

# Teaching the Discourse of Legal Risk to Finance Professionals: Preliminary Steps and Emerging Issues in Developing a Linguistically Scaffolded Curriculum

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*In this paper we report on the preliminary stages of a collaborative project involving a linguist and a subject specialist that aims to develop specific course materials for postgraduate students studying in a second language and, more broadly, students from one discipline (finance) who are seeking to understand the structure and terminology of another (law). We introduce the notion of a linguistically scaffolded curriculum under which exercises and tasks traditionally used in language learning can be adapted and developed to enable students to focus on learning concepts of a new discipline, while indirectly improving their language skills. We distinguish this new form of curriculum from content-based language instruction (which shares the goal of integration of content and language but maintains in practice a predominantly language focused approach). We also distinguish it from other 'integrated' approaches to the challenges posed by non-traditional students and interdisciplinary subject areas, such as content and language integrated learning (CLIL), which typically targets non native speakers of the language of instruction.*

*We describe the theoretical as well as the practical motivation for developing teaching materials that will scaffold simultaneously both language development and an understanding of key legal concepts and procedures. We discuss the establishment of guidelines within which exercises can be developed, and illustrate the potential suitability of particular exercises by working through selected examples (gapped texts, unordered concept clusters, and scaffolded argumentation).*

*Finally, we describe how the development of fluency exercises, originally designed to supplement the primarily content-focused materials for students with first languages other than English, led us to recognize the essential role played by an enabling discourse which depends largely on a hitherto undescribed level of lexis that is neither sub-technical nor general but 'coloured' by its use. We discuss the kinds of materials that can assist students to master this enabling discourse in which technical terms are embedded.*

**Key words:** law, finance, discourse, terminology, integration, content

## 1. Introduction\*

The integration of content and language (ICL) is a frequently cited goal of teachers and educationalists; however, this phrase can stand for a wide variety of techniques and theoretical approaches. In this paper, we analyse a method which attempts – through the construction of a 'linguistically scaffolded curriculum' – to assist both native and non-native speakers of a language to develop their understanding of the fundamental concepts of an academic discipline whilst at the same time improving their control over the discourse of that discipline. This method is based on our work with post-graduate students of applied finance who also need to understand the concepts and terminology of the distinct discipline of law, since legal rules govern the operation of the various financial markets in which they operate.

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In section 2 of the paper we focus on the development of the concept of a linguistically scaffolded curriculum, distinguishing this pedagogical approach from the more familiar content (or discipline) based language instruction (CBI) and also from content and language integrated learning (CLIL), both of which typically target non native speakers of the language of instruction. We elaborate the rationale for such a curriculum, noting the importance for all students at tertiary level of a good, or ‘deep’, understanding of concepts that are represented and – in this case largely constructed – by means of a discipline specific terminology and discourse. We also explain a key premise – that an understanding of these disciplinary concepts can be acquired by students by means of exercises and tasks based on instructional materials that have previously been used for teaching and testing language skills.

In section 3 we outline the main elements of what is essentially a materials-based approach. Acknowledging our original motivation as a concern to assist non-native speakers in the acquisition of reasoning and language skills, we describe how we went on to develop a linguistically scaffolded curriculum focusing on concepts and conceptual relations and how this allowed us to develop materials of broader application, capable of benefiting all students, regardless of their prior knowledge or language background. We discuss the establishment of essential guidelines within which to develop appropriate exercises and tasks, and explore the actual process of design through analysing some typical exercises.

Finally, in a fourth section, we describe how, in seeking to develop this pedagogical approach, we became aware of the existence of an ‘enabling discourse’, made up of a set of specific language choices in which legal concepts are commonly expressed and systematically applied to real-world situations. Preliminary research suggests that this discourse relies on a wide range of characteristic collocations (nouns, verbs and adjectives) and that it accounts for much of the non-technical lexis of legal discourse. We contend that a knowledge of this enabling discourse is critical to students attempting not only to understand how legal concepts function but also to develop an appropriate range of vocabulary, along with the appropriate syntax, which will allow them to discuss and apply those concepts accurately and precisely.

In the present paper we draw on the legal concept of ‘authority’ by way of a working example of a concept needing to be explained and acquired. While the term ‘authority’ can be used in a number of different legal senses, in this context it refers to the power of one person (known as ‘the agent’) to act on behalf of another (‘the principal’) and to bind that other to a transaction.<sup>1</sup> The concept of ‘authority’ in this sense is of particular interest, legally and linguistically, for several reasons:

- From a legal perspective, it is critical to the enforceability of contractual arrangements which underpin the structure of modern commerce and finance. In the absence of appropriate ‘authority,’ an arrangement such as a contract may simply be invalid.
- From a linguistic perspective,
  - it is an example of a term in common everyday use that has a range of meanings, both general<sup>2</sup> and technical; and
  - when used as a technical legal term, it is frequently accompanied by ‘enabling vocabulary’, recognition and knowledge of which combine to increase significantly an understanding of the scope of the legal concept.

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<sup>1</sup> The term ‘authority’ can have other legal meanings, including ‘permission’ and ‘case law on a particular point’.

<sup>2</sup> The Shorter Oxford Dictionary lists eight meanings: 1. power or right to enforce obedience; 2. derived or delegated power; 3. those in authority; 4. power to influence the conduct and actions of others; 5. power over the opinions of others; 6. title to be believed; authoritative statement; 7. quotation or book acknowledged or alleged to settle a question or give conclusive testimony; 8. the author of an accepted statement; an expert in any question. Sense 2 comes closest to the legal usage.

## 2. A linguistically scaffolded curriculum

We define a ‘linguistically scaffolded curriculum’ as a curriculum in which students acquire the concepts and principles of a particular subject or discipline through activities which are linguistically scaffolded. We take scaffolding to mean the systematic sequencing of content in terms of increasing complexity, initial provision of constraints on performance that exclude much trial and error on the part of the students and a systematic decrease in levels of support as understanding evolves and performance improves. Essentially, in our approach, scaffolded exercises and tasks are designed to support acquisition and learning at an appropriate level of difficulty for students, irrespective of their language background. Thus, the approach differs significantly from content or discipline based language instruction (CBI), and from most varieties of content and language integrated learning (CLIL), and it differs from sheltered content instruction in its linguistic grounding.

### a) Contrast with content/discipline based language instruction

As we noted in the Introduction, the phrase ‘integration of content and language’ can stand for a wide variety of methods. In the 1980s, in the context of Content Based Instruction (CBI), it represented an approach to language teaching which had energetic advocates in the US and Canada, especially in the fields of English as a second language (ESL) and English for academic purposes (EAP). Various techniques were trialed in those countries within the school system (see Crandall, 1987, 1992; Crandall, Spanos, Christian, Simich-Dudgeon and Willetts, 1987). The approach was subsequently used in tertiary level contexts (Brinton, Snow and Wesche, 1989). In 1986 Bernard Mohan (University of British Columbia) published an influential book called *Language and Content*, promoting development of cognitive skills in relation to mastery of the kinds of abstract ‘knowledge structures’ (causation, etc.) which are normally required to understand content.<sup>3</sup> However, in England the dual aims of content-based language learning and language-based content teaching had already been espoused in educational policy covering bilingual children (DES, 1985). This principle, often known as Content and Language Integrated Learning (CLIL), is currently enshrined in education policies in numerous bilingual and multilingual national contexts. This approach was originally defined in 1994, by UNICOM, the University of Yväsby and the European Platform for Dutch Education (see Darn, 2006) as an approach to teaching and learning in which ‘subjects are taught through a foreign language with dual-focused aims, namely the learning of content, and the simultaneous learning of a foreign language’ (cited in Darn, 2006).

The focus in schools in England has been on content, and a close integration of language and content aims, with language specialists scaffolding selected tasks and providing an ancillary ‘focus on form’ (Long, 1983, 1991, 1997; Long and Robinson, 1998; Pica, 2000; see Creese, 2005, for details). Subject teachers and ESL teachers often team-teach in the same classroom. Despite some successes, however, the approach appears to have often foundered due to the teachers ‘shifting between the dual aims’ (Creese, 2005: 188). As Creese puts it: “Despite the well known phrase in England, ‘language across the curriculum’, we have been slow in looking at the possibilities of combining subject and language syllabuses within the classroom” (2005: 202).

Language teachers generally tend to construct the issue as a language focused one, and have devised numerous methods that, however, only incidentally use authentic content (as a *thematic focus*). The terms Content Based Instruction (CBI) and Discipline Based Instruction (DBI) actually stand for ‘Content Based *Language* Instruction’ and ‘Discipline Based *Language* Instruction’ (the latter notion was popularized by

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<sup>3</sup> He has since published extensively on the topic, exploring possibilities for materials development (cf. Mohan and Naerssen, 1997) and reporting on collaborative research into classroom learning (Mohan and Huang, 2002; Mohan and Beckett, 2003).

Krueger and Ryan, 1993). Although Mohan (1986, 1989) has modified this emphasis significantly by focusing on thinking skills and abstract “knowledge structures”, his approach still treats the actual content as secondary in a syllabus based on cognitive skills and structures. Loretta Kasper (e.g. 1997a, 1998) has for a number of years promoted what is called a ‘focus discipline’ approach to language teaching. Marcia Pally (2000, 2001) advocates content-based instruction that is *sustained* in terms of its content focus (SCBI), using materials (e.g. readings) taken from a selected academic discipline; the syllabus is often designed to cover a generic taxonomy of skills rather than a given sequence of content areas (Pally, 2001, Belcher, 1995: 139, cited in Pally, 2001). All of these content-based teaching initiatives have, in the final analysis, taught us much about the possibilities and limits of an integrated approach to content and language.

