case studies

LWB 333 Theories of Law  
Tutor Support and Management Materials  
Marett Leiboff, Law School  
1. Induction Session - this material is supplemented for tutors  
2. Tutor Materials, managing syndicate groups, finding your way round the Study Guide  
3. Extract from tutor answer guide  

1. Induction Session - this material is supplemented for tutors

Memo
To: Theories of Law academics  
From: Marett Leiboff  
Date: 14 February 2001  
Subject: Induction session 2001  
Time and Place  
9.00-10.30 Monday, 19 February 2001  
C416A  

What we are doing
1. Rationale for teaching LWB333 as we do  
2. Tutor Materials, managing syndicate groups, finding your way round the Study Guide  
3. Assessment overview  
4. If time, introduction to the OLT site  

What you need to bring  
1. Tutor Materials (attached)  
2. First week of Tutor Answer Guide (attached)  
RATIONALE FOR TEACHING LWB333 AS WE DO

Critical reflective capacities

• This unit requires students to engage in a critical reflective way with legal theory informing, among other things, the practice of law - see SG Part A, paras 2-4

• Students tend to arrive into the unit with underdeveloped capacities in this area, wanting to be given 'the answer'. Instead, our focus must be on not only the acquisition of 'information', but the development of the processes by which this occurs - see SG Part A, paras 5-6

• Consequently, we have had to develop ways for students to acquire the capacity for critical reflective thinking, commensurate with the expectations of the unit, in light of its status as a third year unit.

Methods

• In order to do this, the unit assessment has been established to develop, on a progressive basis, the abilities of students in the unit - these differ according to whether students are internal or external. This material focuses on internals.

• SG Part B1, paras 1-3 sets out the assessment regime which is designed to develop these capacities in the students. Also see SG Part A, para 10.

• Additionally, a set of tutorial materials at SG 145-152 are used as part of this process of development (these will be discussed in the next part of today's session.

• We assume that students develop progressively in this unit, through both familiarity with content (information) on the one hand, and process (ways of thinking) on the other. It appears that students arrive with a perception that 'everything will be understood first go', and if this does not occur, then it cannot be understood all. This is broken down through the assessment processes, which culminate in the exam.

Educational theory

This explains links between learning and assessment and the objectives of this unit. We will go through the concepts and link them up with what it is that we are doing in each component of the unit. At the outset, can we work on the following principles:

• We aim for learning to be student centred, and not lecturer-centred, and to this end, we want active, self-directed engaged learning by students, rather than students who merely repeat information given by academics.

• We want students to operate beyond the merely external aspects of legal theory so that they can work through the reasons for using theory.

• We want them to accept that sometimes there is not a simple 'right answer' for all circumstances, and that it is likely for them to come up with quite different responses to material they use in this unit, and that our assessment criteria has room to recognise this difference.
2. Tutor Materials, managing syndicate groups, finding your way round the Study Guide

**Basic tutor information**

- You will be progressively updated with answers answer guides and lecture OHTs throughout semester: they will be sent to you by email.
- Before your first tute, we will give you a printout of your class list from QUT virtual and a photo-sheet of you class - look for these in your pigeon hole.
- LWB 333 Marking sheets are attached - you will need one of these for each of your tute groups. You will need to progressively update leadership marks on this document. We will send these as an email attachment if you prefer to work off an electronic copy.
- LWB333 Central Syndicate Group Diaries. If you have 18 in a class you will need to fill out 3 for each class etc. This is your copy for students to fill out and give to you. Students should fill out the relevant pages in their own study guide.
- Outlines and accompanying self-assessment forms are submitted by the leading student at the end of the class they led in, and are returned to them the following week.
- You will need to maintain and file observing sheets. Students will either download these, or photocopy the page from the study guide or pull out the page. You may wish to make your own annotations on the sheet for your purposes.
- Assessment Guidelines, Marking Tables, and Ready-reckoners are attached.
TUTOR ONLY - for submission at the end of semester

LWB333 Seminar Participation Marking Sheet
Semester One 2001

Seminar Time:
Tutor:

