Developing an analytical text structure

Presented by
Peter O’Carroll
Learning Centre
Developing an analytical text structure

Outline of this session

- Learning Centre
- What is analytical writing?
- Analytical text structures
  - Constrained vs unconstrained
  - Organisation of ideas
  - Semantic gravity
  - Cohesion

LC
What is analysis; how do we analyse; analysis not just for our own satisfaction but to guide and enlighten the reader – so analysis must be clear
Constrained, etc – depends on type of assignment
Organisation – ways of making structure clear to reader
Semantic gravity – relating theory to practice, abstract to concrete, general to particular, etc
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

Jigsaw e.g.
Types of writing arranged in an implicational hierarchy – any type on the hierarchy will be accompanied by or will involve the types below it.
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.
This structure has no abstract categories and is often unsuitable for comparing and contrasting features.
Includes abstract categories, facilitating comparison
Comparison impaired by separation of categories
Includes abstract categories, placed together, facilitating comparison
Analysis: break down the material, examine the component parts, re-organise the parts into (abstract) categories (of your own devising or from an existing model/theoretical framework) and synthesise them into a new, coherent whole.
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.

Re-organisation of facts
✓ logical, clear, using the right frameworks/models to apply to the facts

Facts & information
✓ accurate, complete, relevant
Para 1: intro including definitions, but no single, writer-created definition emerges. Reader is left to do the work of interpreting the quotations.
Para 2: raises need to challenge the model; alerts the reader to the structure of the text
Paras 3,4 & 5: abstract categories (economics, flexibility & leadership) used to organise material (categories don’t appear to be directly related to DD law in this section)
Para 6: summary -> argument -> recommendation

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
Classifying – finding criteria

Case outcomes
Reasons for outcomes (acquitals)
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
Linking the concrete and the abstract

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.
See text 5 para 1 – narrative closely based on events in the real world
Linking the concrete and the abstract

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.”

(Continued text)
See text 4 para 1
Linking the concrete and the abstract

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 achieved¹. 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”⁵ and Bankowski and Mungham who explore the “images of law”⁶.

¹ (Shafet text)
Linking the concrete and the abstract

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.” They both point out that to degrade someone is to destroy all capacity for self-determination. In the forum of a court, the future of the defendant is determined by others, making it a prime site for such a process of degradation, for such an exclusion of identity.

[Footer text]
Shifting from one to the other – relating theory to real world
Linking the concrete and the abstract

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.” They both point out that to degrade someone is to destroy all capacity for self-determination. In the forum of a court, the future of the defendant is determined by others, making it a prime site for such a process of degradation, for such an exclusion of identity.
See text 5 para 3
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.
Is about developing an identity- a disciplinary identity
Starting and ending with concepts and then shifting from real world to writer’s interpretation throughout the body.
## Structure of the legal problem answer

<table>
<thead>
<tr>
<th>STAGE</th>
<th>TYPE</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>GIVE CONCISE STATEMENT OF ISSUE</td>
<td>Usually occurs in introduction</td>
<td>to prepare the reader by summarizing the facts briefly, forecasting issues</td>
</tr>
<tr>
<td>STATE ISSUES</td>
<td>Usually occurring in the body of answer and can hold together with other stages</td>
<td>To list the issues. Issues should be numbered and given name (e.g. negligence, breach of contract). Only include issues that are relevant to the facts, or that the law states how or from the law should apply to the facts</td>
</tr>
<tr>
<td>STATE LAW</td>
<td>Usually occurring in the body of answer and can hold together with other stages</td>
<td>To state the relevant legal principles or statute (briefly) that apply to the particular issue under discussion</td>
</tr>
<tr>
<td>CITE AUTHORITY</td>
<td>Usually occurring in the body of answer and can hold together with other stages</td>
<td>To give authority to the stated principles 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 occurring in the body of answer and can hold together with other stages</td>
<td>To apply the law to the facts; includes referring to the facts, justifying whether opposing arguments are presented in original way, supporting by analogy</td>
</tr>
<tr>
<td>GIVE OPINION/ADVICE</td>
<td>Usually occurring in the body of answer and can hold together with other stages</td>
<td>To evaluate the strength of the opposing arguments and which ones are the most obvious and which are the 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.
Conjunction

ADR can result in the interests of both parties being served to an extent. For example, 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. 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.4

Text illustrates how meaning is more difficult to retrieve when conjunctions are missing
Conjunctions make the meaning relationships between sentences/clauses more explicit
Topic sentence & referring words

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.

