for
students to be able to understand how they can use the tools to achieve their goals.
CHAPTER 10

Monitoring learners’ corpus consultation behaviour

Results

In this chapter I focus on student behaviour in the LAWS online concordancing environment, both in the controlled context of a user test, and in the uncontrolled context of independent corpus consultation. Here I draw on data from general and focused case studies, including the user test, server logs, student learning journals and interviews with students (refer to Chapter 8, Figure 8.1 for an overview of the research design and data sources). The questions under investigation are:

Question three: What affordances do students perceive in corpus consultation?
   a) In closely-monitored corpus consultation tasks?
   b) In loosely-monitored, independent corpus consultation, for their own purposes and on their own chosen tasks?

Question four: What strategies do students employ to exploit corpus tools as an affordance in proofreading legal writing?

Question five: How intuitively accessible are concordancing technology, output and methodology in the context of academic and professional practice?

Question six: How effectively do concordancing procedures introduced in academic settings dovetail with professional discourse community practices, so that the procedures fostered may extend beyond the academy, as a form of lifelong learning?

In this chapter, I first report on student behaviour and strategies as observed in the controlled environment of the user test, with the benefit of students’ retrospective accounts of screenrecordings of their online activity. Based on this inquiry it is possible to make judgments about the potential of corpus consultation techniques in
the present context. Next, I report on students’ actual online concordancing behaviour for the period under observation, as recorded in server logs and as described by students in interviews and learning journals. Based on this inquiry it is possible to understand how students used the corpus tools in an uncontrolled environment, for their own purposes and on their own chosen tasks.

10.1 Strategic processes and affordances in corpus consultation

This section focuses on the following research questions:

*Question three (a):* What affordances do students perceive in closely-monitored corpus consultation tasks?

*Question four:* What strategies do students employ to exploit corpus tools as an affordance in proofreading legal writing?

The user test study reported on here aims to establish what affordances students perceive in the corpus tools, and what strategic use they make of the tools when proofreading their legal writing. The reader will recall that the user test was set up under carefully controlled conditions, in order that students could be closely monitored while performing the corpus consultation task. The procedure is outlined in detail in Chapter 8, and I review it briefly here. Students completed three distinct corpus consultation tasks (see Appendix I) and their on-screen activity was recorded using screenrecording software. Students later met with me and provided a delayed retrospective account of the on-screen activity.

Tasks 1 and 2 (gap-fill) were convergent tasks, requiring the student to consult the corpus in order to retrieve particular collocational patterns. In completing these tasks students demonstrated a certain level of working familiarity with the corpus tools. Task 3 (proofreading) was a divergent task, requiring students to correct errors highlighted in examples of their own legal writing. Students were instructed to identify and correct the errors and were given the option of using the corpus tools to assist them. This task was intended to simulate an authentic use of the corpus tools. The corpus had been introduced to students as a reference resource which they could use if they were uncertain what language to use in a legal writing and drafting
assignment (see Chapter 4, Section 4.4). It was therefore hoped that by highlighting errors in their legal writing and drafting, similar conditions would be created, albeit with additional guidance. Thus, the research aim of the proofreading task was to observe students performing an authentic legal writing task with the assistance of the corpus tools, and identify the strategies that students used to exploit the corpus tools under these conditions.

In this section I focus on the manner in which students completed task 3 (proofreading). In analyzing their use of the corpus tools for proofreading purposes I will consider what affordances they perceived, how these affordances related to effective completion of the proofreading task, and what strategies students used in the process of corpus consultation.

10.1.1 Affordances perceived in the corpus tools

As mentioned above, students completing the proofreading task were not required to use the corpus tools to assist with corrections but rather were given the option to do so. Students were further asked to indicate which option they had exercised, including whether they found the corpus tools to be helpful in correcting an error or not, by filling out a proofreading log (see Chapter 8, Figure 8.9). For the purposes of this study, where students indicated that the concordancer had helped them to correct an error, it was assumed that they had in some way relied on the corpus tools for the correction, for example by adapting language samples retrieved from the corpus. It should be noted that the notion of reliance on the corpus tools is a subjective one, as it depends on the students’ perception that the corpus tools were helpful. Such a perception does not necessarily entail that students’ have relied on the tools appropriately, but indicates that they perceived an affordance in the corpus tools for the particular item in question.

Taking all of the foregoing into account, an initial indication of whether or not students perceived an affordance in the corpus tools can be inferred from whether or not they chose to consult the corpus, and subsequently reported relying on the corpus to make a change. It was expected that where a student could immediately correct a basic error, the student would do this without consulting the corpus. Similarly, it was
expected that in the case of more difficult errors students would consult the corpus for assistance. The method adopted here, which allowed students the freedom to choose whether or not to utilize the corpus tools, provided valuable insight into when students’ perceived an affordance. On analysis, three patterns of corpus consultation were identified in the proofreading task and these are summarized in Figure 10.1 below:

Figure 10.1 Corpus consultation patterns

<table>
<thead>
<tr>
<th>Corpus not consulted</th>
<th>Corpus consulted but not relied on</th>
<th>Corpus consulted and relied on</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Items attempted</td>
<td>13</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Proportion of total items</td>
<td>28%</td>
<td>30%</td>
<td>43%</td>
</tr>
</tbody>
</table>

Figure 10.1 shows that in 13 out of 47 items attempted by the four students, the students corrected the error without the assistance of the corpus tools (marking their logs ‘the concordancer was not helpful but it was a simple error so I corrected it anyway’); in 14 cases, students consulted the corpus but were apparently unable to rely on the output for assistance (marking their logs ‘the concordancer was not helpful and I moved onto another error’ or ‘the concordancer was not helpful but it was a simple error so I corrected it anyway’); and, in 20 cases students both consulted the corpus and felt able to rely on the search results (marking their logs ‘the concordancer helped me to correct an error’).

Where students choose not to explore their errors using the corpus tools I interpret this to mean that the errors highlighted were not sufficiently challenging to warrant investigation. The fact that students felt able to correct a little less than one third of their errors without consulting the corpus tools is a finding of some interest. It highlights the strong possibility that the proofreading task holds some intrinsic value independent of the concordancing technology. This is of course not particularly surprising: one would expect that reviewing work with the benefit of expert feedback would be beneficial. However, the results also show that the students did perceive some affordance and consulted the corpus in 34 out of 47 cases. It seems likely that
students perceived this initial affordance in the corpus tools because the error highlighted was sufficiently challenging, that is, they were unable to correct it unassisted. Interestingly, students reported relying on the corpus in only 20 of these 34 more difficult cases. Therefore, from the students’ perspective, problems were encountered in the process of corpus consultation in the other 14 instances. I examine the nature of these problems in section 10.1.2 below.

In their delayed retrospections students confirmed that they chose not to consult the corpus tools for less challenging items. The errors in such items were ‘quite apparent’ and therefore could be corrected without further investigation (S1, delayed retrospection, Cohort 1). Students preferred to rely on their own resources in this manner, as it involved less effort than consulting the corpus. One student commented that:

…it’s very time-consuming to going back to the concordancer too frequently, so back and forth, so instead of doing that I try to see if I can do the correction myself, then if I come to some places that I am not sure then I go to the concordancer to save time. (S4, delayed retrospection, Cohort 1)

In addition, students’ retrospective accounts reveal that items which required corpus consultation were of a different quality to those which were answered independently. Errors were not clearly apparent to the student. When the corpus was consulted, students did not always give a rationale for their choice of search term, but where they did, this rationale was frequently vague or speculative. For example, describing the corpus consultation process, S1 notes ‘I expected nothing at that time [when entering the search term]; I was just trying my luck’. Students’ accounts of the process in these cases disclosed an underlying uncertainty as to the nature of the language problem to solve. This was of course exactly the kind of situation that the task was intended to simulate.

In summary, three different patterns of corpus consultation behaviour were observed, indicating different perceptions of affordance in the corpus tools. Students completed the task a) without consulting the corpus; b) by consulting the corpus but not relying on it; c) by consulting the corpus and relying on it. Students usually did not consult the corpus if they felt that the error was apparent and were able to correct
it by relying on their own prior knowledge. On the other hand, where students were uncertain about the error, they perceived and utilized the affordance of the corpus tools.

**10.1.2 Affordance and improvements observed**

We may explore the affordances of the corpus tools further by asking how successful students were at correcting errors under the three conditions identified above. It is interesting to consider whether students’ perception of affordance relates to actual improvements in their text. In analysis, a subtle but important distinction must be drawn. The study does not attempt to establish a cause-effect correlation between affordances perceived and subsequent improvements made by students to their text. It was suggested earlier that such cause-effect relationships may be difficult to establish because of the many complex interacting factors that must be taken into account in the technological learning ecology (see Chapter 7, Section 7.3.1). Therefore, the aim here is more modest: to describe students’ performance under each of the different conditions identified earlier. One would expect students to have the highest success rate with simple errors (where the corpus was not consulted) or cases where the student judged the concordancer to be helpful (where the corpus was consulted and relied on). Figure 10.2 below summarizes the number of improvements made to the text according to the different corpus consultation patterns identified (corpus not consulted, corpus consulted but not relied on, corpus consulted and relied on).

As illustrated in Figure 10.2 the rate of improvement was highest when the corpus was consulted and relied on, with students improving three out of four items. As expected, the rate of improvement was also relatively high when the corpus was not consulted, with students improving more than two out of three items. Interestingly, when the corpus was consulted but not relied on, students were able to improve less than one out of every two items. Thus, students correct the text most effectively either when they do not consult the corpus tools at all, or when they consult and rely on the corpus tools.
A number of observations can be made based on this comparison. Firstly, the relatively high rate of success when the corpus was not consulted confirms that students were able to recognize and correct a large number of these items without assistance. As noted earlier, the students perceived these items to pose little difficulty. Secondly, in cases where the corpus was consulted the success rate was higher where the student felt able to rely on the concordancer. This suggests that the students’ perceived affordance in these instances is frequently related to actual improvements in the text, and that reliance on the corpus tools plays a positive role in error correction. Finally, when students did not rely on the corpus tools this did not necessarily prevent them from eventually discovering a solution to the language problem identified. It appears that in some cases students were able to solve the problem after spending some time consulting the corpus tools.

Figure 10.2 above identifies a marked difference in the success rate of students who were able to rely on the corpus tools, compared to those who did not feel able to do so. It is instructive to consider in greater detail the process of corpus consultation followed by these two groups of students, as observed in screenrecordings. It was expected that in order to successfully complete the corpus consultation task it would
be desirable for the student to complete a number of specified stages. These included the correct identification of an error (target language) in the student’s work, exploration of the target language through concordance searches and output, and the identification of appropriate language patterns in corpus output. Therefore it is interesting to consider whether these stages were indeed followed, and to what degree. The figure below summarizes behaviours observed, comparing instances where students relied on the corpus tools with those where they did not:

![Figure 10.3 Identification of target language and appropriate lexico-grammatical patterns](image)

Figure 10.3 shows that in cases where the corpus tools were not relied upon, students had successfully identified the target language in only 7 out of 14 instances. Furthermore, their explorations revealed appropriate lexico-grammatical patterns in only 2 out of 14 cases. In such cases students felt unable to rely on corpus output because they were unaware of their errors, or because the corpus revealed no relevant lexical patterns. By comparison, in cases where students reported relying on the corpus tools, the students identified the target language correctly 16 out of 20 times. A clear pattern became evident in 11 cases and students relied on that pattern and their work improved as a result. Thus, where students reported reliance on the corpus tools they were more aware of their errors and better able to retrieve output from the corpus. However, students did not always use the corpus tools in the manner envisaged. For example, some items were corrected, even though no patterns
were evident in corpus output. As will emerge in the following section, the process of corpus consultation observed did not always follow clearly defined stages and it was at times difficult to attribute students’ corrections to the search strategies that they followed.

In summary, students’ perception of affordance was related to improvements observed in their text. It has been established that in cases where students did not consult the corpus, this was because the items were perceived to be straightforward. Where students consulted the corpus, those who perceived an affordance and relied on the corpus were able to improve their text more frequently than others. This can be explained with reference to key stages in the corpus consultation process, such as a failure to identify the target language error or appropriate language patterns in corpus output.

10.1.3 Strategic processes observed in corpus consultation

The preceding discussion of affordance has inevitably alluded to students’ strategies in the corpus consultation process. In this section, this process is discussed in more detail. In completing the proof-reading task students can be seen to be going through a process of problem-solving, differing in the extent to which they relied on the corpus tools. This process can be summarized as in the following figure:

**Figure 10.4 Strategic processes in corpus consultation**
Figure 10.4 shows that the process as observed began with the formulation of a hypothesis as to the nature of the language problem, or identification of the error. For a simple error the student might be able to identify the target language immediately and propose a solution by applying a known rule to the text in question. This could be done without reference to the corpus tools. For a more difficult error, the student might require assistance at some stage in the process and therefore refer to the corpus tools. Both inductive and deductive processes of inquiry were observed, with students sometimes consulting the corpus before, sometimes after they corrected their text. Solutions proposed could be based either on corpus output, or if the corpus investigation had been unsuccessful, on the students’ own prior knowledge. An alternative was to abandon the attempt and move on to the next item, but this option was exercised in only two out of 47 instances. As evident from Figure 10.4, the process was a non-linear one. For example, after hypothesizing a problem and consulting the corpus, students might be unable to find support for their hypothesis. This could lead the student back to the formulation of a new hypothesis, and the student could choose to proceed by testing this against the corpus or by proposing a solution based on prior knowledge. In the following sections, I discuss and highlight important aspects of the process observed.

**Relying on prior knowledge**

A key strategic choice that students exercised was whether or not to consult the corpus at all. When choosing not to consult the corpus students relied on their own prior knowledge of rules of usage in order to identify the error and propose a solution. Students perceived this course of action to be the most efficient manner of completing the task. In most cases the error identified was an apparently straightforward one (for example an incorrect article) and students appeared not to need any assistance with such errors. According to student accounts the process of identifying and correcting the error is a more or less automatic one, e.g. ‘I think *instantly* I think the word *awaiting* is a bit weird so I changed it *straight away* as *waiting for*’ (S1, delayed retrospection, Cohort 1). Students confirmed that such changes were based on their ‘own knowledge’. 
Students also relied on their prior knowledge when formulating hypotheses (which could be a source of some difficulty, see below: Problems encountered). In attempting to identify errors, students drew on their legal genre knowledge, raising issues of appropriacy as well as linguistic accuracy. The following extracts from delayed retrospections illustrate the kind of contextual criteria that students applied in the proofreading task:

*I don’t understand why I used initiate at that point and also we don’t usually use court claim in a legal context* (S1, delayed retrospection, Cohort 1)

*...very possible isn’t really very professional so I was just trying to find out what sort of words that people use* (S2, delayed retrospection, Cohort 1)

These examples show that students in this study relied on a knowledge of language situated in legal contexts in order to hypothesize language problems in their writing.