*Please attach a copy of attendance record for each seminar group*

<table>
<thead>
<tr>
<th>Name (Alphabetical Order)</th>
<th>Attend. 1/2 x 12 6</th>
<th>Particip. 5</th>
<th>S A 2</th>
<th>Outstanding Good 2.5</th>
<th>Total 15.5</th>
<th>Outline 7.5</th>
<th>Lead 5</th>
<th>SA 2</th>
<th>Total 14.5</th>
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(There is space for 18 names)
TUTOR ONLY - for submission at the end of semester

LWB333 Seminar Moderation Sheet
Semester One 2001

Seminar Work -15.5

Can you fill in this table at the end of semester for me to see how your marks are spread

<table>
<thead>
<tr>
<th>Grade</th>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
<th>Group 4</th>
<th>Group 5</th>
<th>Group 6</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 (13.5-15.5)</td>
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<td></td>
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<td>6 (12-15)</td>
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<td>5 (10.5-11.5)</td>
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<td>4 (8-10)</td>
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<td>3 (7.5)</td>
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<td>2 + 1 (0-7)</td>
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</table>

Students (number):

Seminar Leadership - 14.5

Can you fill in this table for me to see how your marks are spread

<table>
<thead>
<tr>
<th>Grade</th>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
<th>Group 4</th>
<th>Group 5</th>
<th>Group 6</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 (12.5-14.5)</td>
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<tr>
<td>6 (11-12)</td>
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<tr>
<td>5 (9.5-10.5)</td>
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<td>4 (7.5-9)</td>
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<tr>
<td>3 (7)</td>
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<tr>
<td>2 + 1 (0-6.5)</td>
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</table>

Students (number):

Seminar Time

<table>
<thead>
<tr>
<th>Group 1</th>
<th>Group 2</th>
<th>Group 3</th>
<th>Group 4</th>
<th>Group 5</th>
<th>Group 6</th>
</tr>
</thead>
</table>
TUTOR RECORD

INTERNAL SYNDICATE GROUP DIARY

Class time:
Group: 1 2 3
Tutor:

INTERNAL SYNDICATE GROUP MANAGEMENT

<table>
<thead>
<tr>
<th>Internal Syndicate Group Members (limit of 6 per group)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
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<tr>
<td>3</td>
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<tr>
<td>4</td>
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<tr>
<td>5</td>
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<tr>
<td>6</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Week</th>
<th>Tutorial Topic Diary</th>
<th>Rapporteur</th>
<th>Observer</th>
<th>Remaining group members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week 4</td>
<td>19.03.01</td>
<td></td>
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<tr>
<td></td>
<td>Contemporary natural law theories</td>
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<tr>
<td>Week 5</td>
<td>26.03.01</td>
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<td></td>
<td>Modernism &amp; Liberalism Law as Science Bentham</td>
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<td>Week 6</td>
<td>02.04.01</td>
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<td></td>
<td>Classic theories of positivism: Austin, Hart, Kelsen</td>
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<tr>
<td>Week 7</td>
<td>09.04.01</td>
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<tr>
<td></td>
<td>Liberalism Dworkin</td>
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<tr>
<td>Week 8</td>
<td>23.04.01</td>
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<tr>
<td></td>
<td>Social, economic and historical theories of law</td>
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<tr>
<td>Week 9</td>
<td>30.04.01</td>
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<td></td>
<td>Legal Realism Sociological Theories</td>
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Seminar Assessment Guidelines

Seminar Work - 15.5

There are four components under this category - attendance, participation, self-assessment, outstandingly good performance - see SG B1 para 5, pp27-28
Attendance: 6 marks

- PHYSICAL attendance only
- 1/2 mark per seminar for 12 seminars
- Eg a student who attended twice will only get one mark.
- One unexplained absence is permitted - note in SG B1 para 5

Participation: 5 marks

- You may want to make notes throughout the semester
- Consider all parts of the semester
- All components apply: see note in SG B1 para 5 and assessment forms
- Consider quality of observation and rapporteuring

<table>
<thead>
<tr>
<th>A rough guidance for marks … if you had a student who always attended</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>But was never involved at all (ie did the crossword, slept etc)</td>
<td>0</td>
</tr>
<tr>
<td>But did not say a word, but appeared to be paying attention</td>
<td>1</td>
</tr>
<tr>
<td>Asked an occasional question etc, and otherwise paid attention</td>
<td>2</td>
</tr>
<tr>
<td>Apparently undertaken some reading, occasionally commented and contributed to the discussion</td>
<td>3</td>
</tr>
<tr>
<td>Had read and contributed well to discussion</td>
<td>4</td>
</tr>
<tr>
<td>As for 4/5, but with superior analytical skills</td>
<td>5</td>
</tr>
</tbody>
</table>