The very diversity of judicial opinions about the outcome of the case is a constant...
Topic sentence & referring words

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.

The very diversity of judicial opinions about the outcome of the case is a constant...

Topic sentence gives main idea of paragraph
Structural cues for the reader – allows reader to construct an anticipatory mental framework
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 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.

The very diversity of judicial opinions about the outcome of the case is a constant...
Together, these elements create a cohesive structure
Theme & New 1

The common law is a product of judgement and opinion developed over 800 years.

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.

Truly, this is a mighty and lasting heritage.
Thematic progression – understanding thematic progression allows the writer to maintain the reader’s focus on a particular idea or sequence of ideas.

The ‘theme’ part of a sentence (everything before the main verb) is what the sentence is about; the ‘new’ part of the sentence (the verb and all that follows) is what we are saying about the theme. All or part of the theme should already be familiar to the reader. This example shows a ‘vertical’ pattern – the idea of ‘the common law’ is repeated in theme position in the majority of sentences.
Theme & New 1

The common law is a product of judgement and opinion developed over 800 years. 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. Truly, this is a mighty and lasting heritage.
A more complex example of thematic progression – the themes are highlighted.
The ‘new’ part of the first sentence introduces three ‘features’ – these become themes of subsequent sentences. This is an example of a ‘fan’ pattern.
The ‘new’ parts of the first, fourth and sixth sentences introduce ideas which are taken up in the themes of the immediately following sentences. This is an example of a zig-zag pattern.
The theme of the final sentence derives from the theme of the previous sentence – i.e. vertical pattern.
When all patterns are combined the text is cohesive – at least one element of every theme is already ‘known’ to the reader.
Theme & New (text 7)

Advocates of ADR claim that it is economically advantageous for the parties engaged in legal disputes.

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.

In these circumstances, ADR may in fact lengthen the judicial process rather than shorten it.
Advocates of ADR claim that it is economically advantageous for the parties engaged in legal disputes.

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 order, for example, they must still progress to court².

In these circumstances, ADR may in fact lengthen the judicial process rather than shorten it.
Advocates of ADR claim that it is economically advantageous for the parties engaged in legal disputes. 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. In these circumstances, ADR may in fact lengthen the judicial process rather than shorten it.
Advocates of ADR claim that it is economically advantageous for the parties engaged in legal disputes. 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. In these circumstances, ADR may in fact lengthen the judicial process rather than shorten it.
Theme & New (text 8)

"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.
Theme & New (text 8)

"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.
Theme & New (text 8)

"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.
“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.
Orange arrow indicates a ‘new’ to ‘new’ connection. This often happens and is acceptable, but is not on its own a satisfactory way of ensuring cohesion.
Daniel Hoggan was a ward of the state.

Encephalopathic illness caused him to sustain severe brain injury as a baby.

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

‘Disinhibited and uninhibited’ behaviour are the primary manifestations of the intellectual disability.

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’.
Text lacks cohesion – ideas are introduced in the themes which have little or no connection to previously mentioned ideas. The reader gets the message, but has to work harder than necessary to get it.
Theme & New (text 10)

Daniel Hoggan was a ward of the state.

As a baby he had sustained severe brain injury as a result of encephalopathic illness.

As a result of that illness, Daniel now has visual impairments and an intellectual disability.

The intellectual disability manifests primarily in ‘dissinhibited and uninhibited’ behaviour.

Specific behaviours listed in an assessment completed by the Department of Community Services included: swearing, kicking walls and furniture, hitting people, refusing to attend school and physical aggression against staff.
Re-written text showing good cohesion.

**Theme & New (Text 10)**

Daniel Hoggan was a ward of the state. As a baby he had sustained severe brain injury following an encephalopathic illness. As a result of that illness, Daniel now has visual impairments and an intellectual disability. The intellectual disability manifests primarily in ‘disinhibited and uninhibited’ behaviour. Specific behaviours listed in an assessment completed by the Department of Community Services included ‘swearing, kicking walls and furniture, hitting people, refusing to attend school and physical aggression against staff’.
Closing

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