**Deductive and inductive approaches**

Two clearly different approaches to utilizing the corpus tools were observed: a deductive approach and an inductive approach. Deductive approaches to data-driven learning are typically defined as verifying a particular rule of grammar or usage by reference to data from a corpus (Dodd, 1997). In the present study, students very occasionally made a correction based on their own prior knowledge and then subsequently consulted the corpus in order to verify the correction according to the corpus output. In contrast, the inductive approach was characterized by students first consulting the corpus to gather evidence from which they could infer a rule of usage. Based on this rule, students then proposed a solution to the language problem that they had identified. This second, inductive approach was far more common than the deductive approach (some form of deductive inquiry was observed in only 4 examples). This is perhaps not surprising: it was noted above that students who were immediately able to identify and solve the errors highlighted in their text mostly chose not to consult the corpus at all because they felt that it would be inefficient to do so.
Chapter 10: Monitoring corpus consultation behaviour

**Developing and modifying queries**

When students consulted the corpus tools, they used predominantly simple searches, making use of wild-card searches only in special cases. Students developed and modified their searches in response to the corpus output, by searching collocations or narrowing or expanding their search. Students did not attempt to narrow searches by limiting the search to any of the available sub-corpora. When students reached obvious dead-ends in their inquiries they began the process over by revising hypotheses and beginning alternative lines of inquiry. Thus the strategic processes observed in Figure 10.4 above were extremely fluid, and there was considerable interaction between the different stages. Drawing on data from the corpus, students were able to infer rules of usage for particular lexical phrases and transfer these rules to their own writing. The following example, drawn from S1, demonstrates some of these processes in action. The student was presented with the following highlighted phrase:

*Thank you for your instruction to ourselves yesterday.*  
*(S1, Q1, user test)*

A possible correction: *Thank you for your instructions.*

The student first searched the phrase ‘thank you for’ and focused on the collocation list:

thank you for the = 3  
thank you for your = 3

Focusing the search by searching the phrase ‘thank you for your’ returned just three key-word in context lines, including the following:

*We thank you for your letter of the 10th July the contents…*

The student commented: ‘I started to realise that it shouldn't be *thank you for your instruction to ourselves* because it doesn't make sense so a simple phrase *thank you for your instructions dated [inaudible] yesterday* that would be fine’ (S1, delayed retrospection, Cohort 1). The student corrected the error to read ‘Thank you for your instruction [sic] of September 2005’. In this example, the student’s search does not disclose a clear understanding of the language problem, only a vague notion that
there may be something wrong. However, through her search she is able to discover appropriate lexical phrases, compare with her own writing, infer patterns of usage, and transfer to the proofreading task.

**Corpus tools as a creative stimulus**

As well as such direct reliance on corpus output students also appear to benefit from the corpus tools as a creative stimulus, when reflecting on language problems. In some instances students were able to propose a correct solution following exploration of the corpus, even though the corpus had provided no direct evidence in support of the correction. In such cases the student was able to correctly complete items based on an incomplete corpus consultation process or partial or negative evidence from the corpus. As an example of the corpus as creative stimulus we may consider the following item:

*The uneven flooring caused damage to part of the shelving system beyond repair.* (S3, Q3, user test)

A possible correction: *The uneven flooring damaged part of the shelving system beyond repair.*

In this example the student made three searches: damage (right sorted), repair (right sorted) and damage (left sorted). This last search revealed numerous adjective-noun patterns in the list of collocations, and the student appears to have browsed through these collocations, including:

- special damage = 9
- substantial damage = 5
- possible damage = 2
- intimal damage = 1
- actual damage = 1

Subsequently the student revised the text to read ‘The uneven flooring caused irreparable damage to part of the shelving system’. Interestingly, the student did not attribute this revision to reliance on the corpus tools, though it appears that it was inspired by the patterns discovered in the corpus. In this case the student fails to perceive an affordance in the corpus tools even though the revision appears to have been stimulated by output from the corpus.
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In some such cases, students indicated that the corpus tools had been helpful to them, even though it was clear from viewing the screenrecordings that they could not have seen any examples of directly relevant lexical phrases. When challenged on this point, one student commented that:

\[\text{It was useful to sort of see similar phrases like the work [the target lexis] … and see sort of how people use words around it so it should be, it is useful. (S2, delayed retrospection, Cohort 1)}\]

In such cases it is possible that the corpus acts as a mediational tool (Wertsch, 1998), stimulating reflection on the language items concerned, so that students are able to arrive at realizations based on partial results before the search process is complete. These findings support the notion that the process of corpus consultation, including the identification of target language and key search terms, is as important to the learning process as the results of the analysis (O'Sullivan, 2007, p. 279).

**Problems encountered in corpus consultation**

When students chose not to rely on the corpus tools, this was usually because they perceived some difficulties which prevented them from relying directly on corpus output. Difficulties perceived included failure to correctly identify errors, poorly formed searches, and a lack of corpus coverage for the items.

In the first instance, one problem that students encountered was difficulty in correctly identifying errors in their own text. This stage in the process was generally regarded as a difficult one, as exemplified by the comments of one student who expressed surprise that errors had been identified in his text at all (the texts used had been submitted as assignments and in some cases very diligently revised already). According to this student: ‘for some of the phrases, well, I can't find any language problem’ (S3, delayed retrospection, Cohort 1). In such cases, it was difficult for students to formulate a clear initial hypothesis. As a result, students tended to follow a process of trial and error, uncertain which keywords to enter but hopeful that they might make useful discoveries in the process of consulting the corpus. From the student perspective, this trial and error process was only moderately successful.
Where the corpus output failed to assist in identifying errors, students’ explorations could lead them either to puzzling dead ends, or interesting side tracks which they were ultimately unable to apply in their writing.

Even when students were able to formulate a clearer hypothesis of what the language problem was, they were not always able to generate adequate search queries in order to explore relevant language items. Some queries were poorly selected, too narrow, too broad or poorly sorted. Queries that were poorly selected or poorly sorted failed to provide relevant output, and this was therefore confusing to the student. Where student searches were too narrow, students felt unable to rely on the small amount of data retrieved from the corpus. With overly broad searches, students were overwhelmed by the sheer quantity of results and felt unable to apply the output to their particular problem.

As an example of some of the difficulties encountered by students in the process of corpus consultation, consider the following item:

The letter of agreement stated the work to be carried out by Chow. (S2, Q1, user test)

The student’s delayed retrospection, which provides a narration of the strategic processes involved in the proofreading task, is produced below. The text has been edited to reduce redundancy and increase explicitness:

What was highlighted was ‘the letter of agreement stated the work to be carried out by Chow’ and immediately I identified the problem as probably ‘stated’ because the rest sounds alright. So I searched for ‘the work’ and sorted the output by frequency on the left to see what sort of words people usually use before ‘the work’. And it was a very broad search so I tried to limit it, by using the wild card and searching ‘agreement * the work’. Then it didn’t come up with anything, so I searched ‘the work’ with the output sorted by frequency on the right, just to see what sort of phrases come up. (S2, edited extract from delayed retrospection, Cohort 1).

In this case, the student correctly hypothesized that the verb state was misused. However, instead of exploring lexical patterns with state (or even agreement), she explored lexical patterns with work. Finding this search to be too broad (and in all likelihood, unrevealing) she narrowed the search so much that no output was
retrieved. In the final analysis the corpus yielded no useful data and the student corrected the error based on her own prior knowledge. This case reveals a typical lack of understanding of how best to utilize the corpus tools in order to explore lexical patterns, with students finding it difficult to select appropriate terms for investigation, and adequately focus their searches. Given this lack of understanding, students would likely benefit from increased training opportunities, focusing on the practical methodology required to employ corpus tools to understand language in discursive contexts. This point is raised again in Section 10.2.2 below.

A final difficulty observed was that for particular functions of legal discourse, the corpus coverage was limited. The corpus was comprised of legal cases, and so provided a good corpus of text related to the basic functions of legal argument (for example describing facts, raising issues, stating rules, stating conclusions). However, with regard to the letter of advice genre and court pleadings (which students corrected for this study), certain genre moves were poorly represented in the corpus. This is because the letter of advice is in fact a hybrid genre, somewhere between a business letter and a formal legal opinion. As such, it includes opening and closing moves more typical of business correspondence than legal argument. Court pleadings also contain particular genre moves that are not typically represented in judgments, for example entering and responding to pleas (as in a statement of claim or defence and counterclaim). Occasionally students had problems with these functions and were not able to retrieve sufficient examples from the corpus to make significant discoveries. In such cases students would have benefited from being able to search a small specialized corpus of business letters or court pleadings.

In summary, the corpus consultation process can be broken down into three interacting stages: hypothesizing a problem, consulting the corpus and proposing a solution. Students rely either on their prior knowledge or on output from the corpus in order to generate hypotheses and propose solutions to the language problems identified. While both inductive and deductive processes were observed, the inductive approach was adopted more frequently with the corpus tools. In the process of exploring the corpus students reformulated, expanded, modified and recast their queries in a limited variety of ways. Students were able to find and apply samples of text from the corpus to their own writing. At times, students used the
corpus tools as a stimulus for reflection on the language problem, proposing solutions based on partial evidence from the corpus or an incomplete corpus consultation process. In addition, students encountered a number of problems in utilizing the corpus tools, including difficulty in identifying errors, poorly formed searches and occasional problems with corpus coverage.

### 10.2 Independent corpus consultation

The study thus far has focused on the strategic processes associated with the corpus consultation task. The user test method adopted provided detailed insights into the strategies utilized by students as they proofread their own legal writing with the assistance of the corpus tools. The task performed by students during the user test effectively simulated an authentic use of the corpus tools in all but one respect: student searches were formulated based on feedback from the tutor. As a result, it is not possible to say from the user test what kind of queries students would initiate in the context of independent corpus consultation, where no input from a tutor is available. In order to investigate this question, the present section draws upon data from server logs, recording the corpus queries of students for two cohorts of students taking the Legal Writing and Drafting course. The server log data provides insight into students’ use of the corpus tools as an optional affordance in completing aspects of their coursework. In order to form a richer picture of how students’ perceive this affordance, I draw on other data, including case studies and individual interviews.

In this section the focus shifts from a detailed account of the processes involved in the corpus consultation task to a broader consideration of the affordances that students perceive and utilize in corpus tools in the given pedagogical context. The following research questions are considered:

**Question three (b):** What affordances do students perceive in independent corpus consultation, for their own purposes, on their own chosen tasks?

**Question five:** How intuitively accessible are concordancing technology, output and methodology in the context of academic and professional practice?
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**Question six:** How effectively do concordancing procedures introduced in academic settings dovetail with professional discourse community practices, so that the procedures fostered may extend beyond the academy, as a form of lifelong learning?

10.2.1 Patterns of independent corpus consultation

It was noted in Chapter 9 that students using the LAWS resources showed a preference for online learning activities that they were familiar with, for example, online tutorials. Comparatively few students engaged in the less familiar and more demanding activity of exploring the corpus. The logs of concordancing use therefore provide a small, yet significant data set. In the first year of the study 22 out of 103 (21%) of the students visiting the LAWS online resources made use of the concordancer without prompting and for their own purposes, and in the second year this proportion rose to 36 out of 91 (40%). The rise in the number of students willing to engage with the corpus tools may reflect an increased awareness of the tools, their purpose and how to use them. This increased awareness may have been fostered by the slightly longer hands-on training session provided to students at the beginning of the second year. On the whole, however, the adoption rate is modest compared to the more familiar online tutorials, which contained targeted, language focused and task-based materials (see Chapter 9, Section 9.2).

The search logs further reveal that there is a tension between the need to access domain-specific knowledge and the need for language specific knowledge. The key words entered by some students suggest a search for full-text documents (rather than specific patterns of language), as in the following queries:

*affirmation, defence and counterclaim, employment agreement*

All of these searches identify legal documents or parts of legal documents that students wrote for courses on the PCLL (including Legal Writing and Drafting). It therefore seems possible that students were trying to use the concordancer to retrieve examples of these documents for modelling purposes, as suggested by the following student search:
These document-related searches contrast with the kind of language-based queries (e.g. in accordance, in view of, pertain) that one might expect from students working carefully through their legal writing assignments, focused on composition. However, such legal document searches are probably consistent with common legal writing practices, where drafting from legal precedents is the norm. It therefore seems likely that students construct the concordancing task through their identity as apprentice lawyers, and that this influences the affordances that they perceive in the corpus tools.

A summary of search patterns and focus (lexical items or legal documents as described above) is provided in the table below.

<table>
<thead>
<tr>
<th>Search focus</th>
<th>Lexical item</th>
<th>Legal document</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 (first cohort)</td>
<td>53 (48%)</td>
<td>57 (52%)</td>
<td>110 (100%)</td>
</tr>
<tr>
<td>Year 2 (second cohort)</td>
<td>247 (71%)</td>
<td>99 (29%)</td>
<td>346 (100%)</td>
</tr>
</tbody>
</table>

*a Note that data has been filtered to remove any searches made during induction sessions.

It is clear from Figure 10.5 that as well as an overall increase in corpus tool use in year 2, students in the second cohort tend to use the corpus tools more appropriately as an aid to composition, with fewer legal document searches recorded. This increase could again be attributed to the hands-on training session conducted at the beginning of the semester (year 2). However, the logs demonstrate that students return to their original preferences for modelling-based searches over time. Students in the second cohort focus their searches mostly on composition and language for around two months after the hands-on training, before focusing on whole documents again. Thus, when the second cohort is compared with the first cohort, higher use, and more appropriate searches are observed. However, there are also indications that, as time passes, students alter the focus of the use of the resource, from language composition to modelling full documents. This suggests that while better training
helps to make the corpus tools accessible, students nevertheless resort to more familiar disciplinary procedures over time.

A further pattern observable in the logs relates to the web page where the student began their search (the referring page). As described in Chapter 4, every page of the online tutorials contains a simple search interface, facilitating queries to the corpus from anywhere on the site. An analysis of these referring pages reveals that legal document searches more frequently originate in the online tutorials, as illustrated by the table below:

<table>
<thead>
<tr>
<th>Referring page</th>
<th>Search focus</th>
<th>Concordancer</th>
<th>Other&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lexical phrase</td>
<td></td>
<td>89%</td>
<td>11%</td>
</tr>
<tr>
<td>Legal document</td>
<td></td>
<td>70%</td>
<td>30%</td>
</tr>
</tbody>
</table>

<sup>a</sup> for example, originating from a page in the online tutorials.

As illustrated by Figure 10.6, a much higher proportion of legal document searches originate from other parts of the site than from the concordancer. This may indicate that when students are engaged in the online tutorials, they use the concordancer in an attempt to retrieve more information about the genre they are studying. However, because their keyword searches focus on broad aspects of subject matter, rather than on phraseology, it is unlikely that students are able to benefit from incidental learning opportunities that the concordancer might afford. More focused, targeted searches are required to properly utilize these tools as a learning resource.

In summary, the data from the logs indicate that students sometimes use the corpus tools in an attempt to retrieve full documents, similar to the way in which they might use other search engines on the web, while doing legal research. The case study and interviews conducted allow us to investigate students’ attitude to the corpus tools in greater detail. In the following sections I draw on the interview data in order to understand the kind of affordances that students perceive such corpus tools to provide.
10.2.2 Attitude towards the corpus tools

The students interviewed can be divided into three different groups: adopters, who recognized and acted on a need for the corpus tools (four students); and two different kinds of non-adopters: the first kind of non-adopter expressed a preference for using other, similar web-based tools for the purpose of checking language patterns (two students); the second kind preferred not to use any such tools at all (three students). ‘Adoption’ here is used in a narrow sense: the logs show that the students cannot be said to have formed any long-lasting habits. Rather, the students have adopted the corpus tools to act as language support with one or more of their legal writing assignments (for a discussion of processes of adoption and normalization, see Bax (2003)).

