STATUTE LAW SOCIETY

TEACHING LEGISLATION

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**A INTRODUCTION**

Having glanced at - but not yet having had time to study - Philip’s draft outline and Ekins’ syllabus, it occurs to me that there are some preliminary points to be made, which require us to consider the following matters.

**1** Are we interested only in a dedicated course on *Legislation* or are we willing to large for providing better coverage of the topic within the existing syllabus?

**2** If we are interested only in a dedicated course, we need to

(a) recognise that many Law degree programmes are now semesterised rather than being based on the full academic year, from which it follows that we would need two outline proposals, one of which would inevitably be Legislation Lite (but still a great deal more substantial than most current offerings; and

(b) decide

(i) at what stage in the Law degree programme the course should be offered; and

(ii) whether we think it should be core or optional (although this aspect tends to become intertwined with the specification of a Qualifying Law Degree, which is *ultra vires* us – and, indeed, *ultra vires* anyone apart from the Joint Academic Stage Board).

**3** If we are prepared to argue only for the less ambitious target of providing better coverage of legislation within the existing syllabus, we need to suggest ways in which this could be achieved.

**4** Having clarified our view on these matters, we need to consider what we want to see as the educational outcomes of whatever we propose - bearing in mind especially the current educational orthodoxy that students who have studied anything should be able to *do* something they were previously unable to do (noting that words such as *understand* do not count for this purpose).

However, I think we have more work to do before we can attempt this with any precision

**B ARE WE INTERESTED ONLY IN A DEDICATED COURSE ON *LEGISLATION*?**

**1** While I am personally sympathetic to the idea of a dedicated course, I am bound to say that I consider this to be a hopelessly ambitious starting point, unless such a course is conceived entirely in terms of an optional subject (probably at Level 3, but also see my conclusion on p 3).

If I am right in this, it follows that even if an explicit argument for a dedicated course were to succeed, the educational impact across Law graduates as a whole would be marginal.

In my experience, this is the position in relation to, for example, *Tax Law*, despite the importance of the subject to many practitioners.

**2** If bolder counsel than mine wins the day, my point at A 2 (a) above will need to be considered, but as this is a matter of detailed syllabus planning I say nothing more about it at this stage. However, I think my point about placing the course (see A 2 (b)) could still usefully be considered, if only to give a steer to anyone (or any group) who is tasked with the taking our proposal.

**C HOW COULD BETTER COVERAGE OF LEGISLATION BE ACHIEVED WITHIN THE EXISTING SYLLABUS?**

**1** There is no single answer to this question, since each Law School has its own syllabus. However, three existing subjects seem to me to be the most obvious hosts, into which *Legislation* could be inserted, or within which it could be developed if it is already there.

**Constitutional Law (or any of its modern synonyms)**

I place *Constitutional Law* first for the simple reason that, in some guise or other, its content is a compulsory element of a QLD.

In the case of any reasonably traditional treatment of the subject, *Legislative Interpretation* (if not *Legislation* in the wider sense obviously envisaged by both Philip and Ekins) can easily be used to illustrate the interaction of the doctrines of the Rule of Law, the Legislative Supremacy of Parliament and the Separation of Powers, and to illuminate the practical reality of each.

Having lectured *Constitutional Law* only in cases of dire need arising from unforeseeable staffing crises, I have only limited experience but I have found that this approach works well. Of course, it does curtail the amount of other material which can be covered (which in my case had the very real advantage of enabling me to conceal the haziness of my grasp of some of the other material which might ordinarily have been expected to have been included, but which may well lead to resistance from those more able to deliver better prepared and developed courses).

**Legal Method (or whatever it may be called)**

Law Schools which teach *Legal Method* in any substantial way (by which I mean to exclude very short *Induction Courses*) will already deal with *Legislative Interpretation* (if not *Legislation* in the wider sense). However, some of the textbooks (and therefore, I suspect, some of the courses) deliver a less than wholly convincing account of the subject. The designers of these courses could usefully be encouraged deal more substantially with *Legislation* and *Legislative Interpretation*, even at the cost of cutting down on *Precedent* (which in my experience relatively seldom causes real difficulty in practical terms).

The principal obstacle to the success of this suggestion is the prevailing view in some Law Schools that *Legal Method* can only be learned and not taught, which has resulted in such courses being less than universally provided.

**Comparative Law**

While *Comparative Law* is perhaps the most academically satisfying host subject for *Legislation Interpretation*, and perhaps *Legislation* (simply as a result of presenting the material in a comparative context), its relative scarcity relegates to the status of the least practical possibility.

**2** Incorporating (or developing) the teaching of legislation into existing subjects necessarily predetermines the Level at which it will be taught.

More particularly, *Public Law* and *Legal Method* are classic Level 1 subjects, while I suspect (admittedly on the basis of neither personal experience nor empirical investigation) that *Comparative Law* is a classic Level 3 subject – and almost certainly an option.

The question of the Level at which Legislation maybe taught has an important bearing on the content of the syllabus.

Students at Level 1, especially in the first few weeks of their course, have practically no background knowledge of the Law to which they can relate whatever they study under the heading of *Legislation* or *Legislative Interpretation*. It follows that the designers of these courses can safely make no assumptions, which inevitably restricts the amount of technical content which can, realistically, be tackled.

Students at Level 3, on the other hand, have (or should have) a wealth of material at their disposal on which they can draw in order to contextualise some further study of *Legislation*. Students at this Level may even be receptive to being taught the principles of *Legislative Drafting*.

**D CONCLUSION**

The thoughts outlined above lead me to suggest that the ideal provision would come in to two stages

Initially, a sound treatment of *Legislative Interpretation* in a compulsory course at Level 1 would provide a tool-kit which students can use in the Law programme as a whole.

Subsequently, a Level Three option on *Legislation* (or *Topics in Legislative Studies*, or some similar title), perhaps including *Principles of Legislative Drafting*.

**E FOOTNOTES**

**1** The major obstacle to making progress with this project seems to me to be that very many Law teachers do not regard *Legislation* as being a subject worthy of study.

**2** A secondary obstacle, although in some cases it may well be presented as the primary one, is that most Law teachers already complain about the extent to which they are under pressure to cover an increasing body of material, in a fixed period of time (and probably with a reduction in most other resources apart from time).

Any additions which we propose are, therefore, likely to be widely resisted irrespective of the desirability of their content.

**3** Unfortunately, I have no prescriptions for overcoming either of these obstacles.

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