Of course, there can be __ marks within this range

<table>
<thead>
<tr>
<th>If you had a student who attended diligently but was obviously quiet and shy, but did not have the confidence to participate fully</th>
<th>Mark to your discretion using guidelines - participation means more than speaking, but listening, comprehending, preparation etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>These students should not be disadvantaged</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>If you had a student who did not attend diligently but who was obviously of extraordinary ability</th>
<th>Use your discretion within this range - note the attendance comment above</th>
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</thead>
</table>

Self-assessment: 2 marks

- If they can reasonably understand their performance level, they can get 2.
- If they are wrong, but tried in their S/A, they will get full marks
- If they say they came an never did, then they get no marks - SG B1 para 5.

Outstandingly good performance: 2.5 marks

- These marks can only be given if students are already getting good to very good marks for the other categories.
- You can give anything from 1/2 mark up to the full 2.5.

Seminar work reckoner (if you want to know what 15.5 looks like on another scale)

Table inserted
Seminar Leadership Guidelines - 14.5

Outline: 7.5 marks

- Standard written assessment criteria set out in the study guide
- Feedback sheet
- Dummy outline and how-to's - SG Part A 12.
- Not full text or copy of power points
- Be strict about word limits

Leadership: 5 marks

- ORAL part of the sessions

<table>
<thead>
<tr>
<th></th>
<th>Marks</th>
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</thead>
<tbody>
<tr>
<td>Did not attempt proper preparation, but did something, read from badly prepared notes or from OHTs, little attempt at reading, can't answer tutor's questions</td>
<td>1</td>
</tr>
<tr>
<td>As for 1 – a little bit more of an effort, but did not involve the others, winged it – not much more reading undertaken, unable to answer questions</td>
<td>1.5</td>
</tr>
<tr>
<td>Relied only on lectures - did not undertake a reasonable range of readings - asked questions rather than attempted answers, a little bit of an attempt to engage the others, and the tutor</td>
<td>2.5</td>
</tr>
<tr>
<td>Had undertaken some detailed reading and preparation, and presented well, and started to draw the others into a discussion, asked them questions etc</td>
<td>3.5</td>
</tr>
<tr>
<td>As for 3, but in addition had moved beyond the basics, and started to develop some interesting techniques for drawing the others into the discussion, was able to deal well with questions</td>
<td>4</td>
</tr>
<tr>
<td>As for 4, but with superior communication skills</td>
<td>5</td>
</tr>
</tbody>
</table>

You can use this as a rough guidance for marks: You will have the views of the observer which you will also have to mark.

If they were wrong in what they did, but genuinely made an attempt, they can be rewarded, except where they were unable to see where they missed the point.

You can also give __ marks within this range
Leadership Self-Assessment: 2 marks

- You can use the same guidelines as above for seminar work self-assessment.

Outline Mark

This component is marked out of 7.5, which is a bit counter-intuitive - here's a bit of a guide.

Table inserted.

Tutorial: Week 1
Introduction to Theories of Law

Reading Writing Outlines

YOU MUST ATTEND THIS SESSION, OR IT WILL BE ASSUMED YOU ARE NOT ENROLLED IN THIS UNIT.

Read Wacks, Chapters One and Two

The first part of the tutorial will be devoted to putting you into syndicate groups, and for you to choose tutorial topics. See what topics interest you in seminars to be held between weeks four and nine as noted in the timetable. You should also check your assessment timetable for the semester to see when you have other commitments that would adversely affect your ability to lead your group properly.

The second half of the tutorial will be devoted to a short exercise in which you will have to outline and substantiate your position on a topical legal issue to another member of the class, after having about 5 minutes to collect your thoughts and make brief notes. Having to explain something to someone is usually a very good way of clarifying and organising your thoughts on a particular subject, and is, in one sense, exactly what lawyers do every day – either to clients, managing partners or judges.

Question 1

This part of the tute is devoted to the following learning objectives:

- Basic oral communication
- Commencement of record management and work planning

Introductory group dynamics, including negotiation

What materials are needed?