Corpus tools as an affordance in legal writing and drafting

Whether they had adopted them for their own use or not, all of the students interviewed displayed an understanding of the intended function of the corpus tools, as a reference resource for composition purposes. Adopters of the corpus tools viewed them as a convenient and helpful toolset to provide language support for their legal writing and drafting assignments. According to one student:

This is a quick fix tool, so that if there is anything that went wrong I can check with it. (S4, Interview, Cohort 1)

Viewed this way, the corpus tools provide opportunities for incidental, informal learning, integrated with the authentic communicative writing requirements of the PCLL courses. A question which naturally arises at this point, and one which would merit further attention in future, is how effective the tools were in promoting such learning. If students perceive the tools as providing quick and convenient solutions to their language problems, then it is possible that they will limit themselves to discovery of surface language patterns only, without exploring their discursive function.

Of the students who used the tools, most reported using them to revise their Legal Writing and Drafting assignments, and in order to avoid making ‘stupid mistakes’
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(S5, Interview, Cohort 2). However one student reported taking more general learning opportunities, using the corpus tools in an attempt to discover the nuances of particular words or phrases:

_Sometimes actually I just use it for curious… just to see whether that word can be used with some other words and in order to improve the meaning of the single word._ (S7, Interview, Cohort 2)

Thus students perceived the tools as affording the correction of possible language problems in their writing, and also exploited opportunities to learn through discovery.

**The Web as corpus resource**

Of the students who did not adopt the corpus tools for their own use, two students reported using language-based search strategies with web-based search engines such as Google or Yahoo (and one of the adopters, above, used this strategy as well). According to one student, during the revision process:

_I will go online and just very quickly do a search and see how other trustworthy articles or resources [actual?] writing that piece of sentence or phrases, so that's what I do when I'm really picky [laughs]_ (S9, Interview, Cohort 2)

This student considered online newspapers to be a ‘trustworthy’ source for confirming her language intuitions. When asked why she did not use the concordancer in a similar way, she answered that she was more accustomed to using Google. Perhaps for similar reasons, these students had not considered using an online legal database such as Westlaw or Lexis Nexis to facilitate the kind of language queries that they reported making elsewhere on the web. Nevertheless, students perceived advantages in searching the specialized corpus compiled for them, as compared to the web as a whole. One student commented that the specialized corpus provided ‘many examples of a particular phrase that I want to use’ (S5, Interview, Cohort 2).
However, the wealth of legally relevant data in the corpus, normally regarded as a positive feature in corpus-based ESP work, was perceived by students as problematic. According to one student:

*I think one of the problems is there is so many results, and you know every single result is legally related and important, so you have to go through every one.* (S8, Interview, Cohort 2)

Compared to skimming through results gleaned from a Google search, it is initially more difficult to identify relevant examples in concordance output or collocation lists. It is likely that this difficulty arises because students who compare their text with texts from the web do not apply particularly rigorous criteria in deciding how lexical items are used. Rather, students’ web searches consist of finding authoritative, trustworthy sources to provide them with reassurance that expressions they have adopted are ‘safe’ because ‘there is [a] passage that contains that phrase’ (S5, Interview, Cohort 2). It appears that when using a specialized corpus, which is already focused in this manner, students may feel rather overwhelmed by the sheer quantity of available and relevant data.

Two points suggest themselves in relation to this finding. The first is that students need considerable additional help in order to make sense of the linguistic data presented in concordance lines or collocation lists. This help should be in the form of methodological help: for example, what questions is it appropriate to ask of the corpus? What factors should be taken into account in interpreting the data? (Kennedy & Miceli, 2001) Such help could also be applied to exploit the tendency of students to browse the web for language patterns, often in an unfocused manner. For students to use existing web search engines to understand the use of language patterns effectively, they need to be able to understand and interpret output from web search engines in terms of its particular discursive functions in context. Furthermore, in the case of law students attempting to master legal genres, the ability to authenticate and transfer language patterns discovered will depend on their state of legal knowledge and legal practice knowledge at the relevant time.

The second point which arises, and which is alluded to above, is that a broad approach to data-driven learning can be promoted with students including access to a
variety of different web-based search engines. Data-driven learning is not limited to technology designed specifically for linguistic investigation, but should be seen as an exploratory approach relying on student discoveries through a variety of data-based search tools. This is becoming increasingly clear, with the design of, for example, pedagogically modified corpus tools for school students and more varied tools for the academy (Braun, 2005, 2007; Milton, 2005, 2006).

**Corpus tools as overspecialized, language tools**

Among the non-adopters there is a general perception that the corpus tools are extremely specialized, and that this specialization is unhelpful. This perception echoes to an extent the concern reported above that it was difficult to identify relevant results in the corpus because all results appeared relevant. Students perceive a variety of problems with the corpus tools in that the tools appear to them to focus mechanically on language, and fail to focus on law. Here, students report two related perceptions. The first is that using the corpus tools involves focusing exclusively, and unnecessarily, on language. The second is that this focus on language is highly technical and constraining, and detrimental to what they perceive as the creative process of legal writing.

Some students apparently felt that there was no need for them to improve aspects of their legal English. This perception persisted in spite of corrective feedback from the tutor:

*I’m quite sure how the word is used so I don’t need to check. Although sometimes, it’s wrong, it turn out to be wrong and get corrected. (S6, Interview, Cohort 2)*

Similarly, another student commented that ‘grammar is something that you either know or you don’t know before you come into this course’ (S9, Interview, Cohort 2). Such comments suggest that some students view the corpus tools as redundant because the students feel that they have mastered the English language to the best of their ability, and adequately for their purposes.
Secondly, one student commented on the highly technical approach to writing fostered by the corpus tools:

*But then I don't think that we, sort of, approach writing as detailed as [the corpus tools are] designed for us to be… I don't know. I'm not a surgeon in my writing.* (S2, Interview, Cohort 1)

This student variously describes the method as ‘mechanical’, ‘writing like a formula’ and ‘very methodological’, and would appear to have difficulty with the technical linguistic approach evidenced by the corpus tools. Similarly, in revising their legal writing, a number of the students interviewed prefer to rely on their own intuitive feeling for the language, rather than referring to the corpus tools. Partly, this is because they prefer to use methods they are familiar with. On the other hand, the strong attitude demonstrated by this student suggests that she found the data-driven learning approach very foreign.

In summary, data from the case studies suggests that students were able to understand the corpus-based approach without difficulty. Students noticed opportunities for incidental learning both for legal writing purposes and more general purposes. In addition to the corpus tools provided, some students reported using similar data-driven learning strategies with popular web search engines. Compared to such search engines, students felt the sheer amount of legally relevant data available through the corpus to be rather overwhelming. It would therefore seem that some form of support is necessary in order to better familiarize students with the corpus-based task and tools provided. Finally, some students were unable to see the relevance of the corpus tools in terms of their legal study, questioning both the need for language enhancement and the need for technical tools to support it.

### 10.3 Summary and conclusion

In this chapter, I have explored the strategic processes and affordances associated with the corpus consultation task in two related environments. The first of these, a user test, was designed to evaluate the potential of corpus consultation in the context of proofreading legal writing and drafting with the assistance of corpus tools. This study focused on the strategic processes that students engage in, when proofreading
their legal writing and drafting. The second, drawing on student interviews and logs of searches, aimed to assess the affordance of the corpus tools as independent reference tool, as explained by the students themselves. This study focused on students’ independent use of the corpus tools, for their own purposes and on their own chosen tasks.

Reviewing the findings, it is possible to identify a number of key points that need to be highlighted. I consider first the strategic processes observed. Students prefer to rely on their own knowledge in order to solve language problems because they perceive this to be more efficient than consulting the corpus. However, this strategy is insufficient to improve students’ texts in more difficult cases. While the strategy of consulting the corpus brought mixed results, where students were able to rely on the corpus tools, the outcomes were positive. In the process of corpus consultation, students demonstrated an ability to transfer output from the corpus to their own text. Surprisingly though, they also interrupted their explorations before they were complete and were able to propose solutions to language problems based on partial models from the corpus. In the context of the proofreading task, the corpus thus provided students with a mediational tool acting as a stimulus for reflecting on language problems. In addition, students also encountered a number of problems with the process, especially in refining searches. It is likely that in order to overcome such problems students require further training in corpus-based methodologies.

In independent corpus consultation students using corpus tools for their own purposes appeared to search for full legal documents, rather than for patterns of lexical phrases. Students perceived affordances in the corpus tools primarily because they provided a convenient way to check legal writing assignments. Perhaps because of a lack of familiarity with the tools, some students preferred to use the web as a corpus resource to check their own language intuitions. Finally, some students found the tools difficult to utilize because they viewed them as highly specialized language tools, with little application in authentic legal professional contexts. These findings suggest that students who construct themselves as apprentice lawyers bring this identity to the corpus consultation task. It is natural and to be expected that such students will draw on professional practices when perceiving affordances in corpus tools and resources.
A clear tension was observed between the professional discourse practices, encouraging students to focus on cases, precedents and models, and the integrated data-driven learning approach used with students in this study, promoting a focus on language and composition. In view of this observation, I suggest that both the procedures promoted with students in this study, and the procedures adopted by students in independent corpus consultation, have their own merits. Any academic focus on construction and composition must have the outcome (the legal model) in mind in order to guarantee authenticity of text and task. However, even in professional practice that works with such legal models, continuing lifelong learners still need to be able to focus and reflect on the functional lexical phrases that constitute the essence of the texture of the documents they are composing. Language focused corpus tools are ideally suited to this purpose.
CHAPTER 11

Conclusions and implications

In this concluding chapter I briefly reflect on the research process. Next I review the key findings of the thesis. Finally I consider the implications of these findings and future directions for research and practice.

11.1 The research process

The research presented in this thesis began as a relatively straightforward project to design, implement and evaluate online resources for legal professional communication skills. As such, there was a clear focus from the outset on providing students with appropriate web-based resources and tools to facilitate the process of legitimate peripheral participation (Lave & Wenger, 1991) in the legal discourse community. Furthermore, in order to achieve this objective, it was clearly necessary to engage with legal colleagues in the kind of ‘thick participation’ and ‘joint problematization’ envisaged by Sarangi and Candlin (Candlin & Sarangi, 2004; Sarangi, 2005, 2006; Sarangi & Candlin, 2001). The close partnership that was established with law school colleagues provided opportunities for the development of highly relevant online teaching materials. For example, law school colleagues consulted with me in order to take part in the development of genre-based teaching materials for the LAWS resources, and also acted as mediators to the wider legal community when it was necessary to obtain information about under-researched legal genres such as the barrister’s opinion. In the evaluation of the online resources and tools, what has perhaps been slightly surprising is the extent to which students have constructed affordances in terms of students’ nascent professional identities. Thus, while the initial focus of the research lay with the evaluation of technological resources, as the research continued this focus shifted gradually and inevitably to the analysis of the criteria by which students judge affordance. As the research has
progressed the importance of the underlying pedagogical framework informing the design of the online resources has become increasingly central.

Because of the deeply situated nature of this research, with a discourse practitioner ‘embedded’ as it were in a legal academic community, the research addresses a variety of different audiences. The thesis demonstrates how findings from studies in Professional and Organizational Communication may be conjoined with studies in the teaching of Languages for Specific Purposes as mediated by technological tools. Accordingly, while its primary audience is practitioners of LSP, computer-assisted language learning and corpora in language teaching, the process and outcomes of the research would also be of interest to scholars of Professional and Organizational Communication studies, legal discourse and legal education.

11.2 Summary of findings and issues raised

At the outset of this thesis two broad guiding questions were posed to frame the research, and these questions are reproduced here:

1. In the context of Hong Kong legal professional education, what factors must be taken into account in the design of an online resource for the development of professional legal writing skills (legal literacy)?
2. What affordances do students perceive and utilize in the technological resources and do these match the goals and objectives of such student learners in an ongoing and dynamic fashion?

These questions have been explored and discussed in detail at various points in the thesis. Throughout this process a number of issues have arisen for discussion and I now summarize the findings of the research with reference to the two guiding questions.
11.2.1 Question 1: Hong Kong professional legal writing needs

In the context of Hong Kong legal professional education, what factors must be taken into account in the design of an online resource for the development of professional legal writing skills (legal literacy)?

Any pedagogical intervention for the development of legal literacy must take into account the full range of social and institutional factors in the learning ecology

In approaching the design of the LAWS resources I have argued throughout that it is necessary to take into account the full learning ecology, including, as here, the social and institutional context of legal education and training in Hong Kong. Through the examination of relevant policy documents in Chapter 2, we have seen that, in spite of the recent growth in the use of Chinese as a legal language, the English language remains critically important to Hong Kong’s policy for legal education. We have also seen clear evidence of perceptions in the legal community of a decline in the English language ability of law students. Simultaneously, there is an increasing language demand on professionals in Hong Kong, who are now frequently expected to be trilingual, biliterate speakers/writers of English, Cantonese and Putonghua. Given the high demands of language proficiency now being placed on Hong Kong lawyers, our existing understanding of legal professional communication needs in this context is quite inadequate. Very little systematic empirical research has been carried out (cf. Candlin & Bhatia, 1998) and education policy as well as curriculum design and pedagogy continues to be informed by anecdotal accounts of lawyers’ discourse practices (e.g. Redmond & Roper, 2001). In order to equip law students with the skills and competencies that they require to be effective professional communicators in the workplace, more empirical research of current and expected discourse practices is required to inform teaching practice.
Academically trained law graduates lack the necessary discourse competence to meet the distinct communicative demands of practical legal genres

The analysis of the barrister’s opinion genre provided in Chapters 5 and 6 responds to the need for empirical research and offers an example of the kind of investigation that may serve to guide the development of effective teaching materials for professional legal communication. A number of points may be made in relation to this particular study. Firstly, the contextual analysis reveals that lawyers writing a barrister’s opinion play two distinct roles, which appear to be at odds: 1. neutral arbiter; 2. problem-solving advisor. This apparent discord creates a conflict which must be discursively managed. In Chapter 6 we saw that this tension indeed caused difficulties for law students. For example, student writers may use inappropriate strategies to manage certainty and doubt as compared to expert writers who exploit doubt strategically as a persuasive resource. In addition, students appear to be less aware of the need to limit the scope of their opinions and highlight gaps in information provided by instructing solicitors. Finally, the analysis demonstrates that student writers approach their writing in a fundamentally more ‘academic’ style, which makes use of lengthy expositions of the law, compared to experts who are considerably more economical in this regard and appear to take such knowledge for granted as part of the professional background knowledge of the reader.