In our own approach, to be described below, we have taken the existing curriculum in a given subject area – in our case, a course on legal risk in finance – and we are designing learning exercises and activities that are *content focused but linguistically scaffolded*. The primary and explicit emphasis remains at all times on the content.<sup>4</sup> The language skills required emerge from a close study of that content, and are only ‘sequenced’ in so far as they reflect the increasing complexity of the conceptual structures covered in the syllabus. Language skills are not overtly taught or consciously learned. It is this primary focus on content, and the fact that linguistic expertise is employed simply to facilitate the learning of that content, that leads us to describe our approach as a ‘linguistically scaffolded curriculum’.<sup>5</sup>

## **b) Rationale**

When dealing with technical terminology, that is, language that has evolved specifically to represent and interrelate the concepts and propositions that make up a given field of knowledge, we are primarily dealing with language in its ideational metafunction (Halliday, 1994). Many applied linguists and students of rhetoric, such as Bazerman (1988, 1998), Crismore, (1989), Crismore and Farnsworth (1990), Hyland (1994, 1998, 2004, 2005), and Hyland and Tse, (2004), are currently preoccupied with demonstrating that academic and scientific discourse has important interpersonal and textual components, reflecting its social context and internal organization.<sup>6</sup> This is a recurring theme in the recent literature on ‘academic literacies’, and ‘Language for Specific Purposes’ (LSP). Yet, most subject area teachers in secondary or tertiary education primarily focus on helping students to acquire an understanding of concepts and conceptual systems that differ from everyday ‘common-sense’ conceptions of the world, both in terms of generality and of abstraction.<sup>7</sup> In other words, the language function (or, more technically, the ‘metafunction’) that is of most immediate interest to teachers, and the one that initially at least presents the greatest problems for their students, is the communication of a systematic representation of carefully defined aspects of the world as seen through the lens of a particular discipline or profession. The meanings to be acquired by students are not initially interpersonal or textual ones, but experiential and logico-semantic meanings; and the fact is

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<sup>4</sup> Our approach is in many respects similar to *Sheltered Content Instruction* (Echevarria & Graves, 1998; Sagliano & Greenfield, 1998); and it essentially shares the same goals as Content-Language Integrated Learning (CLIL). It differs from these approaches in its conflation of language with content and its systematic approach to scaffolding.

<sup>5</sup> The introduction of a linguistically scaffolded curriculum has already proved successful in first year Accounting & Finance courses (see Sin, Jones and Petocz, 2006, for an evaluation; and see Kasper, 1997b, 1998, who found that undergraduates who had studied in content-based courses did better both in English and in overall learning, as measured in content exams).

<sup>6</sup> Halliday (1993b) demonstrates how analysis can first focus on a general register (here, scientific discourse) and then, in separate phase, on a contextualised instantiation of that register in an actual, situated text. Features of the ideational metafunction assume primary importance in the first phase, where we focus on the (re-)construal of experience through grammar; features of the interpersonal and textual metafunctions predominate in the second.

<sup>7</sup> These terminologies are what Martin calls “technical taxonomies”, or “technicalities”; see Martin, 1992; Wignell, 1998. Linguists such as those just mentioned work within the paradigm of Systemic Functional Linguistics (Halliday, 1994, Halliday and Mattiessen, 2004).

that these meanings have largely been agreed on by particular academic communities and are enshrined in (mostly) very systematic, hierarchically-ordered terminologies.<sup>8</sup> So it is necessary to accept that one of our pedagogical aims – and perhaps the fundamental one – is the *transmission* of meanings from expert to a novice.

When meanings are very tightly linked to sets of defined terms and terminological relations, formal accuracy largely *amounts to* semantic accuracy. Especially in the social sciences and subjects like the law, specialized vocabulary and syntax *realize* concepts and conceptual relations. In typical language teaching contexts, focus-on-form is not necessarily focus-on-meaning, since form-function mapping is loose in everyday communicative contexts. In such contexts, pragmatic meanings are often far more important than formally encoded ones. Because of the dominance of communicative language teaching (CLT) over the past thirty years or so, focus-on-form has been seen as ancillary to interaction and the negotiation of pragmatic, interpersonal meanings (aimed at creating and sustaining social relations). However, when the teacher is teaching content per se – as when defining and exploring concepts and technical/conceptual relations – meaning is very tightly linked to sets of predefined terms and formally expressed terminological relations. In this situation formal, or grammatical, accuracy *amounts to* semantic accuracy. This is why we focus on form in our exercises and, to a lesser degree, in our tasks.

A disciplinary discourse, whether from the hard or soft sciences, turns commonsense understandings into technical understandings (Wignell, 1998: 298). “It does this by creating a technical language through setting up technical terms, arranging those terms taxonomically and then using that framework to explain how the world came to be as it is” (Wignell, 1998: 298-299) – or, we might add, by using that framework to interpret the world for specialized and institutionalized purposes, as in healthcare, economics, finance or the law. Wignell further notes that “[i]n general technicality is used to distil: to create and develop field through defining, classifying and explaining” (1998: 299). In a professional discipline, such as the law, we would add: *reasoning*.

In our approach, our fundamental aim is to assist students to understand the concepts of a particular legal field, here finance law. In so doing, however, we assist them to master the relevant *terminology* of that field, viewed as a formal system made up of “interdefined theoretical terms, which encapsulate the taxonomic structure of a theory” (Sankey, 1998; Vygotsky, 1986: 173). What this means is that a field of science, or discipline, is governed by a taxonomic structure which divides up its subject matter into kinds, and kinds of kinds. And, associated with this taxonomy is a lexical network – a network of interrelated *terms*.<sup>9</sup> Furthermore, we also equip the students with an *enabling discourse*, in which the legal terms are embedded. This is a largely unrecognized and undescribed level of terminology that is neither sub-technical nor general, but that is rather ‘coloured’ by the contexts of its use (see section 4).

Our approach involves moving beyond notions of ‘situated cognition’ and ‘situated learning’ (Brown, Collins, and Duguid, 1989), with their emphasis on social context of learning and the interpersonal features of disciplinary discourse (Hyland, 2004). Instead, we focus on “how learners are to engage with knowledge derived from someone else’s experience” (Laurillard, 1993: 23; 2004), that is to say, with the concepts, conceptual relations, and principles that constitute a disciplinary field of knowledge.

### c) The fundamental premise

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<sup>8</sup> Martin notes: “it goes without saying however that the presence of fuzzy boundaries does not mean that categories do not exist” (1992: 292). Similarly, Temmerman (1999, 2000) calls for the study of how terms develop over time; but the fact that terms have a history does not mean they lack synchronic systematicity.

<sup>9</sup> Kuhn also adopted a ‘no-overlap’ principle, according to which the categories in a taxonomy must be disjoint, or else one should be a subset of the other. Categories cannot simply overlap.

Our fundamental premise is that the types of exercises and tasks designed to teach or test language proficiency can be adapted to scaffold and check conceptual understanding. We draw on the work of Vygotsky (1986; as also on Bruner, 1975a, 1975b, and Bruner and Garton, 1977), who take the position that it is through language use in social contexts that the capacity to think develops, through the process of internalising speech patterns, and that it is by means of internalized language patterns that mental representations of abstract facts are eventually constructed. We link this insight to Krashen's theory of acquisition as learning; however, we use instructional materials to provide the kinds of structured input that acquisition optimally requires, as well as to help students develop a conscious awareness and control over the syntax of conceptual relations (Krashen, 1981, 1982). On these principles, we have adapted exercise types and activities currently used in language teaching and testing so that they can be used to teach not only language but the concepts which the language represents. We have built on educational concepts like 'assisted performance' and 'guided participation' to design exercises and tasks that facilitate the acquisition and deepening of subject area knowledge, and the cognitive skills needed to analyse and interrelate the key concepts (Bruner and Garton, 1977; Levinson, 1979; Lemke, 1990).

Work carried out by Bereiter and Scardamalia (e.g. Bereiter and Scardamalia, 1987a, 1987b) and more recently by Galbraith (1999) and others (Alamargot, Favart and Galbraith, 2000) in the psychology of written composition lends scientific credibility to the assumption that students can learn through writing about – as through talking about – their subject. Methodical research now lends plausibility to what has been advocated for a very long time by writing specialists, often without a background in linguistics or psychology. The process of designing texts for specific recipients and, accordingly, of exploring different ways of formulating the concepts, assists students to develop different perspectives on the concepts themselves and their interrelations.

Slobin (1996) has recently argued, on the basis of extensive research, that in the course of language production there is inevitably a stage at which the speaker has to structure his or her thoughts according to the options made available by the language spoken (and, we would add, by the speaker's available repertoire of styles and registers). Slobin calls this process "thinking-for-speaking", and concedes that there may well be deeper levels of conceptualization that do not correspond with any verbal expression. Similarly, Pinker, who rejects linguistic determinism in its 'strong' form, nevertheless admits that "one's language does determine how one must conceptualize reality when one has to talk about it" (Pinker, 1989, p. 360). We take these claims to imply that, when learning a new language – or the discourse of a new field – one learns to conceptualize aspects of reality in a new way *in the learning of that language or discourse*.

