CHAPTER 1 LEARNING LAW: HOW CAN I DEVELOP A LEGAL MIND?

Answers to exercises and reflections in the textbook

Contents

[Reflection: Law in context – lecturer notes 2](#_Toc110938561)

[Exercise: Inductive and deductive reasoning - answers 4](#_Toc110938566)

[Exercise: What’s your reasoning? - sample answers 5](#_Toc110938567)

[Reflection: Lawyers in society 8](#_Toc110938570)

[Exercise: Priestley 11 requirements - answers 9](#_Toc110938571)

[Reflection: Power to make law - lecturer notes 10](#_Toc110938572)

[Reflection: Diversity – lecturer notes 11](#_Toc110938573)

[Reflection: A company – lecturer notes 12](#_Toc110938574)

[Exercise: Assessing sources - answers 13](#_Toc110938575)

[Exercise: Basic IRAC application - sample answer 14](#_Toc110938576)

Reflection: Law in context – lecturer notes

Textbook pages 3-4

This exercise asks students to reflect on how culture, development and broader experiences of conflict and discrimination impact on law and legal systems. The quotes are drawn from conversations Michelle has had in different countries.

*Note: lecturers should exercise emotional intelligence*—there may be some students who come from the countries mentioned, or have similar backgrounds and experiences. It may trigger them, and discussions may need to be facilitated focusing on the other scenarios, or exploring very much the situational context and how that shapes the law and legal system differently in each place.

Quote 1: Myanmar: impact of politics

Myanmar is a context in which a coup d’etat took place in February 2021, and since then the military has been attempting to quash dissent through killing, torture, rape, destruction of homes and livelihoods, to name a few. Meanwhile the National Unity Government, formed amongst those who were elected to rule but are in hiding, is also issuing their own laws. The quote refers to a ‘law’ introduced by the junta, based around the notion that anti-regime fighters move around on motorbikes and they are usually men, so if there is a man riding on the back of a motorbike he must be a fighter and should be shot dead.

It can be useful to ask students to consider what is law, is it the laws in place before the coup, passed through parliament? Or is it the orders of the ruling junta, like the motorbike law? The type of government has shifted from a democracy to a dictatorship, and this political crisis has had a significant impact on Myanmar law (which can now be decreed) and legal system (which no longer relies upon a parliament that votes on proposed laws, or a judiciary to enforce the laws). Instead, there are extrajudicial killings (in which the police or military decide themselves the fate of a person they consider to have done something wrong).

It is useful to look at the underlying power to make laws. Here, the shift is from the ‘right’ based upon being elected by the people, to the ‘might’ of power through force.

Quote 2: South Sudan: impact of development

South Sudan is the world’s newest country, being formed in 2011 following a long civil war between the north and south. The tribes of the south united in their fight against the north, but after independence, inter-tribal rivalries re-emerged and the country has been sunk into civil war ever since. The quote came from a time just after independence, when things were looking positive for the future.

The basis for the barrister’s comment is that the legal system is not yet developed enough to have trials and prison sentences for those who commit crimes. His opinion was that it will take some time for that legal system development to occur, and criminal justice cannot wait. In his view, deterring people from committing crimes is only achievable in the meantime through the death penalty for criminals, to send a strong message.

Students may reflect upon the ways in which societies deter people from committing crimes. The quote suggests the only effective way is the threat/fear of punishment. Students may reflect on why they do not commit crimes—is it only because of the fear of being arrested, tried and imprisoned? Or are there other reasons, and if so, how much are they social, religious and cultural?

Quote 3: China: impact of culture

This quote is from one person, it is not reflective of the whole population of China and nor is it applicable indefinitely before and after. It is just an example of a perspective on the law and legal system as being established and to be followed, rather than to be questioned. There is also the cultural dimension of hierarchy, whereby the more junior the lawyer, the less they should question the law and legal system, but should follow it as it is.