Based on such a genre analysis it is possible to design genre-specific teaching materials which focus on the contextual, rhetorical, lexical and grammatical patterns inherent in the genre. Such an evidence-based approach responds directly to the needs of law students whose goal it is to engage in the practices of the legal discourse community and construct texts for that community. As we have seen, genre analysis is not limited to the study of generic structure potential or associated grammar and lexis, but is also concerned with the practices of text construction. This is an important point as writing in professions and organizations is essentially a form of situated literacy, located and contextualized in the genres and practices of the relevant discourse community. Programs which seek to develop legal professional writing skills should emulate the practices of text construction to be found in the target discourse community, so that students become familiar not only with what lawyers write but with how they go about the writing task itself, and how such
writing is evaluated in the context of the professional workplace. The kind of ethnographic, qualitative interpretive inquiry reported in Chapters 5 and 6 is ideal for identifying and explaining relevant discourse practices.

### 11.2.2 Question 2: Affordances perceived in the LAWS resources

What affordances do students perceive and utilize in the technological resources and do these match the goals and objectives of such student learners in an ongoing and dynamic fashion?

**Students perceive affordances if resources and tools can be related to their real-world goals and objectives**

A key consideration in the design of the LAWS resources was to integrate the technical tools developed with authentic writing tasks required as part of students’ course of legal education and training on the Legal Writing and Drafting course (see Chapter 4). It was argued in Chapters 3 and 4 that if programs in professional legal writing are designed to provide direct support for the authentic legal writing tasks which students are engaged in as part of their legal studies, then students will perceive such programs as more relevant to the development of their professional legal discourse competence. In the case of LAWS, this design preference appears to have been well-founded, as the findings reported in Chapter 9 show that students utilize the resources in a strategic manner, as a reference tool to achieve course-related goals and outcomes. This goal-directed nature of students’ online learning was highlighted in students’ browsing patterns. Two different styles were identified: a ‘casual browse’ and a ‘goal-directed search’. Students’ browsing paths demonstrated a preference for direct searches for information over the more demanding discovery-oriented approach implicit in casual browsing of the resources, suggesting that students were mostly attempting to retrieve information in as efficient a manner as possible. In addition students demonstrated a preference for those online learning activities which they perceived to be familiar and relevant to their real-world goals and objectives. Students appear to perceive a greater
affordance if instructors highlight the relevance of the resources to these real-world needs.

**Students construct affordances in terms of their identity as apprentices to the legal discourse community**

Students’ choice of online activities (see Chapter 9), and the manner in which they exploited particular resources such as the corpus tools (see Chapter 10), clearly suggest that students construct affordances in terms of their identity as a nascent legal professional. In Chapter 9 it was found that students relied considerably on the examples of different genres provided. Students apparently use examples as a framework for their own legal writing. This practice echoes the professional practice of legal drafting where it is common to adopt precedents of legal documents as models and modify them to fit the particular context of situation. Similarly, in Chapter 10 it was found that when students utilized the corpus tools a large proportion of searches appeared to target full documents or models, rather than the kind of lexical phrase output typically associated with corpus tools. As additional training in use of the corpus tools was introduced (from cohort 1 to cohort 2), students’ use of the resource appeared to change, with students relying less on the examples, and appearing to use the corpus tools for lexically motivated searches more frequently.

**11.3 Implications and future directions**

It is in the nature of qualitative interpretive inquiry to raise questions for future investigation and this study is no exception. As one would expect, the thesis raises a number of questions with regard to the teaching of Professional and Organizational Communication and Language for Specific Purposes, as mediated by technological resources and tools. The issues raised by this thesis address in particular the domains of professional legal communication, technological affordance and evaluation methodology and I address these questions in that order.
Chapter 11: Conclusions and implications

11.3.1 Professional legal communication and LSP

The findings suggest that in the specific case of the barrister’s opinion studied, there are identifiable functional lexical and grammatical language features associated with professional legal genres, which present law graduates with difficulty. A notable example of this is the inappropriate use of hedging by students. In the present study, students also encountered problems at the discourse level, as evidenced by the lengthy explanations of law identified in student writing, when compared with expert writing. These difficulties can be attributed to a lack of understanding on the part of the students of the contextual constraints of the professional genre in all its complexity. Thus the study highlights a gap between the skills developed in undergraduate academic legal education and the skills required for full professional competence. This gap consists of a shift in the contextual factors associated with practical legal genres, which brings with it a change in focus from learning abstract principles of law to practising the law in a real situation. As students gradually develop the professional legal competence they require for practice, they need to be exposed to a variety of authentic texts and tasks which challenge them to engage with the world of practice and understand its ways. In terms of teaching Language for Specific Purposes, this means that it is insufficient to focus attention on the forms of language alone, and aspects of genre, such as generic text structure, generic processes, and practices must be incorporated into the curriculum. In order to write authentically for the professions, students need to engage in an authentic process of text production, as well as keeping authentic generic structures in mind.

The process of materials design which was completed as part of this thesis study suggests that such a curriculum design requires broad participation and collaboration from the key stakeholders, including students, legal academics, legal professionals and applied linguists. In order to create the kind of curriculum focusing on text, process and practice as envisaged above, it is necessary to involve a variety of experts in the conceptualization and implementation. In the present case, there was strong collaboration between legal academics at the School of Law and practitioners of LSP (including myself) at the English Language Centre. Legal practitioners were consulted as the need arose (in particular with regard to under-researched legal genres such as the barrister’s opinion genre). Each of these different groups brings a
different, complementary expertise to the curriculum design process: legal practitioners bring their specialist knowledge of the practical context of legal practical genres, legal academics their knowledge of legal discourse and the needs of legal education, and practitioners of LSP their knowledge of language education. The aim in soliciting such a broad range of input is to guarantee authenticity of text and task in materials, while at the same time creating an environment for the reflective development of legal writing skills, before students are immersed in the business of the professional environment.

The study of legal genres that has been begun in this thesis is clearly only a beginning. As I have already signalled, very little research has been carried out into the professional discourse competencies required of legal practitioners in the Hong Kong setting. In this context, approximately 10 years after the translation of Hong Kong’s legislation into Chinese, it would also be interesting to know what role the Chinese language now plays in different sectors of the legal system, both in sociocultural and in economic terms. There appears to be a clear need for Hong Kong lawyers to develop trilingual/bi-literate proficiency in English/Cantonese/Putonghua, so it would be interesting to reconsider what exactly the role of Hong Kong law schools is in this development. More up-to-date research in the area of lawyers’ professional discourse competencies would also be of clear benefit in informing legal education policy (cf. Candlin & Bhatia, 1998; Redmond & Roper, 2001).

11.3.2 Technological affordances and LSP

This study found that students perceive greater affordances when tasks are considered to be familiar and relevant to students’ real-world aims and goals. It also found that students construct affordances according to their identity as apprentices to the professional legal community which they aspire to join. The findings highlight a potential mismatch between academic designers’ and student learners’ perceptions of the affordances of a given technological resource or tool. While the design of the LAWS resources, especially the corpus tools, focused on issues of language and composition, students utilizing the resources often appeared to be focused on a search for models, guided by the professional practice of drafting from precedents,
as I briefly indicate above. As discussed in Chapter 10, there is a clear tension between the integrated data-driven learning approach adopted, focusing students on language and composition, and professional discourse practices which encourage students to focus on cases, precedents and models. However, it seems most likely that this tension can only be resolved through a process of mutual engagement: any course in legal writing must necessarily keep in mind the textual product (a model) in order to ensure authenticity of text and task. At the same time, continuing lifelong learners must have opportunities to reflect upon the lexical patterning which constitutes the essence of the discourse with which they are engaged, and corpus tools provide the ideal vehicle for this task.

As I have noted elsewhere (Chapter 10), electronic tools promoting corpus-based pedagogies are beginning to be pedagogically modified to take into account the distinctive needs of target students. Such modifications include the ability for teachers to create hyperlinked ‘pre-cast’ concordances as feedback on student writing (Gaskell & Cobb, 2004; Milton, 2005, 2006) or the design of ‘corpus complementary materials’ and the adoption of a discourse-based approach to corpus tasks which focuses equally on ‘vertical reading’ of corpus output and engaging with full texts from the corpus (Braun, 2005, 2007). Such pedagogical modifications of corpus tools recognize an existing shortcoming of corpora in language teaching, which were originally intended for use by academic researchers, not by students. Thus the kind of pedagogical modifications mentioned focus on enhancing the learning process, by integrating with that process and thereby making the tools more amenable to pedagogical aims. Findings from the present study suggest that it would be beneficial to consider whether such pedagogical enhancements can be introduced to the present corpus tools so that the corpus consultation task complements more directly existing academic and professional discourse practices. If students perceive the corpus consultation task as integral to the academic and professional legal writing process, then they are much more likely to perceive affordances in it.

Research in corpora and language teaching by its very nature focuses heavily on the use of corpora in more or less supervised contexts, usually within the framework of a course that introduces the corpus consultation task as a course requirement. At the same time however, one of the perceived advantages of hands-on corpus work is the
ability of students to work independently and direct their own learning. In view of calls to popularize corpus consultation (Chambers, 2005, 2007) there is a need to better understand how students approach the corpus consultation task, especially as independent learners. It would therefore be extremely interesting if more data were available on the lasting impact of pedagogical interventions which promote corpus consultation techniques as a lifelong learning strategy. In particular, it would be interesting to know whether learners continue to use corpus tools, and if so how. In view of the current findings that students interpret the corpus tools with reference to professional practices, such a study could have considerable pedagogical implications.

11.3.3 Evaluation methodology

Aspects of the qualitative interpretive methodology adopted for the purposes of this study may prove to have useful application in future studies of technological affordances in the context of LSP and in Professional and Organizational Communication studies. The approach combines a wide range of data and tools to assist in the observation and interpretation of student and professional practices, as they relate to both legal writing and online learning. In the study of online learning behaviour, observations of students’ actual recorded behaviour (in server-side logs or as screenrecordings) are combined with students’ own accounts of this behaviour, either in the form of delayed retrospections or small focus group interviews. This focus on procedures which record traces left by individual students has added an extra dimension to this study. However, much of the literature on strategy use in CALL or learner behaviour in corpora and language teaching does not make use of the technical innovations available in order to record observable onscreen activities, and frequently relies instead solely on self-reported data. Such self-reported data involves a process of selection on the part of the participant, who may omit potentially interesting behaviours from their account. The data-mining and screenrecording procedures used in this study can help to address this problem and refocus the investigation if necessary. It therefore appears that research methods in this area need to be rethought to systematically include the kind of techniques used in this study in order to facilitate a focus on strategic action in online learning.
11.4 Concluding remarks

I hope that this thesis has demonstrated the importance of adopting a contextualized pedagogy for LSP which integrates findings from Professional and Organizational Communication studies in the design of technological affordances for the development of professional legal literacy. Such a pedagogy engages stakeholders in the kind of thick participation and joint problematization alluded to at the beginning of this chapter. The approach adopted to the development and implementation of the online tools and resources in this study is characterized by a collaborative effort to understand and engage students in the situated literacy practices of the professional legal community. Unlike the typical model of LSP, which usually involves a comparatively brief period of needs analysis near the beginning of the course, here the commitment to the site was both longer and deeper. Furthermore, the online materials developed focused not only on the linguistic features of relevant genres of the professional discourse community, but were also designed with a view to being integrated in the existing situated literacy practices of law students, and to encourage students to engage in appropriate generic processes and practices for the construction of professional texts. In facilitating the development of professional literacy, courses in LSP must focus not only on the linguistic patterns associated with common text types but also on the processes and practices of the professional discourse community that student apprentices aspire to join. In future, it is to be hoped that LSP practitioners, subject specialists and professional practitioners can work together in the negotiated manner exemplified in this project, in order to develop appropriate learning materials and courses of instruction.

In the design and development of technological affordances it is clearly important to create resources which take into account the full social and institutional learning ecology. This thesis has been centrally concerned with the question of the mediating role of technology in the development of legal literacy. As suggested above, any consideration of this issue must take into account the situated literacy practices which influence text construction, both in the immediate learning environment of the academy, and the target environment of the professional workplace. The study has shown that students engaged in the construction of professional texts interpret new technological tools in light of their identity as apprentices to the legal discourse
community, seeking information in ways that are consistent with legal discourse community practices. The study has focused entirely on the way that individual students interact with the medium. A further question which now arises for future consideration is ‘what mediating role can technology play between the academic legal and professional legal discourse communities, in order to facilitate students’ legitimate peripheral participation in the professional legal discourse community?’ This question presupposes some form of collaboration between the academy and the profession and would require that a balance and understanding between the respective stakeholders be reached. Ultimately, this is exactly the kind of joint problematization which has the potential to create a meaningful and significant learning environment.
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APPENDICES
APPENDIX A: LIST OF FUNDING OBTAINED, PRESENTATIONS, PUBLICATIONS

A variety of academic activities have arisen from work on this thesis, including the successful application for a grant to development and evaluate online resources, publication of journal articles, and a range of presentations in local and international fora. I provide details of these activities here.

Teaching Development Fund

Publications


Presentations


Hafner, C.A. (2005) Developing computer-mediated online instructional resources to integrate language skills development in legal education. A lunch seminar organized by the School of Law, City University.
### APPENDIX B: PCLL LEGAL WRITING AND DRAFTING SCHEDULES

#### B1: LWD Course Schedule Semester A 2005-2006

<table>
<thead>
<tr>
<th>Week</th>
<th>Lecture</th>
<th>Tutorial</th>
<th>Compulsory Conference</th>
<th>Assignment</th>
</tr>
</thead>
</table>
| 1    | Lecture 1 (2 hours) Introduction & Plain English  
     Lecture 2 (2 hours) Advice Letters  
     Lecture 3 Legal Research (Guest Lecturer) | Tutorial 1  
     Plain English |  |  |
| 2    | Lecture 4 Document Drafting | Tutorial 2  
     Letters |  | Assignment A  
     Letter of advice due Monday 19 September 6:30pm to be marked for conference in week 4 |
| 3    | Lecture 5 (2 hours) Pleadings |  | Assignment A  
     Letter of advice due Monday 19 September 6:30pm to be marked for conference in week 4 |
| 4    | Lecture 6 Peer Editing - Peer Feedback on Assignment A |  | First |
| 5    | Tutorial 3  
     Statement of claim | Assignment B  
     Rewrite Letter due Monday 3 October at 6:30pm to be marked for conference in week 7 |
| 6    | Tutorial 4  
     Defence and counterclaim | Assignment C  
     Statement of claim due Monday 10 October at 6:30pm to be marked for conference in week 7 |
| 7    | Lecture 7 Affirmations | Second |
| 8    | Lecture 8 Opinion Drafting (Guest Lecture) | Tutorial 5  
     Affirmations | Assignment D  
     Defence and counterclaim due Monday 24 October at 6:30pm to be marked for conference in week 12/13 |
| 9    | Tutorial 6  
     Legal Research and Opinion writing | Assignment E  
     Opinion due in class to be taken away for marking and return in week 12/13 |
| 10   | Lecture 9 Document Drafting Part 2 |  | Assignment F  
     Civ Pro linked affirmation to be handed in on Friday 18 November at 6:30pm and marked for conference in week 12/13 |
<p>| 11   | | | |</p>
<table>
<thead>
<tr>
<th>Week</th>
<th>Lecture</th>
<th>Tutorial</th>
<th>Compulsory Conference</th>
<th>Assignment</th>
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<td>12</td>
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<td></td>
<td>Third</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td>Third</td>
<td>Assignment G Settlement agreement DUE SEMESTER B</td>
</tr>
</tbody>
</table>