Our approach then, which builds on that initially described in Jones and Sin (2003, 2004a, 2004b), rests on the premise mentioned above – the premise that the types of exercises and tasks designed to teach or test language skills can be adapted to facilitate the scaffolded acquisition of content knowledge, focusing on concepts (rather than words or 'vocabulary items') and on conceptual relations rather than syntactic structures. We explore this premise further in section 3 below, but it is important to note here that, if it is correct, the same scaffolded learning devices will be of as much use to native speakers of English as to students who speak English as an additional language (EAL students). If all educational processes are mediated by language, an 'integrated' approach to teaching and learning (i.e. one that conflates language development with cognitive development and the acquisition of new knowledge) will be just as appropriate for teaching content to native speakers of a given language as it is for teaching non-native speakers.<sup>10</sup> There is no doubt that the latter experience special linguistic and conceptual difficulties when acquiring the terminology and discursive practices of a discipline like law, which relies so heavily on the ability to absorb information from written sources and to reason verbally (orally and in writing) from principles to cases and from cases to cases. However, it has frequently been found that some difficulties experienced by EAL

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<sup>10</sup> Second Language Acquisition (SLA) has traditionally represented a separate branch of research and practice in applied linguistics, having little crossover with First Language Acquisition (FLA) research.

students are similar to difficulties experienced by native speakers who are new to a discipline and a particular register, and that an *explicit account* of these difficulties throws light on the learning processes and difficulties of native speakers of English. In the course we offer, the latter must also learn a whole new style of speaking and writing – the register of the law – and a new way of reasoning about everyday situations.

### 3. A materials based approach

Laurillard (1993, 2002) proposes the following philosophy of teaching, and it is one we have found apposite in teaching the concepts and the discourse of legal risk in finance:

Teaching is essentially a rhetorical activity, seeking to persuade students to change the way they experience the world. It has to create the environment that will enable students to learn the description of the world devised by others.

Levinson (1979) spelt this approach out in somewhat different terms (and with concrete examples) when he described the *elicitative* method employed by one particular science teacher. Students were led to use the same linguistic categories – i.e. theoretical abstractions traditional to a particular branch of science – as the teacher in order to express the conceptual relations that were to be taught/acquired. The teacher was not satisfied until the children’s answers were couched in terms of the physical concept “energy” instead of everyday concepts like “work” or “strength”. Galbraith argues that text production (i.e. writing) can (under appropriate conditions) be an active “knowledge-constituting” process (1999). We have tried to use this insight to guide and scaffold students’ knowledge-constituting responses *in writing* much as Levinson’s science teacher did the children’s responses in a spoken interaction. We have noted with interest that model texts and guiding questions were recommended by Martin in order to scaffold writing tasks for students in Australian high schools (1993: 190).

In this section, we next outline the project for which we are currently developing the linguistically scaffolded curriculum and analyse a brief selection of the exercise types that we have to date designed.

#### a) The project

The project reported on here was first conceived when it was decided to deliver an Australian based Master of Applied Finance program in China. The course was developed and is currently taught by staff of Macquarie University’s Applied Finance Centre. Although the course known as Legal Risk in Finance had already been delivered in centres outside Australia (such as Singapore and Hong Kong) the decision to enter this new market where the students would be primarily non-native English speakers with only infrequent exposure to English provided an opportunity to take stock of the course and to consider how it might usefully be revised to make the legal concepts and principles as transparent as possible.

We soon realized, however, that the exercises that we were developing (described below) could potentially benefit all students. With a few exceptions, students come to the compulsory legal course with little or no background in the law and are inexperienced in applying the step-wise algorithms of legal reasoning to financial and commercial situations. It was known through teaching the course over a number of years that many found the course challenging. Interestingly, students struggled not only with the concepts but also the level and complexity of language in which lawyers tend to discuss and analyse concepts. Despite being English speakers, many students encountered difficulty in following the formal language and complex grammatical structures in the legal judgments which they were required to read, even though the judgments were presented not in their original raw form but as edited extracts in a casebook.<sup>11</sup>

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<sup>11</sup> McCracken and Everett, *Finance & Security Law Cases and Materials*, Butterworths Sydney 1998.

The initial brief we developed was to design materials that could be used in all our teaching centres by all students, irrespective of their language and their background. Generally, the course is taught face-to-face to groups of students intensively in two five-day blocks within a semester. Classes are run informally with the lecturer inviting substantial participation in discussion of concepts. Students are expected to have read the Course Notes and to have prepared for class, although not all do so. We envisaged that our materials would be able to be used by students in their own time, reinforcing the work in class and enabling them to deepen their understanding, working at their own pace. One caveat was established at the outset. The new materials were not to involve a 'dumbing down' of the course content. Rather, they were to provide a mechanism whereby students could, if necessary, be assisted in rising to the level that was considered appropriate to a Master's level program.

Perhaps not surprisingly, we continue to revise and refine our brief. Further work has suggested that these materials can be developed to stand independently of the course material. We are thus now focused on producing what we currently describe as a 'workbook' which can be used both by students enrolled in the course and by a wider business oriented audience who are seeking to understand how lawyers think so that they can communicate sensibly with their lawyers in their day to day dealings with their lawyers. Phrased perhaps frivolously but nonetheless pointedly, our draft Preface advises that if you 'want to 'talk the talk', then you need to 'think the talk'.

## **b) Designing the exercises**

We were aware from the outset that the exercises we wanted to develop were radically different to traditional law exercises, certainly in Australia. Typically, students studying law, whether as part of a law degree or a more general commerce degree, are required to demonstrate their knowledge of the particular area of law by identifying appropriate legal principles in a given factual situation and by then applying those principles to the facts, showing the reasoning behind the conclusions they reach.<sup>12</sup> Traditional law lectures focus on explaining the legal principles and the cases in which they arise or are developed or interpreted, while problem-solving – applying those principles to a set of facts- is practised in accompanying tutorials. Here, we proposed to scaffold and guide conceptualisation, reasoning and problem-solving by means of a series of short written exercises and tasks.

Our departure from the traditional approach initially raised in our minds a potential problem: how would the exercises be received by the students? Our concerns were initially twofold:

- i) would they view them as relevant?
- ii) would they consider them overly simplistic?

Both these issues can, we believe, be addressed.

i) *Relevance?* By focusing the exercises on the fundamental concepts rather than on the detailed rules that govern the operation of the concepts, the exercises become a necessary *preliminary* step to any analysis that the student develops. They encourage students to acquire a firm understanding of the concepts themselves. Too often concepts are assumed to be understood and the emphasis in the lecture theatre is placed on exploring their application. By targeting the exercises at an early stage in the learning process and thus attempting to ensure students understand the concepts behind the principles or rules they are required to apply, we believe that the exercises will be perceived as highly relevant.

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<sup>12</sup> The approach has been the subject of considerable analysis, and has given rise to the well-known acronym FIRAC (Facts, Issues, Rules, Analysis and Conclusion).

ii) *Simplistic nature?* Many of the exercises look very simple. Interestingly, as Jones and Sin (2004) found when designing exercises for accountancy students, language type exercises which are readily accepted by language students are often viewed doubtfully by students in other disciplines. However, as language students have learnt over the years, simple in form does not necessarily mean easy to complete. A gapping exercise, for example, which requires selection of a missing word may appear at first sight very easy to complete. Yet, as we will discuss below, it is possible to provide a challenging exercise through making selection of the correct missing word dependent on an understanding of the concept that the word represents. In providing a range of apparently acceptable commercial synonyms and requiring the student to select only that which legally is appropriate, the student's legal knowledge can be both extended and tested.

An ongoing concern was the extent to which students might regard the exercises as having a purely linguistic focus, rather than as mediating conceptual, learning. Experience counselled that any suggestion of language learning *per se* might result in students (particularly, but not necessarily only, native speakers) ignoring the exercises, believing themselves already to possess quite competent language skills. Jones and Sin (2003, 2004a, 2004b) had learned, when designing exercises for accountancy students, that it was critical that students see all activities as being knowledge-focused – hence, in preparing their accountancy materials ‘the whole idiom of language teaching was eschewed’ (Jones and Sin 2003).

### ***(i) Establishment of guidelines***

With these concerns in mind, we adopted the following 4 fundamental guidelines for designing the activities:

#### *1. Pitch the level appropriately.*

We have pitched the exercises at a level which we view as appropriate for students enrolled in a Master's program. The principal objectives are to enable the student to acquire a thorough knowledge of the selected concepts of legal risk and to develop skills of legal analysis. Naturally, we need to equip the students with the linguistic forms they will need to attain these objectives, but this is provided indirectly.

#### *2. Scaffold the content of the exercises.*

We have ordered the exercises in each topic, initially providing significant guidance but gradually reducing the degree of guidance as students become more familiar with the topic and demonstrate increasing ability – and confidence – through successful completion of the early exercises. Where possible, we develop the initial exercises from general financial or commercial topics likely to be familiar to finance students before introducing more legally orientated material based on case law.

