



Criticality in Law

What does it look like?

What it isn't

It is not:

- 'Questioning everything'
- This approach will lead students into making arguments that are not properly grounded in legal reasoning and jurisprudence.

What it is

Thinking like lawyers (Griffiths, 2021; Huxley-Binns, 2016; Wallace, 2018)

- Identifying grey areas in which 2+ interpretations are 'equally defensible' (Wallace, 2018: 262)
- Arguments supported by clear legal reasoning which is 'accepted as valid within the system' (Wallace, 2018: 262)
- How can students/teachers know what is accepted as valid?

What is valid?

To know what is valid:

- Students (and possibly teachers?) must develop legal literacy (Huxley-Binns, 2016)
- Legal literacy involves:
 - Having a good understanding of primary and secondary legislation, and the case law and journal articles surrounding that legislation
 - Case law is key
 - It indicates where the grey areas are
 - It shows what interpretations are defensible
 - It demonstrates key legal 'reasoning and argumentation moves' (Bruce, 2002: 324) that students themselves need to emulate
- How can we engage students in case law and other legal discourses?

Engaging in legal discourses

Communicative task-based methodology (Northcott, 2008: 34)

- Students have a oral task to do each week – a debate, a negotiation, or a moot
- In order to complete the task, students have to engage with legal discourses, like legislation, case law, and journals
- The tasks encourage students to think like lawyers meaning...
- Criticality is 'built in' without having to be taught as a separate abstract concept

TBL benefits

Benefits include:

- Motivating
- Tasks encourage students to speak to each other
- Vocabulary is developed through engaging in legal discourses
- The arguments students engage in through debates, negotiations, and moots mirrors that which they are required to do in essays and seminars
- Students can work more independently and co-construct knowledge with EALP teachers

TBL drawbacks

Drawbacks include:

- Students and teachers have to engage in a lot of reading
- High workload for teachers (marking and giving feedback) and for students
- May not be practical if the pre-sessional course is quite short due to the issues stated.

References

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