It can be useful to guide students to think about the degree to which acceptance to just apply the law and legal system as it is, can support a harmonious society overall, even if it means that the situation of some people may be unfair. It would be interesting to introduce discussion on the COVID-19 lockdown in Shanghai in 2022, where people were crying out from their apartments in desperate need of food and other basic supplies. The lockdown law was reportedly intended to achieve zero cases, even though the effect would be for some people to suffer and perhaps die from being unable to go out and buy groceries.

Quote 4: Philippines: impact of discrimination

Mindanao in the south of the Philippines has for many years been a place of conflict, mostly between the military and the armed groups seeking independence. The timing of this quote was prior to a peace agreement which led to the creation of an autonomous region in Mindanao with a degree of self-governance.

Students can reflect upon the role that access to education has on law and the legal system. Schools can teach the basics of what is law, what is the legal system, what is justice, what are rights, and can empower people to be able to speak up on how the law and legal system needs to develop. But if people do not have access to education and do not know what rights they have and what avenues they can follow to pursue them, change is less likely.

The sentiment expressed is similar to that heard in other parts of the world, such as where Indigenous people seek self-determination and deny that the law and legal system of the occupying power applies to them. This law student is of the view that it is necessary to learn that occupier’s law and legal system, in order to use it to achieve redress for discrimination.

As this reflection exercise comes right at the start, it can be a useful opportunity to establish the ground rules for class discussions. There may have been some students who expressed strong views, who spoke emotionally based on their own lived experience, who disagreed with others. This is a good opportunity to introduce the value of taking different perspectives, even different from one’s natural perspective, as a pathway to learning and understanding.

Exercise: Inductive and deductive reasoning - answers

Textbook pages 9

Identify whether the following use inductive or deductive reasoning. Don’t concern yourself with their validity.

1 Taking a person’s life is always wrong. Capital punishment involves taking a person’s life. Therefore, capital punishment is always wrong.

**Answer:** Deductive

2 The right to self-determination of minority peoples is a core part of international law. Therefore, if a majority of First Nations Australians vote for self-government, they must be allowed to do so.

**Answer:** Deductive

3 Six in ten children who are allowed to drink at home with their parents become alcoholics later in life. Therefore, attitudes towards drinking are formed by others near to us.

**Answer:** Inductive

4 Every human being has rights. John is a human being, therefore, John has rights.

**Answer:** Deductive

5 Every time Mr Jones has taught Contract Law, students have achieved good results on the exam. This semester, Mr Jones is teaching Contract Law. Therefore, students will go well in the exam.

**Answer:** Inductive

6 A’s oral contract for sale of land was invalid in Case A. B’s oral contract for sale of land was invalid in Case B. C’s oral contract for sale of land was invalid in Case C. Therefore, all oral contracts for the sale of land are invalid.

**Answer:** Inductive

7 Red cars go fast. Jenny’s car is red. Therefore, Jenny’s car goes fast.

**Answer:** Deductive

8 We all have the right to equal treatment under the law. Therefore, Mani (their) should be able to attend an all-girls school, just as Mary (she) is able to.

**Answer:** Deductive

Exercise: What’s your reasoning? - sample answers

Textbook pages 10-11

Inductive reasoning

All of these examples relate to damage caused by something belonging to someone (dog, cat), on or from their property (rat, pool) or within their control (oil tanker, candle), so using inductive reasoning it could be deduced that ‘A person is liable if something they own or control causes harm to a third party or thing’. It is based on civil liability, not criminal liability (which arises from the age of 10).

Deductive reasoning

*A six-year-old child sitting in the front of a vehicle unexpectedly reaches across and yanks the wheel of the car, causing an accident:*

It is a child and the parents are responsible for the damage resulting from the accident. This is a straightforward application of the rule to the scenario.

*A toddler is attracted to an exhibit at the local shopping centre which is not fenced off or guarded, and pulls it over:*

The toddler is of course a child, but it could be argued that the local shopping centre knew the place would be frequented by people of all ages, including toddlers, who often run ahead of their parent and are attracted to exhibits. So really the toddler was just being a toddler and the problem was the centre’s failure to fence the area or provide a guard. It could be argued that the rule should be qualified so that if the behaviour of the child which caused damage was created by a third party, that third party should be responsible for the consequences, rather than the parent.