#### *3. Include visual aids (e.g. diagram and flow charts) where possible*

We have incorporated diagrams and flow charts into many exercises. Students with a finance background often struggle, at least initially, to absorb the meaning of concepts through verbal explanation alone. Diagrams and charts are also useful in clarifying the mental ‘picture’ that a student may have of a particular concept. Financial transactions can be represented in differing ways. It is important for the finance student to understand how the lawyer ‘sees’ the transaction. Ad hoc diagrams in particular form part of a lawyer's traditional kitbag, used for schematising (scaffolding) and explaining transactions.

#### *4. Ensure the exercises are clear and the instructions easy to follow.*

The intention is that students should be able to work through the materials either in class under the direction of a teacher (who may not necessarily be a legal subject specialist), or on their own and in

their own time. The activities required should therefore be self-explanatory and self-contained (with suggested answers and solutions provided in an appendix).

### *(ii) Types of exercises.*

We are currently working on designing and compiling a bank of exercise and task types. To date, we have identified some 25 different types of exercises, and no doubt more will be added as we work our way through the topics. Our intention is to have a variety of exercise and task types within particular topics. Rather than simply list these in the present paper, we have selected shortened versions of 3 typical exercises to illustrate how language learning exercises can be developed to assist students in understanding a concept and to support our premise (see Part 1) that an exercise designed to develop mastery of vocabulary items can be readily transformed into one which develops an understanding of the concepts the words represent.

The three exercises are all familiar to language teachers. [However, as adapted for our purposes, each exercise is designed to help students to improve their understanding of key concepts and conceptual relations.](#) It is the exercises' capability of improving students' understanding of the meanings of technical terms which makes them particularly suitable for use in a linguistically scaffolded curriculum.

However, it is important to note, that whilst exploring and reflecting on legal concepts, students are also developing discourse-specific language skills, albeit in many cases without realising it. In order to complete the exercises, students obviously need, for example, to know the vocabulary that is used and to be able to deploy the appropriate grammatical structures. In working through the exercises, they become familiar with the structure and level of language. Where possible, we have based the exercises on actual texts from cases, thus exposing students to the formal, complex and often lengthy sentences that tend to characterise this style of writing (see section 4). As noted above, even students with English as a first language often struggle with the language commonly used by the judiciary in articulating legal concepts.

The selected exercises assume a certain level of knowledge about the concept of authority which students have acquired through other preliminary exercises, such as through exploring definitions. At the stage of completing the 3 selected exercises a student would be aware of the following legal principles:

- *actual authority* is the strongest form of authority and it falls into two categories - express actual authority and implied actual authority.<sup>13</sup>
  - *express authority* is conferred explicitly – for example, by one person saying to another “ I give you authority to do this’.
  - *implied authority* may arise where it is implicitly agreed between two persons that one should have particular authority to act on the other’s behalf even though nothing is expressly stated. It may also arise where the doing of an act can be said to be reasonably incidental to the carrying out of some related expressly delegated act.
- *Ostensible (or apparent) authority* potentially arises if there is no actual authority – for example, if the principal has not given authority to a particular person but nonetheless represents to a third party that the third party should deal with that person as the principal’s agent. In these circumstances, the principal is regarded as having given the person the appearance of authority<sup>14</sup> which is sufficient to cause the person to be treated legally as an agent.

In considering these exercises, readers should bear in mind our intention that students will work through numerous exercises as they would if studying a foreign language. Examined out of its context, any one exercise risks appearing low-level.

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<sup>13</sup> See Everett & McCracken, *Banking and Financial Institutions Law*, 2004, Chapter 15.

<sup>14</sup> Hence the common use of the description ‘apparent authority’ as a synonym for ‘ostensible’ authority.

Finally, a question we have sometimes been asked about these exercises concerns the extent to which it is possible to ascertain that students are manipulating (and learning) concepts and not lexical items? We would argue that the answer lies in the fact that the exercises are precisely designed to reveal that the items represent concepts – and implicate conceptual relations – by forcing students to explore their different aspects and dimensions. In arguing thus we find support in Vygotsky’s (1962/1986: Chapters 5 & 6) developmental schema according to which word meanings, which may initially represent more or less concept-like complexes, gradually develop into properly grounded concepts. Vygotsky argues that “the central moment in concept formation, and its generative cause, is a specific use of words as functional ‘tools’” (1986, p. 107). His notion of scientific concepts learned via analytic procedures, as opposed to spontaneously acquired everyday concepts, is also very relevant for us here (1986: 171-173).

Students’ understanding and reasoning ability can therefore be assessed through their ability to use the concepts subsequently in meaningful contexts. Accordingly, the exercises are carefully structured. As illustrated in the three exercises below, the scaffolding is gradually reduced, culminating ultimately in a more open exercise which requires the students to demonstrate their understanding of the concept in a less guided way than before.

### **a) Gapped texts**

Students are given a short passage of text from which key concept words have been omitted and they are required to select the correct word to fill in the relevant gap from a range of words given, which may include distractors.<sup>15</sup>

Gapping is an exercise which can be used at various levels of sophistication. In the extract selected, a student is required to distinguish between actual and ostensible authority and to understand the notion of delegation inherent within the concept of authority.

The passage<sup>16</sup> discusses whether actual authority to borrow money which was conferred originally on the Board of Directors of a company and subsequently delegated to senior management has in fact been further delegated to an individual foreign exchange (FX) dealer, known as K.

### **Sample exercise**

Complete the gaps in the following passage by selecting the appropriate word in the box below, demonstrating your ability to identify a potential source of a foreign exchange dealer’s authority to borrow foreign currency.

*The banks submit that the board of the directors of the company delegated to management the whole of the implementation and conduct of the FX operation subject to sketchy guidelines. Senior management, which included K’s manager, delegated to K the conduct of the operation and therefore K had authority to borrow foreign currency on behalf of the company. Alternatively, the width of the authority conferred by the board upon management carried with it the implied authority to borrow foreign currency in the course of the FX arrangement. ....(1) then either expressly authorised K to borrow, or alternatively, the scope of the express authority conferred on him carried with it the.....(2) authority to borrow.*

*Alternatively, by employing K as a money market dealer and FX manager, in the context of an FX exposure management operation, the company conferred on K .....(3) authority to do what was usual in the course of a money market manager and FX dealer’s authorised business. Alternatively, by representing to the banks that K had authority to borrow foreign currency, the company gave K.....(4) authority.*

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<sup>15</sup> Turner has recently argued for “exercise types which require students to use and manipulate actual expressions and constructions” (2004, p. 105), and indeed mentioned cloze exercises as an example.

<sup>16</sup> This passage is based on the judgment of Rogers CJ in *AWA Limited v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759. It has been modified for teaching purposes.

management - apparent - implied - the board-  
ostensible - the company - actual - K's manager

In an exercise of this type it is obviously important that the gapping words should be selected in such a manner that the gaps be correctly completed through an understanding of the concepts rather than simply, for example, a knowledge that the word chosen is grammatically apposite. In this example, we have made the missing words grammatically 'neutral' – hence the use of four possible adjectives to describe the type of authority and the four possible nouns to identify the source of the delegation. When choosing the word, it is the knowledge of the concepts that should determine the correctness of the answer. Obviously, however, some knowledge of the language is necessary, both in terms of selecting a word with the correct meaning and in realising which set of four words (nouns or adjectives) provides the potential answer.

In considering the first gap, the student has to focus on who can in these circumstances make a legally effective delegation of authority. Four possibilities are presented – management; the board; the company; K's manager. Each of these is commercially appropriate and on particular sets of facts each could potentially be capable of delegating. However, on these facts, only one is legally appropriate.

- We can rule out relatively quickly 'the company' and 'K's manager'. Dismissing 'the company' requires an understanding of the legal context; we are looking at the structure within the company – it has to be some representative (or group of representatives) within the corporate structure. Dismissing 'K's manager' depends on an understanding of who can give authority – it has to be a person who himself has authority. There is nothing in the text to suggest that the manager alone has authority. The fact that he or she is a person to whom K generally reports does not necessarily mean that they therefore have the authority in respect of this particular transaction. Often they do, but not always.
- A choice between 'the board' and 'management' is perhaps more difficult. The board usually does have the power to delegate, but the facts indicate that it has already delegated its powers to senior management. While it is admittedly arguable that the board could have retained some residual right, again nothing on the facts suggest that it has done so. By a process of elimination (if nothing else), 'management' might therefore be said to be the most correct answer. This can, however, be confidently confirmed by the student who understands that to delegate authority the person making the delegation must have the authority in the first place. The facts are consistent with the view that it is management who has received the requisite authority from the board.

The remaining gaps requires an understanding of the different types of authority and, in particular, the distinction between actual authority and ostensible (or apparent) authority as well as the various sub-sets of actual authority.

- While the available words suggest a choice of four, in substance the choice is between one of three words as 'ostensible' and 'apparent' are synonyms in this context, being used to describe the type of authority that arises where one person represents that another has authority in a situation where there is no actual authority. In practice, students often confuse implied authority (which is a type of actual authority) with ostensible authority.
- The word in the second gap cannot legally be either ostensible or apparent – although grammatically both would fit. Express authority cannot carry with it ostensible authority. The latter depends for its operation on a representation being made by the principal. On the facts, no representation has been made at this stage of the analysis. (That point is subsequently picked up in the fourth gap.)

- In making the choice between the two remaining words, ‘actual’ and ‘implied’ for the second gap, the student needs to understand that ‘implied’ is simply a type of actual authority. Of the two words, ‘implied’ is therefore the better response. Actual is not wrong as such, but it is legally less accurate and precise as ‘actual’ covers not only implied authority but also express authority.
- The third and fourth gaps focus on the distinction between implied and ostensible authority. Both types of authority can be said to be given by the company, but it is the student who understands the technical difference between them who will be able to select the correct description in the particular circumstances.

