Developing an analytical text structure

Presented by
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Learning Centre
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Outline of this session

• Learning Centre
• What is analytical writing?
• Defining features of language & structure
• Analytical text structures
  ○ Unconstrained
  ○ Constrained by topic/content
  ○ Constrained by requirement
• Cohesion
What is analysis?

…”the separating of any material or abstract entity into its constituent elements [in order to study] the nature of something or [determine] its essential features and their relations [leading to] a presentation, usually in writing, of the results of this process.”

http://www.dictionary.com/browse/analysis

Perspectives on analytical writing:
• Features of writing
• Organisation of ideas
• Semantic gravity
• Thematic progression
What is analytical writing?

**Descriptive**
- Providing information & facts
  - e.g. summary of a case or legislation, quotation or paraphrase of a source

**Analytical**
- Re-organising information: applying principles/models to data, comparing, finding patterns & categories
  - e.g. identifying parts or features of a case, relating a case to common law, comparing legislation in different jurisdictions
- Taking a position, making a claim, developing an argument
  - e.g. supporting your interpretation of a case with respect to common law, arguing in support of a principle
- Critical
  - Evaluating others’ work, entering a debate, considering alternative views
    - e.g. considering the pros and cons of an approach taken by a particular court, proposing law reform, evaluating theories/principles proposed by others
Exercise: 5 minutes

Read and compare Text 1a & Text 1b:

• Which is more analytical?
• Underline the specific words which make one text more analytical than the other.
• How are the structures of Texts a & b different?
• Compare your observations with your neighbour.
Structure of ideas & structure of text

Text a/b

(autonomous)
Structure of ideas & structure of text

Text 1a

Heydon J
- background
- opinion 1
- opinion 2

Kirby J
- background
- opinion 1
- opinion 2
Structure of ideas & structure of text

Text 1b

Liberal vs conservative

Rule of law
H vs K

Judicial qualities
H vs K

Judicial activism
H vs K
Defining language features

Abstract: *rule of law, judicial qualities, judicial activism*

- **Analytical**: Abstract terms, language to show relationships, the structure of ideas matches the structure of the text
- **Descriptive**: Concrete terms such as names/dates; reference to cases/acts/journal articles

*However, whereas, while, etc.*
What do they want from you?

Existing frameworks in Law: e.g. defining features of ratio decidendi vs obiter dictum, jurisdictions, court hierarchy, common law vs statute law

Or frameworks created for the specific assignment: e.g. advantages and disadvantages of a particular position, similarities between cases, etc.

- **Analytical**
  - Re-organisation of facts
    - Logical, clear, using the right frameworks/models to apply to the facts

- **Descriptive**
  - Facts & information
    - Accurate, complete, relevant
Exercise: 5 minutes

Read the excerpts on ‘HAD’ (Texts 2a & 2b):

• How has the student structured these sections?
• Compare your observations with your neighbour.
• Draft a possible classification taxonomy
Exercise: 5 minutes

HAD involvement (13)

- Guilty of murder (4)
  - Case e.g. 1
- Not guilty of murder (9)
  - Case e.g. 2
  - Full acquittal (2)
  - Manslaughter (7)
    - Jury
    - Plea
    - Sympathy
      - Case e.g.
    - Self defence
Exercise: 5 minutes

Read the essay excerpt on ‘Alternative Dispute Resolution’ (Text 3):

• How has the student structured this section?
• Has she/he used an existing analytical framework within Law, or one which is made for this essay?
• How does this student show the structure to the reader? Underline the relevant words.
• Compare your observations with your neighbour.
• Draft a possible classification taxonomy
Warren is a 19-year-old man who lives with his mother in an outer suburb of Sydney. He works as a casual labourer on construction sites when he can obtain work. Currently he has no work although he hopes to start a new job in a couple of weeks’ time. He has two previous convictions for assault. Both those convictions were within the last 12 months. For the first assault he was sentenced to a fine and for the second he was sentenced to probation for a year.
Linking the concrete and the abstract

The semantic wave

SG-  theoretical concepts

SG+  concrete particulars

(constrained by topic/content)

Semantic range
(narrative flatline)

Time
From a theoretical viewpoint, this may not be the most sensible way of proceeding when one weighs up the individualistic and communitarian approaches to what justice is and how it ought to be achieved. However, when sitting in the courtroom and watching the day-to-day practicalities of the administration of criminal justice, this was what struck me the most - the identity, or non-identity, of those being judged. Particularly relevant to such a concern are the works of Garfinkel in his considerations of “degradation ceremonies” and Bankowski and Mungham who explore the “images of law.”

[Student text]
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Linking the concrete and the abstract

The semantic wave

Theoretical concepts

Concrete particulars

Time

Semantic range
Exercise: 10 minutes

Read Text 4

- What is the functional structure of the text?
- What is the semantic wave for Text 4?
- Discuss your observations with your neighbour.
Linking the concrete and the abstract

What is the semantic wave for Text 4?

