Assessing Career Readiness Skills – The Case File Approach in Criminal Law

Kellie Toole and David Plater

adelaide.edu.au
The scenario

Peter Ackerman does not arrive at work one morning. His concerned colleague and friend, Andrew, calls Peter’s mobile phone and landline. He doesn’t get any response from Peter or Peter’s wife, Alison.

Peter is very reliable and so Andrew is concerned enough to call police. Police arrive at the Ackerman residence to investigate.

They find Peter’s dead body in the hallway. He has a massive head wound. An iron covered in blood is on the floor beside him.

Alison is lying beside Peter. She is dazed and crying and covered in blood.

Alison Ackerman is charged with the murder of Peter Ackerman
The rationale

Competitive job market - private and public sector opportunities contracted due to global economic turndown, artificial intelligence business processes, routine work being undertaken offshore, non lawyers undertaking paralegal work (eg conveyancing)

Recruitment opportunities are skewed against women, people from different racial backgrounds and those without connections within the profession

Criminal law mostly practised by sole practitioners or small firms that lack resources to provide clerkships like commercial firms, or internships like public sector organisations
The approach

Junior criminal defence lawyers:

- maintain their own case load, and
- support barristers in complex cases

The course prepares students through Simulated case files, supported by Involvement of the profession, and Practical assessment

Seminars are structured around two simulated case files that progressively raise issues as they would unfold in a real-world criminal case.

Students assessed the liability of their ‘clients’ each week, using replicas of witness statements, autopsy reports, records of interview, statements, bail agreements, and medical and psychological reports, which raise legal questions and social issues such as domestic violence and mental health issues that underpin many crimes.

Students made strategic decisions on the progress of the case, such as whether to plead guilty, proceed to trial, negotiate with police or claim mental impairment.
The evidence
Feedback on career readiness

‘I have really loved the direction this course has taken, particularly focusing on the practical skills and the guest speakers. I have always felt this is something lacking from previous law courses. We learn the law and apply it to a problem question, but do not look at the bigger picture - how it all operates in practice. It has been really excellent exploring the law within the bigger political/policy and ethical context. ... I really believe that the course you have developed is the future of law studies.’

(unsolicited email 2018)*

‘I also just wanted to extend my thanks and appreciation for the semester. I thoroughly enjoyed the structure and practicality of the course, particularly the focus that was placed on providing “real life” advice to the client, as opposed to a purely theoretical approach.’

(unsolicited email 2018)*

*the emails were ‘solicited’ in the sense that we constantly encouraged students to provide feedback on any aspect of the course
The assessment task

You are a junior lawyer at Toole, Plater and Associates, a reputable South Australian firm that undertakes criminal defence work for legal aid clients. Your supervisor leaves the Alison Ackerman file in your pigeonhole with the following memo attached:

INTERNAL MEMORANDUM: FOR ACTION

TO [your name]
FROM Morris Thivanka, Managing Partner
RE Ackerman – Non-insane Automatism
DATE 25 March 2018

We act for the above client. I wish to explore the viability of a defence of non-insane automatism/lack of volition on both counts. I do not wish to pursue a mental impairment defence at this time. I am completely unfamiliar with this area of law. Please review the file, conduct the necessary legal research, and provide the following to me as soon as possible and absolutely no later than 27 April 2018 at 5pm:

(i) a brief file note/memo explaining
   (a) the relevant law, with reference to case law and academic commentary; and
   (b) your opinion on whether the defence is viable given the available evidence

(ii) a draft letter of advice to the client summarising the above.


Morris
The feedback on assessment – positives

What aspects of the course assisted the development of career readiness skills?

<table>
<thead>
<tr>
<th>Task</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memo</td>
<td>1</td>
</tr>
<tr>
<td>Client letter</td>
<td>11</td>
</tr>
<tr>
<td>Legal research</td>
<td>4</td>
</tr>
<tr>
<td>Letter and memo</td>
<td>25</td>
</tr>
</tbody>
</table>

“The interim assignment was particularly helpful in visualising how my knowledge of the law would apply in ‘real life’; it was enjoyable, practical and unique in comparison to assignments for other courses.”

“the practical nature of the assignment whilst also retaining academic research”

“the assignment was a refreshing chance to prepare students for real situations of communication rather than a boring and basic assignment structure.”
### The feedback on assessment – suggestions

**How could the course be improved to assist students to develop career readiness skills?**

<table>
<thead>
<tr>
<th>Strategy</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide example of memo ahead of assignment</td>
<td>1</td>
</tr>
<tr>
<td>Provide example of client letter ahead of assignment</td>
<td>1</td>
</tr>
<tr>
<td>Provide example of client letter and memo ahead of assignment</td>
<td>11</td>
</tr>
<tr>
<td>Additional practical assessment pieces</td>
<td>20</td>
</tr>
</tbody>
</table>

“more guidance on the career ready skills is needed for example a seminar before the assignment on how a memo and letter should be done.”

“My involvement in mooting in my first year was the best experience I have had law school and think more courses should incorporate mooting ...From the people I know in the profession, they have all said this regarding some graduates being inexperienced in basis skills expected in the profession.”