## b) Concept clusters

Students are presented with a randomly ordered list of concepts and are asked to construct a legal proposition that makes sense in a given context. The propositions below focus on an aspect of ostensible authority, namely the making of representations.

### Sample Exercise

Reorder the words and phrases below to state a legally accurate proposition. This allows you to test – or demonstrate – that you understand which *representations* may form the basis for *ostensible authority*.<sup>17</sup>

1. to the banks – represented – the company – had authority – the dealer – that- to borrow<sup>18</sup>
2. the agent – having invested – the representation – with a particular office – the company – flows from<sup>19</sup>
3. actual authority – a dealer – ostensible authority – cannot make – a manager – giving – without – a representation<sup>20</sup>

These sentences would be difficult to reorder without an understanding of the concept of *ostensible authority*. In each sentence, most students will have difficulty in determining the correct subject. The issue in sentences 1 and 2 is: who makes the representation about whom?; in sentence 3, who can delegate to whom? The correct answer in 1 and 2 requires an understanding that authority generally involves the position of an individual acting on behalf of the company, while 3 requires an understanding that a person must have actual authority to enable another to have ostensible authority, even if he or she is higher in the corporate hierarchy.

## 3. Constructing an argument

Students are given a contextualised exercise, or task (i.e. they are given more or less detailed information about a given situation), plus a list of key concepts, and are required to formulate an argument on a particular issue, using some or all of the concepts listed.

A typical task of this kind building on the 2 previous exercises might, for example, require students to develop an argument that a FX advisor would not have similar authority to a FX dealer to borrow foreign currency. By changing the role and the outcome a student has to use the concepts *to reason with*. Although the vocabulary and grammatical structures which have been used in the first two exercises may be replicated in these arguments, the changed role and required output mean that students can only develop their argument successfully if they understand the concepts involved.

<sup>17</sup> These sentences are also based on *AWA Limited v Daniels t/as Deloitte Haskins & Sells* (1992) 7 ACSR 759.

<sup>18</sup> The company represented to the banks that the dealer had authority to borrow foreign currency.

<sup>19</sup> The representation flows from the company having invested the agent with a particular office.

<sup>20</sup> A manager without actual authority cannot make a representation giving a dealer ostensible authority.

## Sample task

Use the following words and phrases to develop an argument that a FX advisor would not have authority to borrow foreign currency.

width of authority  
the board  
implied authority  
ostensible authority  
to confer authority  
representation  
actual authority

## 4. The enabling language of legal discourse

In studying the materials described above, students become familiar with the legal discourse. In discussing and analysing the concepts, they become acquainted with the fundamental technical terms which are used to describe the concepts. If, however, they are to master the discipline, we would contend that they must also become familiar with what we would describe 'as enabling language. This is language which is neither technical nor general but which is critical to understanding and expressing the concepts. It may be gathered from various sources, including:

- legal judgments in cases and statutes of parliaments;
- legal documents prepared and used by lawyers;
- textbooks and articles written by legal academics; .
- discussion with a subject-area expert;
- listening to lawyers' discussions.

It was through the drafting of the exercises in particular that we first became aware of the significance of this 'enabling language'. We realised that there was certain vocabulary that seemed particularly appropriate to particular technical terms. While, as far as we are aware, this vocabulary has not previously been described as 'enabling language', other commentators have noted in other contexts a role played by vocabulary which was not in common usage, but which fell short of being technical. Slotta, Chi and Joram (1995), for example, found that explanations given by experts differed from those offered by novices in that experts used a significantly more abstract vocabulary, with verbs and prepositional phrases that expressed circumstantial relations and processes and thus expressed the nuances of physics better than the concrete everyday verbs used by non-experts.

Some might perceive the enabling vocabulary as jargon. Jargon should not of itself necessarily bear a negative connotation. Martin (1993: 172), for example, argues that, although 'jargon' is often referred to pejoratively,

it is an indispensable tool for scientists (and we add lawyers). Not only is it compact and therefore efficient, but most importantly it codes an alternative perspective on reality to common sense, a perspective accumulated over centuries ... [Martin is referring to the terminology of the natural sciences, in our case the legal perspective]. It constructs the world in a different way.

Martin claims further (ibid.) that "[s]cience would not be science without deploying technical discourse as a fundamental tool", and we make exactly the same claim for the law.

It is our contention that students and others seeking to familiarise themselves with legal concepts need to learn this enabling vocabulary. On the one hand, it depends their understanding of the concepts themselves. On the other, it helps them to express those concepts more accurately and precisely.

To understand how enabling vocabulary fits into the legal discourse and how it differs from legal terminology, we need firstly to determine what is technical terminology and secondly, to try to identify the scope and range of this style of vocabulary.

### a) Technical terminology<sup>21</sup>

Simon Harris has noted (1997: 291) that “[w]hat makes legal language special ... is its width of association and conceptual density.” He illustrates this point as follows:

The key contractual term *consideration*, for example, meaning an act or forbearance on the part of both parties that makes promises contractually enforceable, only acquires its discourse value within a community of associated legal values: *duress, privity, intention, adequacy* and other contractual concepts.

These remarks apply equally, for example, to the term *authority*, which acquires its discourse value in relation to a set of other terms like *delegation, representation, liability* and *enforceability*.

In the language of case reports, according to Harris, the referential qualities of common law vocabulary are illusory. As an example of a specialized professional language, he claims, it is in a class of its own. Harris quotes Peter Goodrich (Harris, p. 291) to the effect that

...words such as *right, duty, obligation, corporation, contract*, and so on do not refer to specific legal functions or relations. A term or a phrase is associated with or connotes numerous other legal terms within a field or paradigm of lexical associations.

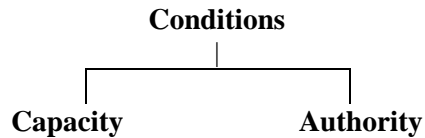
Goodrich, however, conceded that legal terms are in one sense technical, i.e. “in the sense of being wholly conceptual” and contrasts this kind of technicality with that of other professional languages, which “are technical, primarily because of their need to classify extra-linguistic processes and relations” (1986: 151). Searle (1995) would say that the concepts that are employed and debated in legal discourse are examples of what he calls “language-dependent” facts (a class of “institutional” facts). Unlike the extra-linguistic facts dealt with by the natural sciences, they have no objective (or “brute”) reality. They are fully constituted by the words we use to define them, to apply them, and to debate their definition and application.

We argue, following Martin, 1992, Halliday and Martin 1993, and Wignnell, 1998, that legal discourse does indeed constitute a “technical terminology”, and that the “discourse value” of individual terms is in fact their technical value. Legal terminology, while being technical and hence systematic, differs from the technical terminology of the life sciences (biology, anatomy, etc.) and that of the so-called ‘hard’ sciences (physics and chemistry) not in that it references abstractions or concepts which only have discourse values, but in that its technical terms are mostly derived from everyday language, or at least the general vocabulary of academic study (what Martin referred to as “academic vocabulary”; see Martin, 1976). The fact that the terms define socially developed constructs, or “institutional facts”, and not phenomenal objects in the world of the senses, is neither here nor there. However, because legal terms appear at first glance familiar and their meaning transparent, a lay person can easily be misled. To the more perceptive, such terms seem simultaneously transparent and opaque.

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<sup>21</sup> Theresa Chung and Paul Nation are currently developing protocols to distinguish technical terms from other layers of language in specific disciplines (Chung and Nation, 2003, 2004).

Halliday (1993, 1998) and Martin (1992, etc.) follow Kuhn (1982) in taking the view that – ideally at least – a terminology is organised as a lexical *taxonomy*, in which higher order terms (category names) subsume and include lower order terms (subcategory names). The overarching taxonomy is made up of local sets of interdefined terms. The concept of *authority*, for instance, is associated with *capacity*; and between them, these two terms/concepts define the legal ability of a corporation to enter into a (legally enforceable) contractual relationship. The pertinent question in real-life contexts is: “*Who can I deal with?*” We often assume that the corporation with whom we enter into a transaction is able to do so, i.e. it has the *capacity* and its representative has the *authority* to enter into a contract; that assumption may not be always correct.



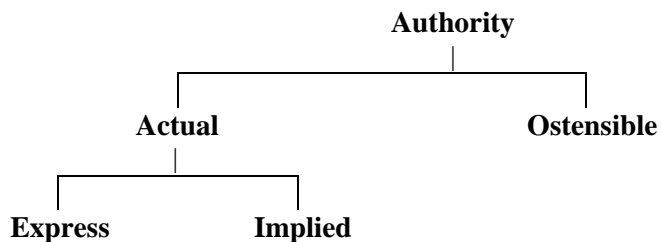
Conceptually, authority presupposes a number of other terms/concepts, e.g.,

**principal, agent; delegation, power; representation, scope/width**

On a finer level, premodified nouns frequently act as technical terms, exploiting the “iterative character of modification” (Halliday, 1998: 197); in this way, classes are divided up into more specific classes as a part of the theory-building process. For instance, the following all represent distinct subcategories of authority, with precise definitions:

- **Actual authority**
- **Express actual authority**
- **Implied actual authority**
- **Ostensible (or apparent) authority**

The two *main* types of **authority** (**actual** versus **ostensible authority**) and the two subtypes of **actual authority** (express and implied) form a “local subset” of “interdefined theoretical terms” (to borrow our terminology from Sankey, 1998) that can be represented as follows:



Other premodified phrases with ‘authority’ as their head do not function as technical terms but have general or ad hoc meanings and belong with the enabling vocabulary to be described below. For example,

- **prima facie authority**
- **appropriate authority**
- **qualified authority**
- **insufficient authority**
- **necessary authority**
- **valid authority**

## **b) Enabling language**

We view enabling vocabulary as a distinctive set of lexical resources that allows us to embed technical terms (i.e. concepts) in sentences that are precise, unambiguous, and recognisably a part of legal discourse.