*After being egged on by an adult leader at a school camp, a teenager puts a small homemade bomb in the toilet at their school. The explosion destroys the toilet, but nobody is injured:*

The teenager is under 18 and is therefore a child, and the parents are responsible for their behaviour. However, at the time the child was under the supervision of other adults, and in this case the behaviour was at the instigation of another adult, so arguably that person should be responsible, not the parent.

*An eight-year-old child plays a practical joke at the local church by mixing up the salt and pepper shakers and an adult has an allergic reaction and is taken to hospital:*

Applying the rule directly, the parent is responsible. Perhaps it could be argued that, where it was not foreseeable that this type of naughty behaviour could result in a person’s hospitalisation, the focus is on the behaviour itself (putting the salt and pepper back into the right shakers) as opposed to the hospitalisation; or that if an adult has an allergy they should have tested the salt or pepper on their hand before using it (to check which was which), and their failure to do so means they are responsible for the consequences.

*Restaurant staff give children pictures and textas for colouring in, and some gets onto the tablecloth:*

With a straight application of the rule, the parents are liable. However, this case is similar to the toddler at the shopping centre: it is in the nature of children that they can’t stay on the page when they colour in, so the restaurant should have known that texta would go onto the tablecloth, and provided either tablecloths that wipe down or textas that wash off, or accept the consequences. The age of the children may vary the response, given that there may be greater expectation for older children (say from five years old) to stay on the page.

*A 12-year-old buys $5,000 worth of accessories for their avatar using the password they saw as they watched over their uncle’s shoulder as he entered his App Store:*

Again, we have someone aged 12, and the parent is responsible for their behaviour. However, it could be said that children are curious, and the uncle should have been more careful to ensure the child was not able to read the password.

*A 15-year-old child uses their drone to film a neighbour nude sunbaking and post it on YouTube:*

Again, it’s a child, and the parent is responsible according to the rule. If it is illegal to fly drones (or you need a licence) and it was the parent who gave the child the drone and allowed them to fly it like that. This situation would be different if the child had picked up a drone left unattended by a third party. It may also be said that if you sunbake naked in an open area you expose yourself to the risk of being filmed, but we don’t know if the sunbaking was done in a private location on the sunbaker’s private property, or at the beach or some other public place.

Having decided how the rule applies, and where the challenges arise with its application, the students may like to suggest a qualification to the rule: parents are responsible for the behaviour of their child unless the behaviour was provoked or enabled by a third party, or the third party could and should have acted to protect themselves from harm

Reflection: Lawyers in society

Textbook pages 12

This reflection asks students about their views on the role of lawyers in society and how these views affect what they expect from their legal education now, at the start of their first year.

To facilitate this reflection in an on-site class, it is recommended to get all students to stand in a line, one behind the other, and then the lecturer can read out each of the following statements, and students step to the right or left based on their views.

To facilitate this reflection in an online class, it is recommended to use an app such as Mural where each student can create an item (such as a coloured square with name in it) for their character and line them up, and can move their square left or right as the statements are read out by the lecturer.

**Statement 1:** a lawyer’s “product”: is their mind, they provide a service to customers who pay for the use of it.

“Move left if you agree, and right if you don’t agree. The more strongly you agree, the further you move. But you cannot be neutral, must pick agree or disagree even if only slightly.”

Lecturers can ask on each side, why did they decide the way they did. Could pick the side where hardly anyone went first, or could pick those who went very far to one side or the other.

**Statement 2:** a lawyer is an instrument of justice: everyone has a right to a fair trial and lawyers represent those on both sides so an informed and just decision can be made.

**Statement 3:** a lawyer is a waste: the amount of money people have to pay to get justice means that often if they win, after their legal costs the only ones who really win are the lawyers.