“I feel more communicative activities such as model client interviews and practice presenting submissions would build students’ confidence and career readiness.”

HREC-2018-092 Criminal Law Career Readiness Survey
96 responses from 493 students – 46 referred to assessment in the open questions
The career readiness dilemma

Embracing challenge:

Responses on what assisted the development of career readiness skills

“Being given little guidance for the interim assignment gave me experience dealing with a high stress environment”

“I found it interesting that the assignment required legal research. I’m in my third year and have never really encountered this before. It was difficult but worth it.”

“The Ackerman assignment. I had to do my own research about what is in a file note structure etc”

Avoiding challenge

Responses on what needed improving to allow students to develop career readiness skills

“The interim assignment was too complicated and harmed my interest in criminal law.”

The midway ground

“Assignment approach was good but very difficult as I have never encountered anything like this before and have not been taught this. Would have enjoyed a mini lecture from lawyer on how to engage with clients.”

“I loved the idea of the assignment (file note approach) but some more guidance or explanation of how these are usually used/made would have been really helpful.”

“I really enjoyed the interim assignment (though I felt it ‘crept up’ on students and this made it less enjoyable ie stress) as I felt it helped career readiness and visualisation of real-life legal application”
Our challenges

provide relevant assessment tasks that simulate the skills and independence needed in criminal practice

vs

providing appropriate guidance and support for student learning

replacing fixed mindset – that intelligence and abilities are fixed entities and you are smart or you are not

with growth mind set – that intelligence and abilities are malleable that develop through practice, challenge, feedback and even failing

See: ‘The best mindset for workplace change’ with Jill Klein on Best Practice, RN with Richard Aedy 23 June 2018
Some Themes from the Case File Assessment

Students appreciated the practical context and generally high quality but:

1. Some students feel urge to use outdated pompous language and/or legal jargon even though modern legal practice increasingly avoids this style.

2. To talk like an American real estate agent with corporate jargon!

3. Or too personal and informal Facebook style. Minute to Senior Partner, ‘Hello Thivanka…LOL … xxxx’

‘It is now generally accepted if justice is to be done to vulnerable witnesses and also to the accused, a radical departure from the traditional style of advocacy will be necessary. Advocates must adapt to the witness, not the other way around.’

*R v Lubemba* [2015] 1 WLR 1579, 1587.

This skill applies both in and out of court and to clients in general! Professional but understandable!
The Case File and the assessment approach introduced students to a realistic practical context of criminal law. It featured a realistic family violence situation and also showed that, as is often overlooked by a purely textbook teaching or assessment approach, there are real persons and real issues in criminal law. The case file assessment approach was also used to introduce, highlight and discuss certain powerful themes for the course closely linked to ‘real’ legal practice.
When you Think of the Criminal Law?
The Reality of the Criminal Law

- But these vivid cases are the exception rather than the norm you may gain from the press and film.
- Few ‘criminals’ are wholly ‘criminal’ or truly ‘evil’.
- Rather crime as is a complex social problem and is very often linked to many other wider issues such as abuse, unemployment, mental illness, race, cognitive impairment, drugs, alcohol, poverty and lack of schooling.
- We highlighted in the case file exercise (and elsewhere) the particular issues of victims of family violence responding to an abusive partner and specifically the role of battered wife syndrome.
- As part of the assessment exercise it was highlighted to students that their role as a lawyer, whether defending or prosecuting, is crucial.
To Start Thinking as Lawyers

• It is the fundamental principle of the criminal law that a person cannot be convicted except after a **fair trial**.

• This may be expressed as ‘every person has a right to be tried fairly’, or ‘every person has a right not to be tried unfairly’. *Dietrich v The Queen* (1992) 177 CLR 292

• This principle applies to all trials, whether conducted summarily or on indictment. No matter how grave or terrible the crime, it applies.

• The ‘golden thread’ of the criminal law that the prosecution must prove guilt beyond ‘reasonable doubt’ was highlighted.

• This aspect was also a main feature of the case file and assessment approach.

• To think critically and analyse as an ethical and effective lawyer the strength of the prosecution case, potential defences, other charges and strategies.
Role of Plea Bargaining

• The assessment exercise also included students thinking about if this was a suitable case to take to trial (noting murder attracts a mandatory 20 years minimum sentence in SA) or to consider a guilty plea to lesser offence. Though plea bargaining is sometimes controversial, it is a vital and accepted aspect of the criminal justice system. Most cases in fact do not proceed to trial and resolve by way of guilty pleas, often to lesser offences.

• The system would grind to a halt without it.
Rights for All!

The case file approach also included that although an accused has the vital right to a fair trial, individual rights should not be treated as if enjoyed in a vacuum. There is an inevitable balance in the criminal justice system from start to finish between the competing interests in this area. As Lord Steyn pointed out in *Attorney-General's Reference (No 3 of 1999)* [2001] 2 AC 91, 118,

'The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.'

Over recent years, the legitimate interests and rights of victims has been increasingly recognised. Think especially of sexual offences and domestic violence. This was a feature of the case file approach. One case involved family violence and one a sexual assault. The assessment exercise involved family violence and battered wife syndrome and showed how blurred the roles of victim and offender can be.