Technical terms set in everyday English sentences frequently sound simplistic, or (what is worse) imprecise.

For learners, whether native speakers or non native speakers of English, the most difficult aspect of legal discourse is in fact often not the vocabulary of terms, and the concepts they realise (although an understanding of these does require a special kind of mental effort), but the vocabulary of relational terms (the procedural vocabulary) that enable speakers and writers to put these into meaningful association. Yet the articulation of conceptual relations in legal discourse often depends on the use of very abstract verb phrases.(or ‘nominal groups’). Moreover, the learner’s task becomes more difficult again when these relations are nominalised and ‘compacted’ (Halliday and Martin 1993) into complex nominal groups functioning as participants in a clause, e.g., a *grant of authority* for *He granted them the authority*; or *the conclusion drawn* for *He concluded*.

As we saw above, there are certain technical terms that are used to describe the relation of agents to authority:

a/the **principal ... authorizes ...** an/the **agent**

However, the use of these technical terms, and the linguistic representation of the relationship between them, and the rights and obligations pertaining to them, entails the use of a relatively limited set of enabling words and phrases as illustrated below:

Technical Terms	Enabling Vocabulary
Principal (P)	<div style="display: flex; align-items: center;"> <span style="font-size: 3em; margin-right: 10px;">{</span> <ul style="list-style-type: none"> <li><i>delegates [A] to A</i></li> <li><i>confers [A] on A</i></li> <li><i>represents that A ...; A as ...</i></li> <li><i>holds out A as ... -ing</i></li> </ul> </div>
AUTHORITY ([A])	<div style="display: flex; align-items: center;"> <span style="font-size: 3em; margin-right: 10px;">{</span> <ul style="list-style-type: none"> <li><i>have [A] to ... deal/ act for, act on behalf of, etc. (purpose clause)</i></li> <li><i>the scope of [A], the width of [A]</i></li> <li><i>carries with it [A] to ...</i></li> </ul> </div>
Agent (A)	<div style="display: flex; align-items: center;"> <span style="font-size: 3em; margin-right: 10px;">{</span> <ul style="list-style-type: none"> <li><i>may not be a party to transactions</i></li> <li><i>can deal on behalf of P</i></li> <li><i>can act for P; on behalf of P</i></li> </ul> </div>

When a principal has ‘provided’ an agent with authority, we can say, for example,

that person *is* an agent  
 that agent *has* authority  
 that person/agent *is authorized*  
 or, alternatively,  
 that person/agent *is unauthorised*

A person/agent is said

to *act as* an agent  
 to *act with* authority  
 to *bind* a principal *to* an action

The enabling vocabulary of legal discourse can have a somewhat archaic feel to it (preserving, as it does, traces of its historical origins), but it is above all formal. This formality, which may have its roots in

attempts to avoid imprecision and ambiguity, actually functions to create a high degree of social distance between lay and legal participants, and allows the professional lawyers to see all kinds of interpersonal acrimony and real or symbolic forms of violence<sup>22</sup> as manifestations of a ‘case’. It is appropriate to the level of abstraction at which lawyers, traditionally, speak and write.

Candlin and Maley (1997) speak, for example, of the “formal” and “impersonal” tenor of legal discourse that is the product of this abstracting process. This impression is fostered by a choice of vocabulary that might be marked in another context but which, in legal discourse, expresses very precise nuances of meaning.

For example, in relation to the act of providing someone with actual or express authority, the everyday verb ‘give’ is eschewed and preference given to less commonly used verbs like ‘grant’ or ‘confer’. The verb ‘give’ in everyday usage generally means (OED, 2<sup>nd</sup> edition 1989):

To make another the recipient of (something that is in the possession, or at the disposal, of the subject).

The OED notes that this verb may be “contextually equivalent to” any of a number of more specialised verbs, including ‘confer’.

Now, ‘confer’ has the following definition, or gloss, in the OED (2<sup>nd</sup> edition, 1989):

*To give, grant, bestow, as a grace, or as the act of a qualified superior*<sup>23</sup>

These extra nuances of ‘confer’ warrant its use in legal discourse where semantic precision is highly valued. For example, the implication that the transfer of authority is “the act of a qualified superior” is vital in this context, and is succinctly conveyed implicitly rather than explicitly.

Other verbs which commonly occur with the term authority as their object are:<sup>24</sup>

- to *assume* authority
- to *be armed with* authority
- to *exercise* authority
- to *find* authority *in*
- to *have* or *hold* authority
- to *purport to have* authority
- to *represent that* someone *has* authority

We conclude this section by reproducing a short passage from a legal judgment<sup>25</sup> to illustrate what is meant by enabling vocabulary. In this example the technical terms are bolded and underlined while the enabling vocabulary in which the technical terms are embedded is italicised.

Bruce McWilliam junior, being the managing director *upon whom* under the articles all powers of management *could be conferred*, had, undoubtedly in our opinion, ostensible authority *to make* the contract. If with this ostensible authority he actually authorized Peter McWilliam *to make* the contract, there would have been *an exercise by him* of ostensible authority, provided the appellant believed that the authority was *being exercised by Bruce through Peter*.

<sup>22</sup> Bourdieu wrote of “symbolic violence, gentle, invisible violence, unrecognised as such, chosen as much as undergone, that of trust, obligation, personal loyalty, hospitality, gifts, debts, piety...” (1990, p. 127).

<sup>23</sup> Other European languages also have specialised verbs to specify the ‘giving’ of power or authority or honours; cf. French *octroyer, accorder, concéder, conférer*; Italian *conferire*; Spanish *otorgar*; and German *erteilen*.

<sup>24</sup> See more generally Table 1 (Appendix I) for common classes of enabling vocabulary in relation to authority.

<sup>25</sup> *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising and Addressing Co Pty Ltd* (1975) 133 CLR 72.

## 5. Conclusion

Our approach to teaching the discourse of legal risk in the context of applied finance has been based on social constructionist assumptions. The ‘objects’ of legal discourse are what Searle (1995) calls language dependent institutional facts (as noted above). Since these objects, along with all the ‘material facts’ lawyers deal with, are socially constructed, i.e. constructed – and negotiated – through spoken discourse and an accumulation of legal texts, often over long stretches of time, with definitions evolving and becoming to a greater or lesser degree stable, we are able to see that what reality they have is largely discursive. To inculcate these habits of discourse, we have designed activities that draw students’ attention to the lexical and syntactic forms of key legal concepts, propositions, and arguments, on the assumption that – in this context – form corresponds with meaning. Readers will note that social constructionism, in this context, amounts to a form of linguistic determinism, and we are interested to note from the literature that linguistic determinism, in a more precisely specified and testable version than before, is gaining considerable scientific ground (e.g. Slobin, 1996, 2003).

Our theoretical assumptions draw upon recent work in cognitive psychology (e.g. DiSessa and Sherin, 1998, Slotta *et al.*, 1995) and share premises with phenomenography (Laurillard, 1993, 2002). We argue that concepts are lexically represented, negotiated and ultimately agreed on, so that they can be treated as members of a closed synchronic system. This is a condition on the transmission and indeed redefinition of scientific knowledge. Slobin (2003: 3) argues that “habitual attention to linguistically-encoded event characteristics” has a spreading influence on the semantic categories a learner already possesses (he speaks of “widespread ripple effects”). This again supports an approach in which language is seen not just as a tool for representing and negotiating real-world situations and events (which it most certainly is), but also as a tool for conceptual change. By exposing learners to the forms of a new discourse, in this case the discourse of legal reasoning about financial risk, we hope to encourage them to question their existing conceptualisations and experiment with more ‘expert’ ones (conceptualisations that correspond to those held by experts in their field).

The form of linguistically scaffolded support that we design for conceptual learning also fosters, almost indirectly, students’ language skills, and in particular the language skills they will need to practice in a specific field. Slotta *et al* (1995) found clear evidence that the misconceptions exhibited by novices with regard to physics problems correlated closely with the use of concrete language to describe abstract processes. Thus everyday verbs like *go*, *come*, *flow*, *soak up*, *fill up* and *give off* were used to describe situations and phenomena that were described by experts in terms of abstract processes like transfer, excitation, interaction, using abstract, metaphorical or circumstantial verbs like *transfer*, *find its way*, *propagate*, *excite* and *be transformed*.

