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What counts as legal writing: an analysis of what it means to write in law, with reference to both legal academics and practitioners in South Africa

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ABSTRACT

Although writing is important in most disciplines in higher education, it is particularly important in law, as written language does not merely communicate the law, it constitutes it. Despite this centrality of writing in law, conceptions of legal writing are under-researched for South African contexts. Of particular importance, given ongoing contestations about legal education and legal knowledge, is that there is little known about the relationship between conceptions of legal writing and conceptions of legal education and legal knowledge. This thesis seeks to understand what it means to write in law, particularly in the legal education context. More specifically, it explores the possible links between beliefs about legal education, legal knowledge, and legal writing. Concepts from the sociology of knowledge are used to re-examine some of the dichotomies in legal scholarship and to create a conceptual framework that is novel for legal education in South Africa, for understanding existing knowledge and writing claims. Drawing on data generated through ten in-depth, semi-structured interviews with legal academics, and legal practitioners involved in vocational training of candidate legal practitioners, this thesis shows that there are multiple understandings of the term "legal writing" and that these understandings can be linked to conceptions of legal knowledge, especially, and to conceptions of legal education, particularly amongst legal academics. It argues that, at university, beliefs about clarity concerning knowledge boundaries appear to link to beliefs about clarity about what "counts" as good legal writing, and vice versa. It identifies epistemic views on writing that value quality of evidence, reasoning and argument over traditional views that focus on textual accuracy, although practitioners hold views that are slightly more traditional and that privilege language criteria somewhat more than academic participants. It shows that apparent agreement regarding some common writing criteria, such as coherence, precision, and structure, may be misleading as these criteria are understood and used in different ways, and that practitioners draw on some criteria for good legal writing that are not used by academics. These findings both confirm Quinot and Greenbaum's (2015) claim that writing development contributes significantly to knowledge construction in the discipline of law and offer a slightly different understanding of the relationship: not only does writing development play a role in knowledge construction, but constructions of legal knowledge play an important role in writing development.

Keywords:

Legal education; Legal writing; Writing development in higher education; Academic literacies; Social realism; Knowledge boundaries; Assessment