**Assignments B, D, F & G are summative - 25% each**

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<thead>
<tr>
<th>Week</th>
<th>Lecture</th>
<th>Tutorial</th>
<th>Compulsory Conference</th>
<th>Assignment</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Lecture 1 (2 hours) Introduction &amp; Plain English</td>
<td>Tutorial 1 Plain English</td>
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<td></td>
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<tr>
<td></td>
<td>Lecture 2 (2 hours) Advice Letters</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Lecture 3 Document Drafting Part 1</td>
<td>Tutorial 2 Letters</td>
<td></td>
<td>Assignment A Letter of advice due Friday (15/9/2006) 6.30pm to be marked for conference in week 3</td>
</tr>
<tr>
<td>3</td>
<td>Lecture 4 Editing - Peer Feedback on Assignment A</td>
<td></td>
<td></td>
<td>First</td>
</tr>
<tr>
<td>4</td>
<td>Lecture 5 (2 hours) Pleadings</td>
<td>Tutorial 3 Statement of claim</td>
<td></td>
<td>Assignment B Rewrite Letter due Monday (25/9/2006) 6:30pm to be marked for conference in week 6</td>
</tr>
<tr>
<td>5</td>
<td>Lecture 6 Affirmations</td>
<td>Tutorial 4 Defence and counterclaim</td>
<td></td>
<td>Assignment C Statement of claim due Tuesday (3/10/2006) 6:30pm to be marked for conference in week 6</td>
</tr>
<tr>
<td>6</td>
<td>Lecture 7 Document Drafting Part 2</td>
<td></td>
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<td>Second</td>
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<td>7</td>
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<tr>
<td>8</td>
<td>Lecture 8 Guest lecture - Opinion drafting</td>
<td>Tutorial 5 Document drafting</td>
<td></td>
<td>Assignment D Defence and counterclaim to be drafted in exam conditions and marked for conference in week 12/13</td>
</tr>
<tr>
<td>9</td>
<td></td>
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<td></td>
<td>Assignment E Affirmation due. Tuesday (31/10/06) 6:30pm to be marked for conference in week 12/13</td>
</tr>
<tr>
<td>10</td>
<td></td>
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<td></td>
<td>Assignment F Opinion due Monday (6/11/06) 6.30pm for discussion in Tutorial 6 to be marked and returned in week 12/13</td>
</tr>
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</table>
### Appendices

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<th>Week</th>
<th>Lecture</th>
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<th>Compulsory Conference</th>
<th>Assignment</th>
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<td>11</td>
<td></td>
<td>Tutorial 6 Legal Research and Opinion writing</td>
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<tr>
<td>12</td>
<td></td>
<td></td>
<td>Third</td>
<td>Assignment G Settlement Agreement due Monday (15/1/07) at 6.30pm</td>
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<td>13</td>
<td></td>
<td></td>
<td>Third</td>
<td></td>
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</tbody>
</table>

Assignments B, D, E & G are summative – 25% each

Tutorials: 1 and a half hours

Lectures: 1, 2 and 6 – 2 hours
3, 4, 5, 7, 8, and 9 – 1 and a half hours

Compulsory conferences – 30 minutes
APPENDIX C: QUESTIONNAIRES

C1: Genre analysis: Participant background information (barristers)

1. How long have you been practising as a barrister? ______ years

2. How long have you been practising as a barrister in Hong Kong? ______ years

3. Have you practised as a barrister in other jurisdictions? (please circle) yes / no

4. If yes, which other jurisdictions and for how long?

________________________________________________________________________

________________________________________________________________________

5. Have you always practiced as a barrister? (please circle) yes / no

6. If no, what did you do before you practised as a barrister?

________________________________________________________________________

________________________________________________________________________

7. What legal qualifications do you have (e.g. LLB, PCLL)?

   a. Qualification __________________________________________________________

      Obtained from (institution, country)_______________________________ Year ______

   b. Qualification __________________________________________________________

      Obtained from (institution, country)_______________________________ Year ______

   c. Qualification __________________________________________________________

      Obtained from (institution, country)_______________________________ Year ______

8. Have you had any experience teaching law? (please circle) yes / no
9. If yes, please give details:

<table>
<thead>
<tr>
<th>Subjects</th>
<th>Institution</th>
<th>Dates</th>
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</table>

10. What would you say your particular area of expertise is, if you have one?

________________________________________________________________________
________________________________________________________________________
Appendices

C2: Genre analysis: Participant background information (students)

1. What is your name? __________________________

2. Age range (circle):
   20-25  26-30  31-35  36-40  41+

3. Gender (circle): male   female

4. In what country did you go to school? (If more than one country, please specify dates, e.g.
   ___________________________________________________________________

5. What degrees have you obtained?
   Name of degree: (continue on back if necessary)
   _______________ Year: ______ University: _______________ Country: __________
   _______________ Year: ______ University: _______________ Country: __________
   _______________ Year: ______ University: _______________ Country: __________

6. Have you ever had any law-related work experience? (circle) yes no
   Please give details: (continue on back if necessary)
   Position: ________________________________________________
   From____________________(MM/YYYY) to____________________(MM/YYYY)
   Where were you based? (circle) Hong Kong / Abroad (please specify): __________
   Position: ________________________________________________
   From____________________(MM/YYYY) to____________________(MM/YYYY)
Appendices

Where were you based? (circle) Hong Kong / Abroad (please specify): __________

7. Have you had any prior full-time work experience? (continue on back if necessary)

Please give details:

Position: ________________________________________________

From ________________(MM/YYYY) to ________________(MM/YYYY)

Where were you based? (circle) Hong Kong / Abroad (please specify): __________

Position: ________________________________________________

From ________________(MM/YYYY) to ________________(MM/YYYY)

Where were you based? (circle) Hong Kong / Abroad (please specify): __________

8. What do you consider your first/native language?

English           Cantonese           Other (please specify) _________________

9. What other languages do you speak? __________________________________________

10. What IELTS score did you get to qualify for the PCLL?          ________

11. How proficient are you with the English language right now?
    (on a scale from 1 to 10, with 1 being low and 10 being high - please circle)

    lowest  1  2  3  4  5  6  7  8  9  10

    highest

12. How long did it take you to write the barrister’s opinion assignment for the conveyancing
    course (please estimate)?                ________ hours

13. When writing the barrister’s opinion assignment (see 12), how much time did you spend:
    a. Researching the problem (including time for reading and thinking) _____ percent
    b. Writing (including time for writing plans and revising your work) _____ percent

~ Thank you very much ~
Appendices

C3: LAWS user test: focused case study background information

1. What is your name? __________________________

2. Age range (circle):
   20-25  26-30  31-35  36-40  41+

3. Gender (circle): male   female

4. In what country did you go to school? (If more than one country, please specify dates, e.g.
   _______________________________________________________________________

5. What degrees have you obtained?

   Name of degree:

   ___________ Year: ______ University: ___________ Country: ___________

   ___________ Year: ______ University: ___________ Country: ___________

   ___________ Year: ______ University: ___________ Country: ___________

6. Have you ever had any law-related work experience? (circle)  yes  no

   Please give details:

   Position: ______________________________________________

   Length of employment: ____________ years ____________ months

   Where were you based? (circle) Hong Kong / Abroad (please specify): ___________

   Position: ______________________________________________

   Length of employment: ____________ years ____________ months
Appendices

Where were you based? (circle) Hong Kong / Abroad (please specify): ___________

7. Have you had any prior full-time work experience?

Please give details:

Position: ____________________________________________

Length of employment: _________ years _________ months

Where were you based? (circle) Hong Kong / Abroad (please specify): ___________

Position: ____________________________________________

Length of employment: _________ years _________ months

Where were you based? (circle) Hong Kong / Abroad (please specify): ___________

8. What do you consider your first/native language?

   English  Cantonese  Other (please specify) _________________

9. What other languages do you speak? __________________________________________

10. What IELTS score did you get to qualify for the PCLL? ________

11. How proficient are you with the English language right now?
    (on a scale from 1 to 10, with 1 being low and 10 being high - please circle)

    | lowest | highest |
    | 1 2 3 4 5 6 7 8 9 10 |

12. How proficient are you with computers?
    (on a scale from 1 to 10, with 1 being low and 10 being high – please circle)

    | lowest | highest |
    | 1 2 3 4 5 6 7 8 9 10 |
13. How familiar are you with web searching/search engines?  
(on a scale from 1 to 10, with 1 being low and 10 being high – please circle)  

<table>
<thead>
<tr>
<th>lowest</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>highest</th>
</tr>
</thead>
</table>

14. What search engines do you use to search the internet? (e.g. Google, Yahoo, Lycos)  
________________________________________________________________________

15. What searchable online legal databases do you use? (e.g. Westlaw)  
________________________________________________________________________  
________________________________________________________________________

16. On average, how often do you use a search engine to search the internet? (circle)  
   a. Once a week  
   b. More than once a week but less than once a day  
   c. Once a day  
   d. More than once a day  

17. On average during term time, how often do you search a legal database? (circle)  
   a. Once a week  
   b. More than once a week but less than once a day  
   c. Once a day  
   d. More than once a day  

18. How do you use search engines (for the internet and legal databases)? (circle)  
   a. I use simple searches with a few search terms to find information  
   b. I use advanced functions to combine words and terms to narrow or widen a search  
   c. Other – please specify:  

________________________________________________________________________
________________________________________________________________________

~ Thank you very much ~
C4: LAWS user test: General case study background information

I would be very grateful if you would help me by filling out this short questionnaire.

This research is being conducted to meet the requirements of MA (hons) under the supervision of Prof. Christopher Candlin, Phone (612) 9850 9818, Macquarie University, Sydney, Email: ccandlin@ling.mq.edu.au.

The research aims to describe the learning behaviour of law students using a variety of online, computer-mediated resources for legal writing skills development. The aims of this questionnaire are to collect background information that will help to explain your use of the LAWS web site (http://laws.cityu.edu.hk).

Participation is voluntary. Please note that participation in this study will have no effect, adverse or otherwise, on the grades you are awarded on the PCLL.

Please note also that any data collected here is strictly confidential. The data collected here will be used as part of an anonymous large-scale quantitative analysis of user behaviour, and the identity of users will in no way be disclosed.

Christoph Hafner, principal investigator (c.hafner@cityu.edu.hk, phone 2194 2479)

Questionnaire

1. What is your student ID number? __________________________

2. Are you a full-time (FT) or part-time (PT) student? (circle)  FT  PT

3. What IELTS score did you get to qualify for the PCLL? ________

4. How proficient are you with the English language right now? (on a scale from 1 to 10, with 1 being low and 10 being high - please circle)

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5. How proficient are you with computers? (on a scale from 1 to 10, with 1 being low and 10 being high – please circle)

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6. How familiar are you with web searching/search engines?
*(on a scale from 1 to 10, with 1 being low and 10 being high – please circle)*

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APPENDIX D: BARRISTER’S OPINION WRITING TASK

D1: ‘Hair Flair’ Case File

INSTRUCTIONS TO COUNSEL

1. Instructing Solicitors act for Hair Flair Limited (‘Hair Flair’). In November 2004 Hair Flair entered into negotiations with New Wave Limited (‘New Wave’), the owner of a shopping mall known as New Wave World, which was then under renovation. The negotiations were conducted between Thomas Tung, a director of Hair Flair, and Larry Lee, a director of New Wave. Hair Flair intended to open a high class hairdressing and beauty salon in the basement of New Wave World, Nathan Road Hong Kong (‘the Premises’). The negotiations concerned the terms on which New Wave would lease the Premises to Hair Flair.

2. Instructing Solicitors enclose the following documents:
   (i) copy letter from New Wave to Hair Flair dated 4 April 2005;
   (ii) copy Memorandum of Understanding;
   (iii) copy letter from Hair Flair to New Wave dated 28 April 2005;
   (iv) copy letter from Hair Flair to New Wave dated 1 June 2005;
   (v) copy letter from New Wave to Hair Flair dated 20 June 2005;
   (vi) copy letter from New Wave to Hair Flair dated 4 July 2005;
   (vii) copy letter from Hair Flair to New Wave dated 16 July 2005;
   (viii) copy letter from New Wave to Hair Flair dated 20 July 2005;
   (ix) copy letter from Hair Flair to New Wave dated 2 September 2005 (fitting out plans not enclosed);
   (x) copy letter from New Wave to Hair Flair dated 15 October 2005;
   (xi) copy letter from Hair Flair to New Wave dated 15 November 2005;
   (xii) copy letter from New Wave to Hair Flair dated 18 November 2005.

3. Thomas Tung has informed Instructing Solicitors that following several months of negotiations, in March 2005 he and Larry Lee reached agreement on the terms of the proposed lease of the Premises including the rent and other charges payable, the duration of the term and the rent free period and the deposit payable. On 4 April 2005 New Wave sent to Hair Flair a Memorandum of Understanding setting out the agreed terms (see documents i and ii).
4. On 28 April 2005 Hair Flair wrote to New Wave (see document iii) confirming that the Memorandum of Understanding reflected their agreement and requesting the lease for execution. A further request for the draft lease was made by Hair Flair on 1 June 2005 (see document iv).

5. Further correspondence followed (see document v) and on 4 July 2005 New Wave sent the lease to Hair Flair for execution (see document vi). The lease was in New Wave’s usual form for New Wave World but did not contain any reference to the agreed rent free and management fee free period. Hair Flair therefore returned the lease to Hair Flair on 16 July 2005 (see document vii). Under cover of the same letter, Hair Flair sent New Wave a cheque for HK$400,000 in respect of the agreed deposit.

6. On 20 July 2005 New Wave acknowledged receipt of the deposit (see document viii).

7. Further correspondence between New Wave and Hair Flair followed. On 2 September 2005 Hair Flair sent its fitting out plans to New Wave for approval (see document ix) and received approval from New Wave on 15 October 2005 (see document x). Hair Flair wrote to New Wave on 15 November 2005 (see document xi).

8. On 18 November 2005 New Wave wrote to Hair Flair saying that they would not grant the lease (see document xii).

9. Counsel is asked to advise:

   (a) whether there is an enforceable agreement for a lease between New Wave and Hair Flair on the terms set out in document (ii);

   (b) if the answer to (a) is in the affirmative, whether Hair Flair can obtain specific performance of the agreement; and

   (c) generally.
Dear Thomas,

Basement, New Wave World,
Nathan Road, Tsim Sha Tsui, Kowloon

I am writing to record the discussions between us regarding the lease of the above premises to be entered into between New Wave Limited as landlord and Hair Flair Limited as tenant. I enclose a memorandum of understanding setting out the terms of the proposed tenancy. Provided you have no queries on the terms, I will arrange for New Wave's solicitors to prepare the lease.