**Statement 4:** a lawyer is a trusted advisor that makes a positive difference for the futures of their clients.

**Statement 5:** lawyers are highly regarded in society.

Exercise: Priestley 11 requirements - answers

Textbook pages 16

|  |
| --- |
| Rights and responsibilities of company directors, employees, creditors and shareholders |
| Legal rights in relation to ownership of land and dwellings on them |
| Negligence, trespass to the person, goods and land, nuisance, defamation, and allowable defences |
| Offences against the person and property, and how they are tried in a court of law |
| Legal mechanisms to make government officials who exercise broad discretionary powers accountable |
| Legal requirements and standards for proving facts |
| The law under which the Commonwealth and states operate, including the basis of their power |
| Ethical conduct and legal accounting |
| Processes by which cases brought involving private individuals and companies are resolved in courts of law |
| Legally binding promises and the issues that arise from breach of them |
| Injunctions, specific performance of obligations, and legal tools to separate legal and equitable ownership of property |

|  |
| --- |
| Company law |
| Property |
| Torts |
| Criminal law and procedure |
| Administrative law |
| Evidence |
| Federal and State Constitutional law |
| Ethics and Professional Responsibility |
| Civil Dispute Resolution |
| Contracts |
| Equity and trusts |

Reflection: Power to make law - lecturer notes

Textbook pages 23

This topic can help students to begin to examine what is law, which can lay early groundwork before we reach the topic of jurisprudence.

Students are likely to commence with discussion of:

* those who sit in parliament having power to make law
* democracy, of people voting in those who make the laws
* the idea of power being in the individual and vested in those they vote to govern them.

It can be further explored:

* does it mean only those who vote are bound, or all are bound? Non-citizens?
* if law is binding upon ‘the masses’, what is the basis of the power?

The link to the scene is at <https://www.youtube.com/watch?v=t2c-X8HiBng> and is only a few minutes in length. Another option is to use a prezi style: <https://prezi.com/ihx-ojatcsq4/monty-python-and-the-holy-grail-constitutional-peasant-literature-in-everyday-text-demo/>

Drawing out the idea of extraction of a sword as the basis of power, or birth right as the basis of power, or really any basis as long as ‘the masses’ accept it. Lecturers can mention that the consideration of legal history and jurisprudence will help them to delve further into these ideas.

Reflection: Diversity – lecturer notes

Textbook pages 25

Students are invited in the text to reflect upon:

*To what extent do you believe the law caters to diversity in society? Do you believe that law should be applied equally to everyone? Is there a difference between equality and equity? Should the focus be on equal treatment of all, or on recognising existing inequalities and having unequal treatment in order to create equality of outcome?*

Students are also invited to reflect upon:

*Affirmative action is an approach where the disadvantaged are given preferential treatment as a means of removing the disadvantage; for example, an employer recruiting for a position where there are two equally good candidates may have a policy for hiring the female, on the basis that women are underrepresented in the relevant field. What do you think of that approach?*

A class activity which can be useful to precede this discussion, which may need the class to go outside into an open space, is for them all to be lined side by side. Each are given a slip of paper which includes a character (sex, age, socio-economic situation, disability status, ethnicity, other diversity, whether rural or remote, whether have a phone and wifi, education such as whether literate or not, or literate in what language) and then the lecturer calls out some statements, and if the student’s character can do what is called, the student steps forward, and if not, steps backward. Statements can include ‘Can look up and read any law’, ‘Can likely afford to pay for a lawyer to advise them’, ‘Likely to experience discrimination in the job market’ etc. After about 10 statements, students at the front and the back can be invited to share who is their character, so it can be seen how people have diverse experiences.

It can be useful to ask for an example of a law which seems to apply equally to everyone but in practice it causes unfairness to some people, and why.

Considering where unfairness in a single case may create greater fairness overall.

Where there are students who exercise strong opinions one way or the other, it is useful to ask them to take the opposite view for the remainder of the discussion, to experience intellectual flexibility.

Reflection: A company – lecturer notes

Textbook pages 26

The reflection exercise asks students to imagine being a lawyer in a company that is being sued for harm caused by its’ product.

The aim is to help them consider the role of a lawyer in achieving a good outcome for their client, but also what boundaries there are on that.

Lecturers can use the example to examine the line between what is unethical or unprofessional, but still legal, and what are acceptable tactics. Students can be informed that there is more discussion on legal ethics later in the unit, and a whole unit of the degree is also devoted to it.