The kinds of materials and activities that we have developed integrate the teaching and learning of conceptual knowledge and language skills in a very seamless way. These materials and the activities to which they lend themselves can readily be incorporated in an existing curriculum. The approach is designed to minimize errors and maximize successful practice; in other words, it limits time-consuming trial and error learning processes. It is thus especially well suited to intensive tuition and self-study situations. It will also, however, work effectively in certain types of classroom. While the approach focuses initially on the design of instructional materials, it can be applied – as exercises become increasingly contextualized – to the design of scaffolded interactions, group activities, and conversations focusing on case-based problems. It must however be said, in conclusion, that the one essential element in this approach is a close collaboration between the subject matter specialist and a linguistically skilled curriculum developer.

## 6. Appendix I

**Table 1:** Common categories of enabling vocabulary

<b><i>Adjectives used to qualify the term authority (adjectives/epithets)</i></b>	<b><i>Verbs/verbal phrases used to describe the fact of acquiring or having authority</i></b>
<p><i>appropriate</i> authority <i>valid</i> authority</p> <p><i>limited</i> authority <i>indicative</i> authority <i>insufficient</i> authority <i>necessary</i> authority <i>proper</i> authority <i>purported</i> authority <i>qualified</i> authority <i>requisite</i> authority <i>restricted</i> authority <i>retrospective</i> authority <i>special</i> authority <i>sufficient</i> authority</p>	<p>to <i>assume</i> authority to be <i>armed with</i> authority be <i>clothed with</i> authority to <i>exercise</i> authority to <i>find</i> authority in to <i>have</i> authority to <i>hold</i> authority to <i>purport to have</i> authority to <i>represent</i> that someone has authority</p> <p>this <i>evidences</i> authority this <i>supports</i> his authority this <i>validates</i> his authority</p> <p>authority is <i>inherent</i> authority <i>flows from</i>; authority <i>stems from</i>; authority <i>is derived from</i></p>
<b><i>Nominalised adjectives used to qualify the term authority</i></b>	<b><i>Nominalisations used to describe the fact of acquiring or having authority</i></b>
<p>the <i>appropriacy</i> of her/his authority the <i>validity</i> of her/his authority</p>	<p>the <i>possession</i> of authority the <i>assumption</i> of authority the <i>representation</i> that someone has authority the <i>exercise</i> of authority</p>
<b><i>Verbs/verbal phrases used to describe the giving or ascribing of authority</i></b>	<b><i>Verbs/verbal phrases used to indicate the terminating of authority or a lack of authority</i></b>
<p>to <i>confer</i> authority to <i>grant</i> authority to <i>arm</i> someone <i>with</i> authority to <i>approve</i> the authority of someone to <i>delegate</i> authority to ... to <i>warrant</i> authority to <i>infer</i> authority [from e.g. a course of dealing] to <i>represent</i> that a person has authority to <i>claim</i> that a person has authority to <i>clothe</i> a person <i>with</i> authority to <i>give the appearance of</i> authority to ...</p>	<p>to <i>deny</i> authority to <i>determine</i> authority to <i>invalidate</i> authority to <i>negate</i> authority to <i>terminate</i> authority</p> <p>to <i>act without</i> authority; to establish a <i>lack of</i> authority</p>
<b><i>Nominalised verbs describing the giving of authority</i></b>	
<p>a <i>grant</i> of authority the <i>conferring</i> of authority</p>	

## References

- Alamargot, D., Favart, M. & Galbraith, D. (2000) Evolution of idea generation in argumentative writing : writing as knowledge constituting or knowledge transforming process?. *EARLI – Writing Conference 2000*.
- Arkoudis, S. (2005) Fusing pedagogic horizons: Language and content teaching in the mainstream. *Linguistics and Education*, Vol. 16, 173-187.
- Bazerman, C. (1988) *Shaping Written Knowledge: The Genre and Activity of the Experimental Article in Science*. Madison: University of Wisconsin Press.
- Bazerman, C. (1998) Emerging perspectives on the many dimensions of scientific discourse. In J. R. Martin and R. Veel, Eds., (1998).
- Belcher, D. (1995) Writing critically across the curriculum. In D. Belcher & G. Braine (Eds.), *Academic Writing in a Second Language: Essays on Research and Pedagogy*. Norwood, NJ: Ablex.
- Bereiter, C. and Scardamalia, M. (1987a). An Attainable Version of High Literacy: Approaches to Teaching Higher-Order Skills in Reading and Writing. *Curriculum Inquiry*, 17 (1), 9-30.
- Bereiter, C. and Scardamalia, M. (1987b). *The psychology of written composition*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Bourdieu, P. (1990/1980). *The Logic of Practice* (trans. R Nice). Oxford: Polity.
- Brinton, D.M., Snow, M.A., & Wesche, M.B. (1989) *Content-based second language instruction*. New York: Newbury House Publishers; new edition, University of Michigan Press, 2003.
- Brown, J. S., Collins, A., & Duguid, P. (1989) Situated cognition and the culture of learning. *Educational Research*, 18(1), 32-42.
- Bruner, J. S. (1977) Early social interaction and language acquisition. In Schaffer H. R. (Ed.), *Studies in mother-infant interaction*. Academic Press, New York, pp 271-89.
- Bruner, J. S. (1975a) From communication to language. *Cognition*, 3, 255-287.
- Bruner, J. S. (1975b) The ontogenesis of speech acts. *Journal of Child Language*, 2, 1-40.
- Bruner, J.S. and Garton, A. (Eds). (1976) *Human Growth and Development: Wolfson College Lectures*. Oxford: Oxford University Press.
- Candlin, C.N. & Maley, Y. (1997) *Intertextuality and interdiscursivity in the discourse of alternative dispute resolution*. In Gunnarsson, B.L., Linell, P., & Nordberg, B. (Eds). *The Construction of Professional Discourse*. London: Longman.
- Chung, T. M., & Nation, P. (2004) Identifying technical vocabulary. *System*, 32, 2: 251-263.
- Chung, T. M. and Nation, P. (2003) Technical vocabulary in specialized texts. *Reading in a Foreign Language*, Vol. 15, No. 2.
- Crandall, J. A. (1987) *ESL through content-area instruction: Mathematics science, social studies*. Englewood Cliffs, NJ: Prentice Hall Regents.
- Crandall, J. A. (1992) Content-centered learning in the United States. *Annual Review of Applied Linguistics*, 13, 111-126.
- Crandall, J. A., G. Spanos, D. Christian, C. Simich-Dudgeon, and K. Willetts. (1987) *Integrating Language and Content Instruction for Language Minority Students*. NCBE (now NCELA): Teacher Resource Guides Series. 1987, No. 4.
- Crandall, J. A., and D. Kaufman. (Eds.). (2002) *Content-Based Instruction in Higher Education Settings*. Alexandria, VA: TESOL, Inc.
- Creese, A. (2005) Is this content-based teaching? *Linguistics and Education*, 16, 188-204.
- Crismore, A. (1989) *Talking with readers: Metadiscourse as rhetorical act*. New York: Peter Lang Publishers.
- Crismore, A. & Farnsworth, R. (1990). Metadiscourse in popular and professional science discourse. In W. Nash (Ed.), *The writing scholar* (pp. 119-136). Newbury Park: Sage Publications.
- Darn, S. (2006) Content and Language Integrated Learning (CLIL): A European Overview. ERIC document No. ED490775. Retrieved 15<sup>th</sup> June, 2006 from: [http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content\\_storage\\_01/0000000b/80/31/ba/30.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/31/ba/30.pdf)
- Department of Education and Science (DES). (1985) *Education for All: The Report of the Committee of*

- Inquiry into the Education of Children from Ethnic Minority Groups* (The Swann Report). London: HMSO.
- DiSessa, A., and B. L. Sherin. (1998) What changes in conceptual change? *International Journal of Science Education*, 20(10) 1155-1191.
- Echevarria, J. and A. Graves. (1998) *Sheltered Content Instruction*. Boston: Allyn & Bacon.
- Galbraith, D. (1999) Writing as a knowledge-constituting process. In M. Torrance and D. Galbraith (Eds.), *Knowing what to write: Conceptual processes in text production* (139-160). Amsterdam: Amsterdam University Press.
- Goodrich, P. (1986). *Reading the Law*. Oxford: Basil Blackwell.
- Halliday, M. A. K. (1998) Things and relations: Regrammaticising experience as technical knowledge. In Martin, J. R. and R. Veel, Eds. (1998).
- Halliday, M. A. K. (1993a) On the language of physical science. In M. A. K. Halliday and J. R. Martin, Eds., 1993, pp. 54-68. (Originally published 1988.)
- Halliday, M. A. K. (1993b) The construction of knowledge and value in the grammar of scientific discourse. In M. A. K. Halliday and J. R. Martin, Eds., 1993, pp. 86-105. (Originally published 1990.)
- Halliday, M. A. K. (1994) *An Introduction to Functional Grammar*. 2<sup>nd</sup> edition. London: Edward Arnold.
- Halliday, M. A. K. (1985) *An Introduction to Functional Grammar*. London: Edward Arnold.
- Halliday, M. A. K. and J. R. Martin (1993) The model. In Halliday and Martin, Eds. (1993).
- Halliday, M. A. K. and J. R. Martin (Eds.) (1993) *Writing science: Literacy and discursive power*. Pittsburgh: University of Pittsburgh Press.
- Harris, S. (1997) Procedural vocabulary in law case reports. *English for Specific Purposes*, Vol. 16, No. 4, pp. 289-308.
- Hyland, K. (1994) Hedging in academic writing and EAF textbooks. *English for Specific Purposes*, Vol. 13, Iss. 3, pp. 239-256
- Hyland, K. (1998) Persuasion and context: the pragmatics of academic metadiscourse. *Journal of Pragmatics* 30, 437-455.
- Hyland, K. (2004) *Disciplinary Discourses: Social Interactions in Academic Writing*. University of Michigan Press. (Originally published 2000).
- Hyland, K. (2005) *Metadiscourse: Exploring Interaction in Writing*. London: Continuum.
- Hyland, K. and P. Tse. (2004) Metadiscourse in Academic Writing: A Reappraisal. *Applied Linguistics*, 25(2):156-177.
- Ivanic, R. (1998). *Writing and identity: the discursive construction of identity in academic writing*. Amsterdam: John Benjamins.
- Jones, A. (2005) Conceptual Development in Technical and Textbook Writing: A Challenge for L1 and L2 Student Readers. *Proceedings of the International Professional Communication Conference, Limerick*, July 2005. CD-ROM. Available from IEEE Professional Communication Society (IEEE Catalog Number: 05CH37660C)
- Jones, A. and Sin, S. (2004a) The integration of language and content: Action research based on a theory of task design. *Journal of Applied Linguistics*, Vol. 1 No. 1, 95-100.
- Jones, A. and Sin, S. (2004b) Integrating language with content in first year accounting. In R. Wilkinson (ed.) *Integrating Content and Language: Meeting the Challenge of a Multilingual Higher Education*, 478-492. Maastricht: Maastricht University Press.
- Jones, A. and Sin, S. (2003) *Generic Skills in Accounting: Competencies for Students and Graduates*. Prentice Hall/Pearson Education.
- Kasper, L. (1997a) *Teaching English through the Disciplines: Psychology (2nd ed.)* (Whittier, 1997)
- Kasper, L. (1997b) The impact of content-based instructional programs on the academic progress of ESL students. *English for Specific Purposes* 16 (4), 309-20.
- Kasper, L. (1998) Meeting ESL students' academic needs through discipline-based instructional