Yours sincerely,

[Signature]

Larry Lee
Director New Wave World Limited
MEMORANDUM OF UNDERSTANDING

Basement, New Wave World, Nathan Road, Tsim Sha Tsui, Kowloon

Landlord: New Wave Limited
Tenant: Hair Flair Limited
Premises: Basement, New Wave World, Nathan Road, Tsim Sha Tsui, Kowloon.
Term: 5 years starting on 1 December 2005 and ending on 30 November 2010.
Rent: HK$200,000 per calendar month payable monthly in advance on the first day of every month the first payment to be made on 1 March 2006.
Management Charges: HK$10,000 per calendar month payable monthly in advance on the first day of every month the first payment to be made on 1 March 2006.
Rates: to be borne by the Tenant.
Deposit: HK$400,000 to be paid by the Tenant to the Landlord on the signing of the lease. The Landlord will repay the deposit to the Tenant at the end of the term subject to any deductions made by the Landlord in respect of any loss or damage suffered by the Landlord as the result of any breach by the Tenant of the terms of the lease.
Fitting Out: The Tenant will submit detailed layout plans of the proposed internal layout of the Premises and receive written approval from the Landlord before commencing fitting out work.
Appendices

Legal Costs and Stamp Duty: Each party will pay its own legal costs. The stamp duty payable on the lease and duplicate will be borne by the Landlord and Tenant in equal shares.

Lease terms: the lease will otherwise be subject to the terms of the Landlord’s usual form of lease for New Wave World.
Dear Larry

Basement, New Wave World, Nathan Road, Tsim Sha Tsui, Kowloon

Thank you for your letter of 4 April enclosing the Memorandum of Understanding. I confirm that it reflects the agreement between us. I shall be away for a month on business and shall be glad if you will send me the draft lease so that I can arrange execution on my return to Hong Kong in early June 2005.

With kind regards

Thomas Tung
Director Hair Flair Limited
Dear Larry

Basement, New Wave World, Nathan Road, Kowloon, Hong Kong

I refer to my letter dated 28 April. I have now returned to Hong Kong and shall be glad if you will send me the lease as soon as possible.

Hair Flair’s decorators are currently preparing the fitting out plans and I will send these to you for approval as soon as they are ready. Can you let me know approximately how long it will take New Wave to approve the fitting out plans.

With kind regards

Thomas Tung
Director Hair Flair Limited
20 June 2005

Dear Thomas

Basement, New Wave World,
Nathan Road, Tsim Sha Tsui, Kowloon

Thank you for your letter of 1 June 2005. I have passed instructions to the leasing department to prepare the lease which will be sent to you as soon as possible. In the meantime, please submit your fitting out plans to Mr Felix Fong of New Wave Limited. You should allow up to 4 weeks for New Wave to approve your fitting out plans.

With kind regards

Larry Lee
Director New Wave Limited
Dear Thomas

Basement, New Wave World,
Nathan Road, Tsim Sha Tsui, Kowloon

I refer to my letter of 20 June and now enclose the lease in duplicate. Please arrange for both to be executed by Hair Flair Limited and return them to me together with a certified copy of a board resolution authorizing execution of the lease and a cheque made payable to New Wave Limited in respect of the deposit of HK$400,000.

With kind regards

Larry Lee
Director New Wave Limited
Dear Larry

Basement, New Wave World, Nathan Road, Kowloon, Hong Kong

Thank you for your letter of 4 July enclosing the lease and duplicate. I am returning them, however, because the lease does not refer to the agreed rent free periods, details of which are set out in the Memorandum of Understanding enclosed with your letter of 4 April. Please send a revised lease and duplicate in due course. In the meantime I enclose a cheque for HK$400,000 made payable to New Wave Limited in respect of the deposit. Please acknowledge receipt.

With kind regards

Thomas Tung
Director New Wave Limited
20 July 2005

Dear Thomas

Basement, New Wave World,
Nathan Road, Tsim Sha Tsui, Kowloon

Thank you for your letter of 16 July enclosing the deposit receipt of which is acknowledged. I confirm that I will send you a revised lease in due course.

With kind regards

Larry Lee
Director New Wave Limited
Dear Larry

Basement, New Wave World, Nathan Road, Kowloon, Hong Kong

I refer to your letter dated 20 July and shall be glad if you will send us the lease as soon as possible. In the meantime I enclose Hair Flair’s fitting out plans for approval.

Would it be possible for Hair Flair to be given possession before 1 December 2005? As you can imagine we are keen to start fitting out so that business can start before Chinese New Year 2006.

With kind regards

Thomas Tung
Director Hair Flair Limited
Dear Mr Tung

Basement, New Wave World, Nathan Road, Kowloon, Hong Kong

I refer to your letter dated 2 September 2005 enclosing your fitting out plans. I am writing to confirm that these are approved without amendment. The premises will be ready for handover on 1 December 2005. Mr Wu, the building manager for New Wave World, will contact you nearer that date to arrange handover.

Yours sincerely

[Signature]

Peter Poon
Assistant to Larry Lee, Director
15 November 2005

Dear Larry

Basement, New Wave World, Nathan Road, Kowloon, Hong Kong

I shall be glad if you will send me the revised lease and let me know the arrangements for handing over possession on 1 December 2005.

With kind regards

Thomas Tung
Director New Wave Limited
Dear Mr Tung

Basement, New Wave World,
Nathan Road, Tsim Sha Tsui, Kowloon

I refer to your letter of 15 November 2005. New Wave Limited has now decided to retain the basement of New Wave World for its own operations. As there is no binding agreement between our respective companies, I enclose a cheque for HK$400,000 which sum you sent to us on 16 July.

Thank you for your interest in New Wave World.

Yours faithfully

Larry Lee
Director New Wave Limited
Instructions to Counsel

1. Instructing Solicitors act for Mary and George Tan, the purchasers of Flat 6A Villa Rouge, 32 Guildford Road, the Peak (‘the Flat’). The vendor of Flat 6A is John Ho. Completion of Mr and Mrs Tan’s purchase of the Flat is due to take place in two weeks’ time.

2. Instructing Solicitors enclose a copy of the Agreement for Sale and Purchase of the Flat.

3. Several days ago Mr Ho allowed Mr and Mrs Tan access to the Flat with their decorator. When Mr and Mrs Tan inspected the Flat they found that Mr Ho’s workmen were removing a number of items from the Flat. The workmen told Mr and Mrs Tan that they had instructions to remove 8 woven silk panels from the walls of the master bedroom.

4. Mr and Mrs Tan noticed the woven silk panels when they first looked at the Flat. The panels are very attractive. The walls of the master bedroom are wood paneled. Woven silk has been fastened to boards with staples. The boards fit precisely into recesses in the wood paneling. They are not fastened with glue or in any other way.

5. Mr and Mrs Tan admired the panels when they first visited the Flat. Mr Ho said that they had been made especially for the master bedroom and that the wood paneling had been installed in order to enable the woven panels to be displayed. Mr Ho’s workmen told Mr and Mrs Tan that the wood paneling would not be damaged by the removal of the panels.

6. The panels were not expressly referred to in the oral negotiations and they are not expressly referred to in the agreement for sale and purchase. Nevertheless Mr and Mrs Tan though that the panels were included in the sale.

7. Counsel is asked to advise:

(a) whether the woven silk panels are fixtures which are included in the sale; and

(b) if the answer to (a) is in the affirmative what action should be taken to ensure that the panels are not removed prior to completion of Mr and Mr’s Tan’s purchase.
THIS AGREEMENT is made the 6 day of January 2006

BETWEEN

(1) JOHN HO of 6A Villa Rouge, 32 Guildford Road, The Peak, Hong Kong (‘the Vendor’) and

(2) MARY TAN and GEORGE TAN both of 10A Hibiscus Court, 32 Conduit Road, Hong Kong (‘the Purchaser’).

1. The Vendor sells and the Purchaser purchases the land described in the Schedule hereto (‘the Property’) for the residue of the term of years created by the Government lease referred to in the Schedule.

2. The purchase price is the sum of $32,000,000

3. A deposit of $3,200,000 shall be paid by the Purchaser to the Vendor on the signing of this Agreement and the balance of the purchase price shall be paid on completion. The deposit shall be paid to the Vendor on completion.

4. Completion shall take place at the offices of the Vendor’s solicitors or as they may direct, on the 6 day of February 2006.

5. Vacant possession of the Property shall be given to the Purchaser on completion.

6. Time shall in every respect be of the essence of this Agreement.

7. The Vendor shall assign the Property as beneficial owner.

8. The title shall commence with the Government lease.

9. The Property is sold subject to and with the benefit of a Deed of Mutual Covenant dated 10 November 1987 and registered in the Land Registry by Memorial Number 123456.

10. There are incorporated into this Agreement as if they were herein written the conditions respectively on the part of the Vendor and the Purchaser set out in Part A of the Second Schedule to the Conveyancing and Property Ordinance save and except Condition 7(1).

11. Any requisitions or objections in respect of title or otherwise arising out of this Agreement shall be delivered in writing to the Vendor’s solicitors within seven days after the date of receipt of the title deeds of the Property otherwise the same shall be considered as waived.
12. The stamp duty and land registration fees payable on this Agreement and the assignment made pursuant to this Agreement shall be borne by the Purchaser.
Appendices

SCHEDULE

1. The Property —
   100/10,000th equal undivided shares of and in Inland Lot No 1278 and of and in the building erected thereon known as Villa Rouge, 32 Guildford Road, The Peak, Hong Kong together with the sole and exclusive right to hold use occupy and enjoy Flat 6A of Villa Rouge as shown for the purposes of identification only coloured pink on a plan attached to an Assignment Memorial No. 876543 (‘the Assignment) subject to the exceptions and reservations contained mentioned or referred to in the Assignment.

2. The Government Lease —
   (a) Date: 2 June 1985
   (b) Parties: (1) the Governor of Hong Kong
             (2) Luxury Developments Limited
   (c) Term: a term starting on 2 June 1985 and ending on 30 June 2047
   (d) Lot Number: Kowloon Inland Lot No 1278

SIGNED by the Vendor
in the presence of:

P Lee
Solicitor,
Hong Kong.

SIGNED by the Purchaser
in the presence of:

P Chan
Solicitor,
Hong Kong.

RECEIVED on the day and year first above written from the Purchaser
the sum of HONG KONG DOLLARS HK$3,200,000.00
THREE MILLION TWO HUNDRED THOUSAND being the deposit money above mentioned.

John Ho
the Vendor
D3: ‘Hibiscus Court’ Case File

Instructions to Counsel

1. Instructing solicitors act for Wong Bing Kwong, the prospective purchaser of a residential flat known as 8A Hibiscus Court, 25 Prince Edward Road, Kowloon (‘the Property’) under an Agreement for Sale and Purchase dated 16 January 2006. The Vendor under the agreement is Vicki Wu whose solicitors are Cameron & Co. Completion is due to take place on 20 March 2006.

2. Instructing solicitors enclose the following documents:
   
   (i) copy Agreement for Sale and Purchase dated 16 January 2006 (‘the Agreement’)
   
   (ii) copy extract from the Deed of Mutual Covenant for Hibiscus Court showing Clause i(a) of the Fourth Schedule.

3. Mr Wong first inspected the Property on 12 January 2006 together with the Vendor. When the Vendor was showing Mr Wong around the Property, James noticed that a small balcony had been built outside the kitchen of the Property. The Vendor kept a washing machine and dryer on the balcony. Access to the balcony was through a door leading from the kitchen of the Property.

4. Later in the oral negotiations between Mr Wong and the Vendor in the period between 12 and 16 January, Mr Wong pointed out to the Vendor that no other flat in Hibiscus Court had a balcony outside the kitchen. Mr Wong’s response was that the balcony was present when he bought the Property in 1998. At that time, two other flats in Hibiscus Court had similar balconies. However, these have since been removed.

5. Mr Wong and the Vendor signed the Agreement. Clause 11 of the Agreement provides as follows:

   ‘The Vendor does not warrant or represent that each and every structure on the Property or any part therefore has been constructed in accordance with the Buildings Ordinance Cap 123 or any subsidiary legislation. The Vendor is under no liability whatsoever if it is discovered that any structure on the Property contravenes the Buildings Ordinance or any subsidiary legislation. The Purchaser shall not be entitled to raise any requisition or objection or to rescind this agreement or to annul the sale or to claim any compensation or damages from the Vendor by reason of or in connection with any such contravention.’

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6. The title deeds were delivered to Instructing Solicitors on 20 January. On 21 January Instructing Solicitors were informed by Mr Wong’s mortgagee’s surveyor that the balcony outside the kitchen is not shown on the latest approved building plans dated 1982 and that the balcony contravenes s 14 of the Buildings Ordinance Cap123.

7. Instructing Solicitors raised requisitions on title on 25 January. The requisitions included the following which is requisition number 4:

‘Our client has been advised by his mortgagee’s surveyor that a balcony has been constructed outside the kitchen of the Property. The surveyor further advises that the construction of the balcony would require the consent of the Building Authority under s 14 of the Buildings Ordinance. We also note that Clause ii(a) of the Fourth Schedule to the Deed of Mutual Covenant for Hibiscus Court provides that no owner will make any alterations to the walls or structure or façade of Hibiscus Court...’. Please send us evidence that all necessary consents were obtained to the construction of the balcony outside the kitchen of the Property.’

8. On 28 January the Vendor’s solicitor replied satisfactorily to all requisitions with the exception of requisition number 4 to which they replied as follows:

‘Your attention is drawn to Clause 11 of the Agreement for Sale and Purchase made between our respective clients which provides that the Purchaser will not raise requisitions in connection with any breach of the Buildings Ordinance or any subsidiary legislation. Accordingly we are not obliged to reply to this requisition.’

9. Counsel is asked to advise whether:

(i) the Vendor has breached the Agreement as a result of failing to reply to requisition number 4;
(ii) Mr Wong is entitled to treat himself as discharged from performance of the Agreement and to recover the deposit paid; and
(iii) generally in relation to the matter.

Chen Fok & Co
February 2006
THIS AGREEMENT is made the 16 day of January 2006

BETWEEN

(1) VICKY WU of 8A Hibiscus Court, 25 Prince Edward Road, Kowloon, Hong Kong ('the Vendor') and

(2) JAMES WONG BING KWONG (黃炳光) of 6A Blue Gardens, Conduit Road, Hong Kong ('the Purchaser').

1. The Vendor sells and the Purchaser purchases the land described in the Schedule hereto ('the Property') for the residue of the term of years created by the Government lease referred to in the Schedule.

2. The purchase price is the sum of $8,000,000

3. A deposit of $800,000 shall be paid by the Purchaser to the Vendor on the signing of this Agreement and the balance of the purchase price shall be paid on completion.

4. Completion shall take place at the offices of the Vendor's solicitors or as they may direct, on the 20 day of March 2006.

5. Vacant possession of the Property shall be given to the Purchaser on completion.

6. Time shall in every respect be of the essence of this Agreement.

7. The Vendor shall assign the Property as beneficial owner.

8. The title shall commence with the Government lease.

9. The Property is sold subject to and with the benefit of a Deed of Mutual Covenant dated 10 November 1982 and registered in the Land Registry by Memorial Number 123456.
10. There are incorporated into this Agreement as if they were herein written the conditions respectively on the part of the Vendor and the Purchaser set out in Part A of the Second Schedule to the Conveyancing and Property Ordinance.