- Study Guide

We will assume that the reading from Wacks will not have been done

Allow about 30 minutes

Procedural matters

- In lectures, I will set out the requirements for tutes, and this will be reinforced in next week's tute.
• Point them to the procedural requirements of how the sessions will work - we covered this in the induction session. Basically refer them to the blue sheets and the white tute materials
• Ask them to be aware of noise levels and being considerate to other groups while allocating topics

How to allocate into the groups:
• Use your discretion about allocation - my method last year was to use the attached icebreaker (eg star signs or make one up for yourself) to get them to split up so that there is a mix of backgrounds in each group of 6 eg:
  (Material edited)
• Otherwise they may be they are happy to split into groups of their choice, then that's ok - otherwise, you are welcome to split them up as you see fit - if so, take into account who looks like they are quiet or talkative or a leader and put them together
• I gave you a proforma diary as part of the materials at the induction session - you should have 3 diaries per tute group - you will need these returned to you.
• They should also record their groups in their study guide diary for their own records.

How to allocate topics and questions
• They need to pick one of the 3 Q's as leaders - you need to find a way for the groups to negotiate this, or you may prefer to say "group 1 will do Q1, group 2 will do Q2 etc". They have to fill out and record this information themselves

Assessment criteria
• Spend a moment going through forms - this will be reinforced in next week's tute. Ask them the purpose of the form (it is designed to act as a method of assisting them in understanding what is required of them in each element of their active sessions each week). Let them know that you will remind them the week before group work starts about the form filling requirement, though what this task is designed to do is to let them know in advance what we are looking for from them.
• Remind them that the observer is being assessed on their observation.

Additional task
You may like to get them to the groupers and stringers exercise before moving into Q2 - you might like to do an OHT or read it out - link it into the way they should think about learning and preparing

Question 2
This part of the tute is devoted to the following learning objectives:
• Basic oral communication
• Introductory outline preparation - this is a preliminary to next week's work

What materials are needed?
• SG pp1-12 (outline pages)
• Refer them to Wacks Chapter 2 on reading (11-14) at the completion of this task

This is a prep exercise for the summary of Davies to be done next week. Effectively, it is designed to elicit the 'nub' of a situation in brief form. Students appear to have difficulty with
this task. (material edited) Next week, they should follow up Wack's guidance in dealing with Davies in this way.

Tutorial: Week 2
Introduction to Theories of Law
1. Read the prescribed reading for this week.
   At this tutorial, you will work in pairs. Each student will need to:
   - Summarise the argument set out in the chapter in no more than 300 words
   - Having done this, work out a way of explaining this argument to another person in a way that would take you no more than 5 minutes
   - Then, set out in point form the main points to be included in this 5-minute explanation.
2. The remainder of the tutorial will cover any questions arising out of the first lecture, as well as making certain that the mechanics of tutorials are understood by all students.

This part of the tutorial is devoted to the following learning objectives:
   - An introduction to critical thinking
   - An explanation of the differences between informational writing and argumentation
   - The challenges of extrapolating an idea
   - An introduction to the method of abstract and outline writing
   An introduction to exploring the difference between oral and written communication styles.

Tutors:
One thing students find really difficult is how to direct an answer away from a simple exegesis of information, and the occasional hit and miss method of answering an essay, and well structured and directed essay writing. As well, it is essential they learn how to construct an answer, rather than just blurring it all out on to the page. The challenge this poses is found in the assessment in the unit in the form of the:
   - Reflective journal
   - 250 word outline in tute leadership
   - Difference between addressing the question as set and that of regurgitating theories

Question One
What materials are needed?

Study Guide
   - Lecture One - pp 53-57, especially prompt questions at 53
• Internal tutorial materials - pp 145-152
• ‘Some how to's’ - 8-12, especially blank outline pages and content criteria

Davies Chapter One
• Davies - cover of the book (you may like to make an OHT of this, as they invariably have a photocopy of the chapter with them only)
• Their own 300 words

How should they have prepared?
• The idea is that students should have given the work a stab, even if it was hard, difficult, a problem. They should be discouraged from giving up if they cannot understand - it is normal to not understand - remembering that we are dealing with process here as much as anything, someone's else answer from another is no use to them at all and is no different from looking up the answers 'at the back of the book'.
• Davies is attempting to say in her intro chapter that it is part of our way of doing law to attempt to explain what law is about (in a nutshell). And this is the point behind her book.
• Having said this, you will need to draw on the premises on which she develops her thesis - just for your info, there are less than 200 words in what follows: (Material edited)