- programs. In T. Smoke (ed.) *Adult ESL: Politics, Pedagogy, and Participation in Classroom and Community Programs* (pp. 147–57). Hillsdale, Erlbaum.
- Krashen, S. (1982) *Principles and practice in second language acquisition*. Oxford: Pergamon
- Krashen, S. (1981) The case for narrow reading. *TESOL Newsletter* 15 (6), 23.
- Krueger, M. and F. Ryan (Eds.) (1993) *Language and Content: Discipline and Content-Based Approaches to Language Study*. Lexington, MA: D.C. Heath.
- Kuhn, T. S. (1982) Commensurability, comparability, communicability. In *Proceedings of the Biennial Meeting of the Philosophy of Science Association*. Chicago: University of Chicago Press.  
Reprinted in Kuhn, T. S. (2000) *The Road Since Structure: Philosophical Essays, 1970-1993, with an Autobiographical Interview*. Eds., James Conant and John Haugeland. Chicago: University of Chicago Press.
- Kuhn, T. S. (1970) *The Structure of Scientific Revolutions*. 2<sup>nd</sup> edition (with added Postscript). Chicago: University of Chicago Press. (First published 1962.)
- Laurillard, Diana. (2002) *Rethinking University Teaching: A Conversational Framework for the Effective Use of Learning Technologies*. 2<sup>nd</sup> edition. Routledge/Falmer: London.
- Laurillard, Diana. (1993) *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology*. Routledge: London.
- Long, M., 1983, Does second language instruction makes a difference? A review of the Research, *TESOL Quarterly*, 17, 359-382.
- Long, M. (1991) Focus on form: A design feature in language teaching methodology. In K. de Bot, R. Ginsberg, & C. Kramsch (Eds.), *Foreign language research in cross-cultural perspective* (pp. 39-52). Amsterdam: John Benjamins.
- Long, M. (1997) Focus on form in Task-Based Language Teaching. Retrieved from:  
<http://www.mhhe.com/socscience/foreignlang/conf/option1.htm> (23-05-06).
- Long, M., & Robinson, P. (1998) Focus on form: Theory, research, and practice. In C. Doughty & J. Williams (Eds.), *Focus on form in classroom second language acquisition* (pp. 15-63). Cambridge: Cambridge University Press.
- Martin, J. R. (2001) Technicality and Abstraction: Language for the Creation of Specialized Texts. In *Analysing English in a Global Context*. Ed. Anne Burns and Caroline Coffin. London and New York: Routledge / Open U / Macquarie U. Pp. 211-28.
- Martin, J. R. (1993) Literacy in science: Learning to handle text as technology. In M. A. K. Halliday and J. R. Martin, Eds., (1993), pp. 166-202.
- Martin, J. R. (1989) Technicality and abstraction: Language for the creation of specialised texts. In *Writing in Schools*. F. Christie (Ed.). Geelong, Victoria, Deakin University Press: 36-44.
- Martin, J. R. and R. Veel, Eds. (1998) *Reading Science: Critical and Functional Perspectives on Discourses of Science*. London, Routledge.
- McCracken, S. and Everett, A. (2004) *Everett & McCracken's Banking and Financial Institutions Law*. Sydney: LawBook Co Sydney (6<sup>th</sup> edition).
- McCracken, S. and Everett, D. (1998) *Finance and Security Law Cases and Materials*. Sydney: Butterworths.
- Mellinkoff, D. (1982) *Legal writing: Sense and nonsense*. St Paul, Minnesota: West Publishing.
- Mohan, B. A. (1986) *Language and Content*. Reading, MA: Addison-Wesley.
- Mohan, B. A. (1989) Knowledge structures and academic discourse. *Word*, 40(1/2), 99–114.
- Mohan, B. A. and Van Naerssen, M. (1997). Understanding Cause-Effect: Learning through Language. *Forum*, Vol. 35, No 4, p. 22. Online: <http://exchanges.state.gov/forum/vols/vol35/no4/p22.htm>
- Mohan, B. A. & Huang, J. (2002) Assessing the Integration of Language and Content in a Mandarin as a Foreign Language Classroom. *Linguistics and Education* 13 (3), 407-35.
- Mohan, B. A. & Beckett, G. H. (2001) A Functional Approach to Research on Content-Based Language Learning: Recasts in Causal Explanations. *The Modern Language Journal*, 87(3), pp. 421-432.
- Myers, G. (1999). Interaction in writing: principles and problems. In C. N. Candlin, and K. Hyland (Eds.), *Writing: Texts, Processes and Practices*. London & New York: Longman.

- Myers, G. (1989). The pragmatics of politeness in scientific articles *Applied Linguistics*, 10(1):1-35.
- Pally, M. (Ed.). (2000) *Sustained Content Teaching in Academic ESL/EFL: A Practical Approach*. Boston: Houghton-Mifflin.
- Pally, M. (2001). Skills Development in 'Sustained' Content-Based Curricula: Case Studies in Analytical/Critical Thinking and Academic Writing. *Language and Education*, 15(4), 279-305.
- Pica, T. (2000) Tradition and transition in English teaching methodologies. *System*, 28, 1-18.
- Pinker, S. (1989) *Learnability and cognition: The acquisition of argument structure*. Cambridge, MA: MIT Press.
- Sagliano, M. and K. Greenfield. (1998) A collaborative model of content-based EFL instruction in the liberal arts. *TESOL Journal* 7: 3, 23-28.
- Sankey, H. (1998) Taxonomic Incommensurability. *International Studies in the Philosophy of Science* 12:1, pp. 7-16.
- Searle, J. R. (1995) *The Construction of Social Reality*. New York: Free Press.
- Sin, S., Jones, A. and Petocz, P. (2006) Sin, S., Jones' A., and Petocz, P. Evaluating a Method of Integrating Generic Skills with Accounting Content based on a Functional Theory of Meaning. In *Accounting & Finance*. (To appear.)
- Slobin, D. I. (2003) Language and Thought Online: Cognitive Consequences of Linguistic Relativity. In D. Gentner & S. Goldin-Meadow (Eds.), (2003). *Language in mind: Advances in the study of language and thought* (pp. 157-192).. Cambridge, MA: MIT Press.
- Slobin, D. I. (1996) From 'Thought and Language' to 'Thinking and Speaking.' In John J. Gumperz and Stephen C. Levinson (Eds.), *Rethinking Linguistic Relativity*. Cambridge: Cambridge University Press.
- Slotta, J. D., M. T. Chi, and E. Joram. (1995) Assessing students' misclassifications of physics concepts: An ontological basis for conceptual change. *Cognition and Instruction* 13(3), 373-400
- Temmerman, R. (1999) "Why traditional terminology theory impedes a realistic description of categories and terms in the life sciences". *Terminology*, 5(1) (special issue on the Barcelona Pompeu Fabra symposium, edited by J.C. Sager), 77-92.
- Temmerman, R. (2000) *Towards New Ways of Terminology Description. The sociocognitive approach*. Amsterdam/Philadelphia: John Benjamins.
- Turner, J. (2004) Language as academic purpose. *Journal of English for Academic Purposes*, 3, 95-109.
- Wignell, P. (1998) Technicality and abstraction in social science. In Martin, J. R. and R. Veel, Eds. (1998). *Reading Science: Critical and Functional Perspectives on Discourses of Science*. London, Routledge.
- Vygotsky, L. S. (1986) *Thought and Language*. Cambridge, Mass: MIT Press.