11. The Vendor does not warrant or represent that each and every structure on the Property or any part therefore has been constructed in accordance with the Buildings Ordinance Cap 123 or any subsidiary legislation. The Vendor is under no liability whatsoever if it is discovered that any structure on the Property contravenes the Buildings Ordinance or any subsidiary legislation. The Purchaser shall not be entitled to raise any requisition or objection or to rescind this agreement or to annul the sale or to claim any compensation or damages from the Vendor by reason of or in connection with any such contravention.

12. The stamp duty and land registration fees payable on the assignment made pursuant to this Agreement shall be borne by the Purchaser.
SCHEDULE

1. The Property —
100/10,000th equal undivided shares of and in Kowloon Inland Lot No 1278 and of and in the building erected thereon known as Hibiscus Court, 25 Prince Edward Road, Kowloon, Hong Kong together with the sole and exclusive right to hold use occupy and enjoy Flat 8A as shown for the purposes of identification only coloured pink on a plan attached to an Assignment Memorial No. 876543 ('the Assignment') subject to the exceptions and reservations contained mentioned or referred to in the Assignment.

2. The Government Lease —
(a) Date: 2 June 1980
(b) Parties: (1) the Governor of Hong Kong
(2) Luxury Developments Limited
(c) Term: a term starting on 2 June 1980 and ending on 30 June 2047
(d) Lot Number: Kowloon Inland Lot No 1278

SIGNED for and on behalf of the Vendor
in the presence of:

} Vheel Wu

P Lee
Solicitor,
Hong Kong.

SIGNED for and on behalf of the Purchaser
in the presence of:

} Johnny Wong

M Pol
Solicitor,
Hong Kong.

RECEIVED on the day and year first
above written from the Purchaser
the sum of HONG KONG DOLLARS
EIGHT HUNDRED THOUSAND
being the deposit money above mentioned.

} Vheel Wu
the Vendor
Extract from the Deed of Mutual Covenant for
Hibiscus Court showing Clause i(a) of the Fourth Schedule

THE FOURTH SCHEDULE ABOVE REFERRED TO

(i) None of the parties hereto shall

(a) make any alterations to the walls or structure or facade of the Building
or to the said premises of which it or they is/are entitled to the sole and
exclusive use, occupation and enjoyment; or
APPENDIX E: CONSENT FORMS USED

E1: STUDENT CONSENT FORM (GENRE ANALYSIS)

INFORMATION STATEMENT AND CONSENT FORM

Project title: Online resources for professional legal writing skills

Chief investigator:
Christoph Hafner
English Language Centre
City University of Hong Kong
Phone 2194 2479
Email: c.hafner@cityu.edu.hk

This research is being conducted to meet the requirements of MA (hons) under the supervision of Prof. Christopher Candlin, Phone (612) 9850 9818, Macquarie University, Sydney. Email: ccandlin@ling.mq.edu.au.

Aims of research:
The aim of this project is to describe the characteristics of legal writing, both in legal professionals and in post-graduate law students, with specific reference to the genre of barrister’s opinion. In addition, the project aims to describe the learning behaviour of law students using a variety of online, computer-mediated resources for legal writing skills development.

Commitment:
Participation in this study involves:
- Giving the researcher consent to analyze your opinion writing, and to obtain the grade for your opinion writing assignment from the school of law.
- Taking part in a 1 hour interview, to be arranged later in semester

Maintenance of privacy/confidentiality:
Please note that excerpts of your work may appear in de-identified form, in the researcher’s MA thesis and in related publications. However, any data you provide will remain entirely anonymous.

Feedback:
Once your writing has been analyzed, written feedback will be provided to you.

Voluntary participation:
Note that participation in this research is voluntary and you have the right to withdraw from further participation at any time without having to give a reason and without adverse consequence.
Agreement to participate:
I agree to participate in this research

Signed:  Witnessed:

Name:  Name:
(Please print clearly)  (Please print clearly)

Date:  Date:

Copy to participant:
The participant has been given a signed copy of this information statement and consent form to keep.

- Thank you for your participation -

The ethical aspects of this study have been approved by the Macquarie University Ethics Review Committee (Human Research). If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Research Ethics Officer (telephone [612] 9850 7854, fax [02] 9850 8799, email: ethics@vc.mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

You may also contact Geraldine Mak, Education Development Office, Room 401, 4/F, Festival Walk, Tat Chee Avenue, Kowloon Tong, Phone 3442 6088.
Appendices

E2: BARRISTER CONSENT FORM (GENRE ANALYSIS)

INFORMATION STATEMENT AND CONSENT FORM

Project title: Online resources for professional legal writing skills

Chief investigator:
Christoph Hafner
English Language Centre
City University of Hong Kong
Phone 2194 2479
Email: c.hafner@cityu.edu.hk

This research is being conducted to meet the requirements of MA (hons) under the supervision of Prof. Christopher Candlin, Phone (612) 9850 9818, Macquarie University, Sydney, Email: ccandlin@ling.mq.edu.au.

Aims of research:
The aim of this project is to describe the characteristics of legal writing, both in legal professionals and in post-graduate law students, with specific reference to the genre of barrister’s opinion. In addition, the project aims to describe the learning behaviour of law students using a variety of online, computer-mediated resources for legal writing skills development.

Commitment:
Participation in this study involves:
- Writing one opinion in response to a set of instructions provided
- Attending a one-hour interview to be held after preliminary analysis of the opinion (by the researcher)

Remuneration
You will be remunerated for participating in this study with an honorarium of HK$1000.

Recording of data and privacy/confidentiality:
Please note that interviews will be audio-recorded and transcribed by a research assistant. Other than the researcher and the research assistant no-one will have access to the raw data. Excerpts of the interviews may appear in publications but will remain entirely anonymous.

Feedback:
Please feel free to contact me for feedback regarding this research (see contact details above).
Voluntary participation:
Note that participation in this research is voluntary and you have the right to withdraw from further participation at any time without having to give a reason and without adverse consequence.

Agreement to participate:
I agree to participate in this research

Signed:  Witnessed:

Name:  Name:
(Please print clearly)  (Please print clearly)

Date:  Date:

Copy to participant:
The participant has been given a signed copy of this information statement and consent form to keep.

- Thank you for your participation -

The ethical aspects of this study have been approved by the Macquarie University Ethics Review Committee (Human Research). If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Research Ethics Officer (telephone [612] 9850 7854, fax [02] 9850 8799, email: ethics@vc.mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

You may also contact Geraldine Mak, Education Development Office, Room 401, 4/F, Festival Walk, Tat Chee Avenue, Kowloon Tong, Phone 3442 6088.
E3: FOCUSED CASE STUDY (YEAR 1) CONSENT FORM

INFORMATION STATEMENT AND CONSENT FORM

Project title: Online resources for professional legal writing skills

Chief investigator:
Christoph Hafner
English Language Centre
City University of Hong Kong
Phone 2194 2479
Email: c.hafner@cityu.edu.hk

This research is being conducted to meet the requirements of MA (hons) under the supervision of Prof. Christopher Candlin, Macquarie University, Sydney. Phone (612) 9850 9818, Email ccandlin@ling.mq.edu.au

Aims of research:
The aim of this project is to describe the characteristics of legal writing, both in legal professionals and in post-graduate law students, with specific reference to the genre of barrister’s opinion. In addition, the project aims to describe the learning behaviour of law students using a variety of online, computer-mediated resources for legal writing skills development.

Commitment:
- 1 initial workshop on how to use the tools and how to write reflections – 1 hour
- 2 progress meetings – 45 minutes each
- 1 individual interview – 45 minutes
- 1 group interview – 45 minutes
- Journal writing 20 minutes per week

The study will begin in week 6 of Semester A and end by week 14 of Semester A.

Participation has no effect on your Legal Writing and Drafting grade
Please note that participation in this study will have no effect, adverse or otherwise, on the grades you are awarded in the Legal Writing and Drafting course.

Recording of data and privacy/confidentiality:
Please note that interviews will be audio-recorded and/or video-recorded and transcribed by a research assistant. Other than the researcher and the research assistant no-one will have access to the raw data. Excerpts of the interviews may appear in publications but will remain entirely anonymous.
Feedback:
A feedback session will be convened to discuss the findings of this research.

Voluntary participation:
Note that participation in this research is voluntary and you have the right to withdraw from further participation at any time without having to give a reason and without adverse consequence.

Agreement to participate:
I agree to participate in this research

Signed:    Witnessed:

Name:    Name:
(Please print clearly)  (Please print clearly)

Date:    Date:

Copy to participant:
The participant has been given a signed copy of this information statement and consent form to keep.

- Thank you for your participation -

*The ethical aspects of this study have been approved by the Macquarie University Ethics Review Committee (Human Research). If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Research Ethics Officer (telephone [612] 9850 7854, fax [02] 9850 8799, email: ethics@vc.mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.*

*You may also contact Geraldine Mak, Education Development Office, Room 401, 4/F, Festival Walk, Tat Chee Avenue, Kowloon Tong, Phone 3442 6088.*
Appendices

E4: FOCUSED CASE STUDY (YEAR 2) CONSENT FORM

INFORMATION STATEMENT AND CONSENT FORM

Project title: Online resources for professional legal writing skills

Chief investigator:
Christoph Hafner
English Language Centre
City University of Hong Kong
Phone 2194 2479
Email: c.hafner@cityu.edu.hk

This research is being conducted to meet the requirements of MA (hons) under the supervision of Prof. Christopher Candlin, Macquarie University, Sydney. Phone (612) 9850 9818, Email ccandlin@ling.mq.edu.au

Aims of research:
The aim of this project is to describe the characteristics of legal writing, both in legal professionals and in post-graduate law students, with specific reference to the genre of barrister’s opinion. In addition, the project aims to describe the learning behaviour of law students using a variety of online, computer-mediated resources for legal writing skills development.

Commitment:
- 1 background information questionnaire – 15 minutes
- 1 individual interview – 45 minutes
- Giving the researcher consent to analyse your legal writing and drafting assignments, including your grades.

Participation has no effect on your Legal Writing and Drafting grade
Please note that participation in this study will have no effect, adverse or otherwise, on the grades you are awarded in the Legal Writing and Drafting course.

Recording of data and privacy/confidentiality:
Please note that interviews will be audio-recorded and/or video-recorded and transcribed by a research assistant. Other than the researcher and the research assistant no-one will have access to the raw data. Excerpts of the interviews may appear in publications but will remain entirely anonymous.

Feedback:
A feedback session will be convened to discuss the findings of this research.
Voluntary participation:
Note that participation in this research is voluntary and you have the right to withdraw from further participation at any time without having to give a reason and without adverse consequence.

Agreement to participate:
I agree to participate in this research

Signed: Witnessed:

Name: (Please print clearly) Name: (Please print clearly)

Date: Date:

Copy to participant:
The participant has been given a signed copy of this information statement and consent form to keep.

- Thank you for your participation -

The ethical aspects of this study have been approved by the Macquarie University Ethics Review Committee (Human Research). If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Research Ethics Officer (telephone [612] 9850 7854, fax [02] 9850 8799, email: ethics@vc.mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

You may also contact Geraldine Mak, Education Development Office, Room 401, 4/F, Festival Walk, Tat Chee Avenue, Kowloon Tong, Phone 3442 6088.
E5: GENERAL CASE STUDY (YEAR 1 AND 2) ONLINE FORM

Student Registration

Need to register? Just enter your email address and get your password.

Enter your name

And your email address

c@student.cityu.edu.hk

Conditions of use

LAWSS is part of a research project investigating the use of online resources for language learning and legal skills acquisition. In order to help understand the effectiveness of the tools offered at this site, anonymous user data may be collected. User analysis will be limited to large scale quantitative studies, and your identity will in no way be disclosed. Please indicate below whether you agree to these conditions.

If you have any questions about this research please contact Christoph Hafner at c.hafner at cityu.edu.hk.

I agree

☐
1. Those instructing me act for Mr. George Tan ("Mr. Tan") and Mrs. Mary Tan ("Mrs. Tan"), the purchasers of Flat 6A, Village Rouge, 32 Guildford Road, the Peak ("the Flat"), who had entered into a written sale and purchase agreement with Mr. John Ho ("Mr. Ho"), the vendor of the Flat on 6th January 2006 ("the Agreement").

2. The walls of the master bedroom of the Flat are wood paneled and 8 woven silk panels ("the Silk Panels") had been fastened to boards which fit in the wood paneling. I have been asked to advise whether the Silk Panels are fixtures included in the sale and if the answer to this is in the affirmative, what action should be taken to preserve them prior to the completion.

**Are the Silk Panels fixtures included in the sale?**

3. Whether or not a chattel becomes a fixture will depend upon the intention with which the chattel was brought onto the land. In ascertaining the owner’s intention two tests will be applied: (i) the degree of annexation and (ii) the purpose of annexation, and more recent authorities suggest that the purpose of the annexation is now of first importance: *Hamp v Bygrave* (1983) 266 EG 720.
4. In the case of *Re de fable, Ward v Taylor* [1901] 1 Ch 523, some tapestries were affixed to the wall of a house in a way that they might be removed without any structural damage, nor was anything in the structure of the house really altered when the tapestries were put up. The court of appeal took into consideration the mode in which the tapestries were affixed and the position in which they were placed and held that the tapestries were merely for the better enjoyment of them as chattels, rather than for the purpose of increasing the value of the house.

5. In *Leigh v Taylor* [1902] AC 157, some tapestries had been affixed to the walls of the house and they could be removed without doing any structural damage. The House of Lords held that the tapestries were not fixtures, since they were affixed only for the purpose of adornment and enjoyment of them as tapestries.

6. However, in the case of *Re Whaley* [1908] 1 Ch 615, pieces of tapestries were affixed on the wall of a house as part of the scheme of decoration and a picture was fixed by the moldings of a mantel which had been constructed for the picture. It was held that these objects, affixed to the wall but capable of being removed without much difficulty, were fixtures because the purpose of them affixing was “of creating a beautiful room as a whole.” (*per* Neville J at 619).

7. I have taken into consideration all the circumstances and I am of the view that the Silk Panels are more likely to be regarded as fixtures rather than chattels.
8. According to the facts, the Silk Panels were not purchased but had been made especially for the master bedroom. Although they can be removed without causing any damage to the wood paneling, they fit precisely into recesses in the wood paneling. I consider the clear inference to be that Mr. Ho regarded the Silk Panels as features of, and part and parcel of, the master bedroom and are therefore fixtures.

**Steps to be taken to preserve the Silk Panels**

9. I am of the view that Mr. and Mrs. Tan may make an application for (i) a declaration under O.15, r.16 of the *Rules of High Court*, Cap.4A (“the Rules”) that the Silk Panels are fixtures that should go with the sale of the Flat, or (ii) for a preservation order under O.29, r.2 of the *Rules*.

**Application for a declaration**

10. The court has the general power, under O.15 r.16 of the *Rules* to grant declaratory relief where the party seeking such relief has no cause of action apart from the rule: *Dick v Easy Finder Ltd.* [1996] 3 HKC 65. However, the court will not usually entertain an action for a declaration where the subject-matter is of low value: *Westbury-on-Severn R.S.A. v. Meredith* (1885) 30 Ch.D. 387.