What is the best way to do this session?
• Base this session on a workshop model with a debrief. However, assume that most will have attempted to summarise the content not the argument. Explore the difference at the debrief at the end.
• Break them up into pairs to get them to explain the argument to each other - this should take 10 minutes
• Get them to exchange point forms, and to think about whether they had the same or different ideas about how to set out an outline.
• At debrief, get responses about both content and processes:
  • Explore reasons for extrapolating arguments rather than simple description
  • Ask them what the difference between reading a text and speaking is for the person listening - let them know we can watch to see if they are reading an answer rather than speaking from notes.
  • What does writing in point form do for speaking styles? Why does this matter for lawyers? Ask them about being barristers in moots as a method of comparison.
  • Refer to the content criteria and why we work off the grid rather than a marking guide
• Outlines
  • This task of explaining what Davies chapter about is an outline, as they will use points to get to the nub of the argument
  • How this relates to setting out an outline - why an outline is not simply a summary
  • Material must be left out in an outline - explain how we can understand that they still have the knowledge because it will show in the outline itself.
• Remind them that their 250 words can be footnoted.
• Also remind them that it is a long slow process.
• Finally, get them to think about the semester's process - they will not get all the answers yet: (material edited)

Question Two
This part of the tutorial is devoted to the following learning objectives:

• An understanding of the explicit assessment requirements and their relationship with the teaching and learning methods of the unit
• Reinforcement of the need to read the study guide
• Thinking about their own preparation

What materials are needed?

• Study Guide
  o Blue sheets
  o Internal tutorial materials - pp 145-152
  o 'Some how to's' - 8-12, especially blank outline pages and content criteria
• Lecture One PowerPoint's
• The point of this part of this tutorial is simply mechanical (material edited).

Tutorial week 3
Historical Natural Law Theories
(Material edited)
When you develop an answer to a question such as this, you cannot answer it in a sentence. You are being asked to develop an argument based on your reading. You have to show an understanding of all of the factors of historical natural law to be able to effectively answer the question.

Note that this is a whole group seminar
This tutorial is devoted to the following learning objectives:

- A development from last week’s work to develop a first stage method of critical thinking
- An recognition of the need to understand the content of theory before attempting sophisticated analysis
- The development of reading originary text, its contextual foundation, and later interpretations
- The application of theory into practice as a method of explication and understanding of the role of praxis
- The effect of hearing different interpretations of the same material.

- The effect of these examples is to demonstrate that historical natural law theories have different outcomes in different circumstances, and beyond this basic interpretative level, also raises the next level question about the assumptions of these theories.
- As a way into the topic, you might like to spend the first 5-10 minutes or so quizzing them on what is meant by natural law as dealt with in this first week of the module (See the OHT for guidance, though some greater development through the prescribed reading should occur) - it is up to you

1. Read the story of Antigone in Davies, asking the law question, p 57. What is the difference between her relationship to a deity and natural law as understood in classical natural law thought?

   Allow 20 minutes

2. Antigone is involved in an illegal street march. She claims her conscience with the deity meant that she could not obey the law. What advice would be found in St Thomas Aquinas’ formulation of natural law?

   Allow 15 minutes

   - This is not a question designed to simply state the categories of the Thomist categories of law, of which natural and human are among them.
   - There is a summary of the ideas from Summa Theologica in the lecture slides.
   - What they should be able to identify is the difficulty established by lex injusta non est lex, and the consequences of a failure to obey a law - an interesting discussion is found in Lloyd 86-91, and 59-60 of MD setting out the problems of a failure to obey.
   - What should really come out the Q is a discussion of the idea of the failure to obey and the wider Q that Aquinas throws up of the scandal or civil disturbance that would be caused.
   - There may be room for a comparison with Cicero’s disobedience argument.

3. Antigone throws a paint bomb on the street, which hits your house. Explain how the social contract theories to be found in the writings of Hobbes, Locke and Hume would assist in arguments behind a prosecution of Antigone.

   Allow 10 minutes (material edited)