- SG-
- SG+

theoretical concepts

concrete particulars

Semantic range

Time
Linking the concrete and the abstract

Text 4

Semantic range

SG- theory concepts

SG+ concrete particulars

Time
## Structure of the legal problem answer

<table>
<thead>
<tr>
<th>STAGE</th>
<th>TYPE</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>GIVE FORECAST OR OVERVIEW</td>
<td>usually occurs as introduction</td>
<td>to prepare the reader by summarising the facts (briefly), forecasting issues</td>
</tr>
<tr>
<td>RAISE ISSUES</td>
<td>usually recurring stage in body of answer and can be combined with other stages</td>
<td>to identify the issues, all issues must be raised but give more weight to difficult/controversial issues where it may not be clear what the law is, or what the law should be, or how the law should apply to the facts</td>
</tr>
<tr>
<td>STATE LAW</td>
<td>usually recurring stage in body of answer and can be combined with other stages</td>
<td>to state the relevant rules, principles or statutes (briefly) that apply to the particular issue under discussion</td>
</tr>
<tr>
<td>CITE AUTHORITY</td>
<td>usually recurring stage in body of answer and can be combined with other stages</td>
<td>to give authority to the stated propositions of law by citing a case or other legal authority</td>
</tr>
<tr>
<td>ANALYSE THE FACTS IN TERMS OF THE LAW</td>
<td>usually recurring stage in body of answer and can be combined with other stages</td>
<td>to apply the law to the facts: involves referring to the facts, putting forward opposing arguments in a logical way, reasoning by analogy</td>
</tr>
<tr>
<td>GIVE OPINION/ADVICE</td>
<td>can recur in body of answer, usually occurs as concluding stage for whole answer</td>
<td>to evaluate the strength of the opposing arguments about each issue or the overall issue and give advice/opinion as to which is stronger</td>
</tr>
</tbody>
</table>

(constrained by requirement)
Legal problem exercise: 10 minutes

Read Texts 5 & 6

• Which issues/sub-issues are being discussed?
• Which stages are represented in each paragraph?
Making the structure clear: cohesion

The key parts of an essay which you can use in your planning and writing to make the structure clear:

• the end of the introduction
• headings/subheadings (in longer essays, if allowed)
• (conclusion)

Other strategies:
• topic sentences
• referring words
• conjunctions
• thematic progression

_Clear_ = the reader does not have to make an effort to see the structure of ideas in the essay.
ADR can result in the interests of both parties being served to an extent. In the Workers’ Compensation Commission, the arbitrator’s primary aim is to reach a mutually-agreed settlement. The traditional court structure selects a definitive ‘winner’ and ‘loser’. In *Seage v State of New South Wales*, an arbitrator would have attempted to reconcile the wishes of both parties, rather than simply accepting or dismissing the plaintiff’s claim. Whilst Seage left court with nothing but the legal costs incurred, he may have received some compensation under arbitration. In attempting to reach a mutually beneficial agreement, ADR often better preserves relationships between disputing parties, which would otherwise degenerate in the more hostile environment of court proceedings.
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The established elements of judicial creativity are reinforced by three institutional features of the common law.

These features help to explain the tendency of the common law to grow and develop in a pragmatic way rather than a strictly logical way.

The first relates to the personal characteristics of the senior judiciary.

Almost without exception those judges have come from a comparatively small group of lawyers...

The second is the judicial obligation to give reasons and sit in public.

These obligations discourage a naked usurpation of power by judges. Moreover...

Third, the right of judges in collegiate courts to dissent, and to express a differing opinion, is another feature of the common law system that recognises creativity.

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It reflects millions of judicial attempts to produce outcomes that conform to rules; but also to secure results that appear lawful, just and appropriate to the conditions in which the decisions were made.

We should not be ashamed of this extraordinary creation.

It is a brilliant and very English invention adapted in Australia to our needs.

It is pragmatic and adaptive.

It still governs about a quarter of humanity long after the British empire has faded into history.

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This is because ADR deals with cases much more swiftly than traditional courts, therefore reducing the legal costs incurred.

However, if ADR is unsuccessful in that parties do not cooperate with the arbitrator’s orders, for example, they must still progress to court.

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“Judicial activism” should be of interest to all citizens.

It concerns the way their law is made.

It affects their form of government.

It involves the fidelity of office of important, well paid and powerful people who sit in the judgement seat.

When some of these people are accused of “judicial activism” – even metaphorical “treason” against the Constitution – the time has come for citizens to sit up and pay attention.

If the accusation is even partly correct, the citizens are entitled to explanations, perhaps even redress.

If the accusation is false and naïve, healthy civil discourse requires that fact to be demonstrated and explained.
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Encephalopathic illness caused him to sustain severe brain injury as a baby.

Visual impairments and an intellectual disability resulted from Daniel’s illness.

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The Department of Community Services completed an assessment listing specific behaviours including 'swearing, kicking walls and furniture, hitting people, refusing to attend school and physical aggression against staff'.
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Closing

› Final questions or comments
› More on this topic: Learning Centre workshops on Analytical Writing and/or Clearer Writing
› Student evaluations