**Application for a preservation order**

| 3a. Issue | 3b. Law and 3c. Authority | 3d. Application to Facts | 3e. Conclusion/opinion |
11. O.29, r.2 of the Rules gives the court the discretion to make an order in preserving a property where the court sees that “there is something which ought to be done for the security of the property” : Hong Kong Civil Procedure 2004, 29/8/8. However, the court will refuse to grant a preservation order if damages would be an adequate remedy for the plaintiff: Feng Loy Chuen v Lim Yiong Lin [1977] HKLR 471.

Conclusion

12. I do not have before me information related to the value of the Silk Panels. Therefore, at this stage, I am unable to assess the merit of the applications and I advise that those instructing me should obtain further instructions in this respect. The value of the Silk Panels is also relevant to whether the application should be commence at the District Court or the High Court.

13. I trust this advice is helpful and would be pleased to advise further if so instructed.

Dated this the 25th day of November 2005.

[Barrister’s name]
[Barrister’s address in Chambers]
APPENDIX G: INTERVIEW QUESTIONS AND PROMPTS

G1: Genre analysis: Barrister interview

A. Getting started/learning to write opinions
   a. How did you learn to write opinions initially?
   b. Were you always this proficient with writing opinions?
   c. If not, how did you become this proficient?
   d. Did you read books? (which ones?)
   e. Did you consult the work of others?
   f. Did you have some formal training?
   g. How do you assist pupils with this kind of writing?
   h. What advice and help do you give? Do you proofread?
   i. What mistakes did you make initially? Do you still make?
   j. What are some of the common mistakes that you see other people making?

B. Your writing process
   a. What do you do from start to finish when writing an opinion – tell me in detail and don’t leave anything out?
   b. How much time do you spend reading, planning, researching, writing?
   c. How did you go about writing this opinion? Was it typical? Why (not)?

C. Audience/styletone
   a. What is the role of the barrister in giving the opinion? How does that affect your writing?
   b. Do you write every opinion in the same style?
   c. To what extent do you consider your audience?
   d. Does it change your writing style?
   e. Does it change your selection of material?
      i. Facts
      ii. Law
      iii. content
   f. When writing this opinion, how did you decide what to include or not?
      i. Facts, law, content

D. Rhetorical structure/organization?
   a. Have I correctly identified the organization?
   b. Why is there a difference in the way the 2 different sets of issues are organized?
G2: Genre analysis: Student interview

A. Getting started/learning to write opinions
   a. How many barrister’s opinions have you written?
   b. Have you done any other writing that you find similar to barrister’s opinions?
   c. Did your teachers point out similarities between the barrister’s opinion and other kinds of writing?
   d. How did you learn to write barrister’s opinions?
   e. Did you read books? (which ones?)
   f. Did you consult the work of others?
   g. Did you have some formal training?
   h. What feedback have you had on your writing?
   i. Has it been useful?

B. Mistakes/difficulties
   a. What mistakes did you make initially? Do you still make?
   b. What did you find most difficult about writing the barrister’s opinion?
   c. How do you think these difficulties could be overcome?
   d. What aspects of researching did you find difficult?
   e. What aspects of writing did you find difficult?
   f. How did you overcome these difficulties?

C. Your writing process
   a. What do you do from start to finish when writing an opinion – tell me in detail and don’t leave anything out?
   b. How much time do you spend reading, planning, researching, writing?
   c. How did you go about writing this opinion? Was it typical? Why (not)?

D. Audience/style/tone
   a. What is the role of the barrister in giving the opinion? How does that affect your writing?
   b. Do you write every opinion in the same style?
   c. To what extent do you consider your audience?
   d. Does it change your writing style?
   e. What strategies do you use to communicate your ideas to your reader?
   f. Does it change your selection of material?
      i. Facts
      ii. Law
      iii. content
   g. When writing this opinion, how did you decide what to include or not?
      iv. Facts, law, content
G3: User test focused case study (year 1): Interview questions

General practices
1. What kind of writing tasks do you have to do for your legal studies?
2. Do you find them easy/difficult? Why?
3. What resources do you use to help you?
4. How do you go about writing?
5. Do you plan your writing? How? If not, why not?

Use of LAWS resources
1. Have you used LAWS to facilitate the legal writing process?
2. Which aspects of the resources have you used?
   a. Word add-on?
   b. Concordancer?
   c. Online tutorials and quizzes?
3. Why did you use these resources?
4. For what purpose?
5. Were they helpful? In what way? If no, why not?
6. How could they be improved?
7. What aspects of the resources did you not understand?

Evaluation
1. Do you think that using the LAWS resources has had a positive effect on your legal professional writing?
2. Why? Why not?
3. Would you use the resources again?
4. Which resources in particular? Why?
G4: User test focused case study (year 2): Interview questions and prompts

Prompts for using online resources:
1. The examples on the web were very useful because they gave me some idea of what was expected of me in my legal writing assignments on the PCLL.
2. The online tutorials were very helpful when I was proofreading my work, because I was able to find out about common errors and check my work against them.
3. I enjoyed doing quizzes. It gave me a break from serious study and let me enjoy myself – like playing a game!

Follow-up questions:
- How did you use the examples? How did you use the tutorials? How did you use the quizzes?
- Did the tutorials and quizzes help you to enhance language and organization?
  - If yes, how?
  - If no, what did you do instead?
- At what point in the writing process did you refer to the LAWS website?

Prompts for using the concordancer:
1. The concordancer is a device that I would use if I’m very very unsure of how to use a particular word or phrase. (S1)
2. I want to get all my ideas onto paper first and then read through the sentences to see if there is anything that doesn’t really sound right and that is the stage when I would use the concordancer. (S2)
3. At first I was thinking why would I want to use it [the concordancer]? But afterwards when I looked at it deeply, I found there are other possibilities of sentence arrangement and word choice that I can use as an alternative and they may be better than what you have just thought about. (S1)

Follow-up questions:
- When did you use the concordancer? How did you use the concordancer? Why did you use the concordancer?
- Did the concordancer help you to improve your language structure and word choice?
  - If yes, how?
  - If no, what did you do instead?
- At what point in the writing process did you use the concordancer?
APPENDIX H: LEARNING JOURNAL TEMPLATE

Writing journal (allow 20-30 minutes per week)

What legal writing tasks did you do this week?

How did you go about them?
Did you use planning strategies, library resources?

What did you find easy or difficult about the writing tasks?
Consider issues of language, content, style, audience, purpose

Did you use the LAWS resources to help?
Which resources did you use and why?
Did you use the concordancer? Word Addon? Online tutorials? Quizzes?

In what way were the resources helpful? Did you resolve your problem?

In what way could the resources be improved?
Are they difficult to use? Do you need more information? What? Why?
APPENDIX I: LAWS USER TEST TASK

I1: Gap fill tasks

Collocation gap-fill task

Fill in the gaps by typing the correct word in the spaces below [help]

[start again]

Use the concordancer to find out which word is most likely to go in the gaps

- Do not use the hint button
- Do not use the get answer button

Phrases - use the concordancer only, do not guess any answers

1. an ____________
   hint? contract
2. a ____________
   hint? duty
3. ____________ of shares
4. ____________ of all matters
5. estoppel by ____________
   hint?
6. doctrine of constructive ____________
   hint?

[check]

Sample paragraph gap-fill task

Fill in the gaps by typing the correct word in the spaces below [help]

[start again]

Use the concordancer to find out which word is most likely to go in the gaps

- Do not use the hint button
- Do not use the get answer button

Paragraph - guess answers first, but if your guess is incorrect use the concordancer for assistance

It is a ____________ hint? principle that a purchaser ought not ____________ hint? be forced to accept a doubtful title or to buy a lawsuit. In ____________ hint? that principle, however, we ____________ hint? exercise our common sense and see ____________ hint? the supposed lawsuit ____________ hint? any basis whatever. We ____________ hint? see ____________ hint? there is the slightest reasonable chance ____________ hint? any such lawsuit ____________ hint? instituted. If we ____________ hint? to the conclusion ____________ hint? the supposed lawsuit exists only ____________ hint? the imagination of the purchaser, we ought to disregard it, giving him the advantage ____________ hint? every reasonable doubt.

[check]
Dear Mr. Ng,


Thank you for meeting with me yesterday to discuss the dispute between ESE and C&P over the Contract. I am the solicitor handling this case for ESE. I have enclosed the retainer letter setting out the basis that our firm can work for ESE in this case. [1]

We appreciate that you can arrange [2] the signing and returning this retainer letter to us at your earliest convenience.

[.....]

ESE contracted Commercial Flooring Company Limited (“CFC”) to remedy the floor work. CFC charged HK$400,000 due to the tight completion schedule. The uneven flooring caused damage to part of the shelving system beyond repair. [3]

ESE therefore bought new shelving equipment and got CFC to install at the cost of HK$600,000. Due to the delay in the furbishing work, ESE incurred extra storage charge [4] of HK$9,000. Besides, [5] ESE lost an order from Sing Sports with a profit of HK$800,000.

I think ESE may address the following 4 issues in the dispute with C&P over the Contract: (i) the costs of the floor work and the shelving system that ESE has not paid C&P, (ii) the recovery from C&P the additional cost [6] involved in getting CFC to cure the defective work, (iii) the extra storage cost, and (iv) the loss of profit of the order of Sing Sports.

[etc: a total of 14 errors were identified for this students’ text]
APPENDIX J: FREQUENTLY VISITED PAGES IN LAWS

J1: Example Affidavit

This example affidavit includes interactive, pop-up, mouse-over comments, which become visible after the student has clicked on the rhetorical element.
J2: Example Defence and Counterclaim

This example Defence and Counterclaim includes pop-up, mouse-over comments, which the student can access in order to learn more about rhetorical elements of the text.
J4: Example Statement of Claim

This example statement of claim includes interactive, pop-up, mouse-over comments, which the student can access in order to learn more about rhetorical elements of the text.
Legal Analysis and Writing Skills

Welcome

Welcome to LAWS, City University’s Legal Analysis and Writing Skills web site. This site is designed for Hong Kong law students and provides a variety of tools to help improve your understanding of legal reasoning and your legal language skills.

Click here to register and login

Click here to change your password

Choose from these options

- Download the MS Word edition to receive writing tips in Microsoft Word, while you are doing your legal writing
- Search the database of legal writing and see how words and phrases are used by professional writers
- Read the glossaries of common legal terms and expressions to identify language that may be useful to you

Learn about

- Reading for law
- Professional legal writing

Get help with this site

- How to search the database of legal text

Our thanks...

...to all those who have contributed time, resources, expertise or funding to this web site.

Technical stuff

This site works best with Mozilla Firefox 1.0 or better, or Internet Explorer 6.0 or better.

Important Note

These materials are intended as a supplement to your lectures and tutorials and focus on skills development. They are not a replacement for your lectures and tutorials and you should refer to your notes to gain a full understanding of legal issues.

Tip #6: ONLINE CONCORDANCER

Did you know...

That you can narrow your search by selecting a relevant database?

Just select the database you want from the list of databases on the advanced search page

Recent comments

More on the use of “I” and “We”

Thank you for your comment. The......[more]

The use of “I” and “We”

Just last night, I was taught to use......[more]

How to save your learning plan

Hi Grace, Thanks for the comment.......[more]

Lost after logout

It’s a fun learning tool, but once I......[more]

Clicking in and out of Profile before changing password

In case you clicked in and out of......[more]

Top 10 users’ searches

principle
Appendices

J6: Example Employment Contract

This example employment contract provides students with a sample, including typical rhetorical elements of the text.

Below is a sample Agreement, in this case an Employment Agreement. Note that in practice such agreements are often accomplished by an exchange of letters. This document has been selected to illustrate various standard features of Agreements, such as the overall structure, the numbering, etc. It is by no means an exemplary agreement and there are many things that you could improve on if you spent time redrafting this document.

THIS AGREEMENT is made the [ ] day of [ ] 200x

BETWEEN:

(1) LIMITED of , Hong Kong ("the Company").
(2) of , Hong Kong ("the Employee").

IT IS AGREED as follows:

1. DEFINITIONS
   1.1 Definitions
      "Outgoings" means management fees, general and water rates
      In this Agreement, unless the context otherwise requires:
      "the Board" means the Board of Directors for the time being of the Company
      "Employment Benefits" means the benefits set out in clause 8.2
      1.2 The headings to the Clauses are for convenience only and have no legal effect.

2 TERM OF EMPLOYMENT
   2.1 The Company hereby appoints the Employee and the Employee hereby agrees to act as .......... of the Company, upon and subject to the following terms and conditions.
   2.2 The appointment shall commence on 200x and shall continue, subject as hereafter provided, for an initial period of ....... years from such date and thereafter unless or until terminated by either party giving to the other not less than ............ calendar months' notice in writing so as to expire at the end of such initial period or at the end of any subsequent calendar month.
   2.3 The Company shall be at liberty, from time to time, upon prior consultation with the Employee, to appoint any other person or persons to act jointly with the Employee in the office of .......... of the Company.

3 NOTICE OF EMPLOYEE
Appendices

J7: Professional Writing Index Page

Legal Analysis and Writing Skills

Professional writing

When you are writing for the professional, you will be engaged in a variety of different writing tasks. What you write and how you write will to a large extent be determined

Learn about:
Documents

Index

Important note

These materials are intended as a supplement to your lectures and tutorials and focus on skills development. They are not a replacement for your lectures and tutorials and you should refer to your notes to gain a full understanding of legal issues.

Background

Lawyers will communicate in written form by letter, pleadings and in non-contentious areas with formal documentation. These documents may include a conveyance of property, a will or a business transaction. This part of the website deals with such agreements. They need to be carefully worded, first to achieve the desired result, and secondly to avoid potential conflict at a later stage. They can include settlement agreements, employment contracts and loan agreements, to give some examples.

Learn about:

- Planning and revising
  - The process of writing documents, tips on how to get started and what to do to edit

- Audience and purpose
  - How to select appropriate language and content for your particular audience

- Structure
  - Suggestions on how to organise your documents in a reader-friendly manner

- Language
  - Common phrases and grammar patterns in documents

- Formatting
  - Conventions for layout and formatting

- Example
  - A sample document, illustrating many of the principles outlined above

- Using precedents
  - Advice on how to use precedents, with examples and tasks taken from the example document in this section
J9: Example Letter of Advice

This example letter of advice is divided into rhetorical moves, and linked to the language section so that the student can learn more about the textualization of each genre move.
J10: Letter Formatting Task

In this task students are required to format a letter correctly by dragging and dropping sections (such as the date, the body) onto hot spots.
APPENDIX K: LAWS DEMO ANIMATIONS CD-ROM

The LAWS web site is closed access and so unfortunately cannot be visited by casual users. In order to demonstrate the design and functionality of the online resources and technical tools, a number of demo animations have been included with this thesis in the attached CD-rom. In order to access the demo animations on the CD-rom, load the contents of the CD-rom to your computer, locate the file index.html and double-click to open it in your browser. Click on the hyperlinks to view the animations.

Table of contents:

Corpus tools
Concordancer: Exploring legal language in use

Online tutorials
Registration and login
Browsing an example
Creating a learning plan
Supporting the writing process with online checklists
Consciousness raising: Discourse conventions
Consciousness raising: Context, audience and purpose
Consciousness raising: Rhetorical structure
Consciousness raising: Lexis and grammar

Enhanced writing environment
Supporting the writing process with an enhanced writing environment