Exercise: Assessing sources - answers

Textbook pages 32-33

The most authoritative sources in law are primary sources—cases and legislation—provided they are relevant. Here both the High Court decision and the appeal decision from the Supreme Court of Western Australia are authoritative and relevant.

In terms of the secondary sources, the ARLC report is highly authoritative due to the stature of the organisation. World Vision is a respected non-government organisation and the Aboriginal Legal Service also has some sway, particularly as statistical data is being referenced. However, the *South Sydney Herald* is less authoritative because it is a newspaper rather than an academic publication; it can be useful to show media comment but it is not an authority for the information contained in it, except where a direct quote is given from a report (and in that case it is better to locate the report itself, and quote that). The journal article by a First Nations scholar on the topic will be of stronger value, particularly if the journal is a refereed publication (where the submitted article is anonymized and sent to persons of expertise in the area, for their comment on the validity of the content). The voice of a First Nations elder as literally transcribed is an original source.

Overall, when conducting research with different sources, students need to consider not only what sources say, but how authoritative they are. Using the most authoritative sources will make the most persuasive argument.

Exercise: Basic IRAC application - sample answer

Textbook pages 52-53

Scenario A:

Issue: Was it legal for Malika to be excluded from using the public exercise equipment?

Rule: Public exercise equipment is made available by local councils for the use of all members of the public (Rule 1).

Application: Fish market workers are members of the public, and the public exercise equipment is supposed to be made available for use by all members of the public.

Conclusion: Malika, as a fish market worker, was wrongly excluded from use of the public exercise equipment.

Scenario B:

Issue: Is the local council liable for Arun’s medical treatment?

Rule: Local councils are only liable for loss or damage if the loss or damage occurred while a member of the public was using the public exercise equipment according to instructions, and there was breach by the local council of two or more of these rules (Rule 6). Public exercise equipment includes all components of benches, bars and weight-bearing machines in a designated area, the boundaries of which are marked by the extent of a padded ground covering (Rule 2).

Application: The public exercise equipment does not include the nearby tree or the padded ground covering, so Arun wasn’t actually using the public exercise equipment, and under these rules, the local council is only liable if the loss or damage occurred while a person using the public exercise equipment.

Conclusion: the local council is not liable for Arun’s medical treatment.

Scenario C:

Issue: Is the local council liable for Joe’s medical treatment?

Rule: Local councils are only liable for loss or damage if the loss or damage occurred while a member of the public was using the public exercise equipment according to instructions, and there was breach by the local council of two or more of these rules (Rule 6). Public exercise equipment includes all components of benches, bars and weight-bearing machines in a designated area the boundaries of which are marked by the extent of a padded ground covering (Rule 2).

Application: Joe jumped between two pieces of public exercise equipment, so it could be considered he was ‘using’ them. However, he was not using them ‘according to instructions’.

Conclusion: the local council is not liable for Joe’s medical treatment.

Scenario D:

Issue: Does Kate have to pay the fine?

Rule: If a member of the public fails to follow signs for safe use of public exercise equipment and thereby causes damage to it, the member of the public may be issued a fine of $200 (Rule 5).

Application: Kate is a member of the public. The stepping machine had a sign showing maximum safe weight. Kate failed to comply with the sign. As a result, she caused damage to the equipment.

Conclusion: The fine was properly issued and Kate has to pay it.

Scenario E:

Issue: Is local council liable for Binta’s injury?

Rule: Local councils are only liable for loss or damage if the loss or damage occurred while a member of the public was using the public exercise equipment according to instructions, and there was a breach by the local council of two or more of these rules (Rule 6). To ensure safe use of public exercise equipment, local councils must place appropriate signage on each item of equipment (Rule 3). Local councils are responsible for regular maintenance of public exercise equipment (Rule 4).

Application: The damage occurred while Binta was correctly using the equipment. The local council knew the equipment was broken, having issued a fine to Kate two weeks before, and yet they did not post any sign saying it was broken and not safe to use. That could be considered a breach of Rule 3. The council also failed to fix the equipment, which could be considered a breach of Rule 4.

Conclusion: the local council is liable for Binta’s injury.