

**THE RECRUITMENT AND RECOGNITION OF  
PRIOR INFORMAL EXPERIENCE IN THE PEDAGOGY OF  
TWO UNIVERSITY COURSES IN LABOUR LAW**

**By**

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Associate Professor Paula Ensor**

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## DECLARATION

I declare that *The recruitment and recognition of prior informal experience in the pedagogy of two university courses in Labour Law* is my own work, except where indicated, and that it has not been submitted before for any degree or examination at any university.

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February 2003

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## ABSTRACT

This thesis explores the epistemological complexities associated with the long-standing principle in adult education that the experience of the adult student should be valued, taken account of and built upon in the pedagogic process, to the extent that it can even be 'recognized' for purposes of access or credit.

It asks how prior experience is recruited and recognized in a higher education context where commitment to the adult student is espoused but the curriculum is non-negotiable. Multiple research methods are used to pursue this question in two courses in Labour Law at separate universities. One, a certificate course, had admitted students with Grade 10 or less. The other, a post-graduate diploma, had admitted students without degrees.

The thesis opens with a discussion of the ways in which formal and informal knowledge have been constructed in various theories of knowledge and thought, as well as in discourses on the Recognition of Prior Learning (RPL). Thereafter, drawing on Bernstein, Dowling and Bourdieu, and in dialogue with the empirical data, a language of localizing and generalizing strategies is developed to identify various forms of informal and formal knowledge and to describe their interplay. The range and interrelationships of these strategies is shown in the form of semantic networks.

Attention is paid to the structure of law and its sub-field labour law as fields of practice and of study and it is noted that both are characterized by a deductive relationship between formal and informal knowledge. The practice of law is essentially about the application of rules, concepts and principles to actual events (a deductive process) while the development of laws themselves is in response to social conditions (an inductive process). There is always the potential for inequity between the generality of the law and the particularities of an individual case. The courses differ in the extent to which they follow the deductive logic of the practice of law. It is argued that the higher level course which explores the complexities of labour law and its application to actual reported cases and events, is closer to that logic than the lower level course which presents the law in terms of sets of rules and procedures and tries to simplify its application by the use of the hypothetical. The postgraduate course also offers students an

opportunity to recruit prior experience in assignments, even though it has to be researched and recontextualized for the purpose.

The research finds that both lecturers and students use localizing strategies, including the recruitment of prior personal experience. Three different pedagogic styles are identified, with the recruitment and recognition of prior informal experience as a major feature of variation. The lecturers' localizations have a generalizing trajectory in that they are expressed in relation to general rules, principles or concepts or case law. The localizations of students who have mastered or submitted themselves to the recognition and realization rules of the courses have a similar trajectory. A few students show a localizing trajectory, limited to personalizing strategies often used to challenge the general rule by asserting the particularity and difference of personal experience. These localizing orientations are associated with very limited formal education but not exclusively so. They are also associated with expectations that prior informal experience is valuable in a formal educational context and will be recognized. This promise, engendered by discourses on RPL and adult education, obfuscates the transmission/acquisition purposes of a formal education programme.

The theoretical contribution of the thesis lies with the language of description which it develops to analyse the interplay between the multiple dimensions of formal and informal knowledge. The research also has important implications for two theories of Basil Bernstein's. It shows that it is difficult to identify horizontal discourse empirically and to separate it from vertical discourse. The two are inextricably intertwined. The discussion of students' orientation to the local and the general shows the relevance of Bernstein's notions of elaborated and restricted codes to adult education. At the same time it exposes the crudity of these notions, showing, through fine-tuned analysis, the multiple different ways in which context-dependent and -independent knowledge is combined in practice.

Finally, the research shows that students with limited formal education can and do succeed in formal education programmes. Factors influencing their achievement include the nature of their work experience and the extent to which it has exposed them to formal literacies, and dispositional factors including a willingness to accept pedagogic hierarchy, to assume an individual rather than collective identity and to expend symbolic labour.

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## LIST OF ABBREVIATIONS

APL	Assessment/accreditation of prior learning
APEL	Assesment/accreditation of prior experiential learning
BCEA	Basic Conditions of Employment Act
BEd	Bachelor of Education
CAEL	Council for Adult and Experiential Learning
CCMA	Centre for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
DS	Discursive Saturation
FAR	Solicitation of formal application to 'experience far'*
FG	Solicitation of formal generalization*
FAH	Solicitation of formal hypothetical application*
FHI	Solicitation of formal hypothetical application to an idea/concept*
FHN	Solicitation of formal hypothetical application in narrative style*
GAP	General Approach Plane
HBU	Historically Black University
HDE	Higher Diploma in Education
HDI	Historically Disadvantaged Institution
HR	Human Relations
HSRC	Human Sciences Research Council
ILJ	International Labour Journal
IMSSA	Independent Mediation Service of South Africa
IR	Industrial Relations
JCE	Johannesburg College of Education
LA1	Lecturer, Course A
LB1	Lecturer, Course B
LLI	Labour Law Institute
LLB	Bachelor of Laws
LLD	Doctor of Laws
LLM	Master of Laws
LLU	Labour Law Unit

LPE	Solicitation of personal local particularization (etic opinion)*
LPF	Solicitation of impersonal local particularization ('experience far' )*
LRA	Labour Relations Act
NEDLAC	National Economic Development and Labour Council
NQF	National Qualifications Framework
NGO	Non Governmental Organisation
NTC	National Technical Certificate
PLAR	Prior Learning Assessment and Recognition
RPL	Recognition of prior learning (in pre-entry admissions procedures)
'rpl'	Recognition of prior learning or experience (in the pedagogy of an instructional programme)
RSA	Republic of South Africa
RDW	Rural Development worker
RRM	Rural Resource Management
SA1 ...	Student, Course A
SB1 ...	Student, Course B
SADC	Southern African Development Community
SAQA	South African Qualifications Authority
SAIRR	South African Institute of Race Relations
SPP	Specific Problem Plane
Std 8	Standard Eight (now called Grade 10, achieved after 10 years schooling)
Std 9	Standard Nine (now Grade 11, achieved after 11 years schooling)
Std 10	Standard Ten (now Grade 12, also called 'matric', achieved after 12 years schooling)
SUNY-ESC	State University of New York, Empire State College
TUC	Trade Union Council
UNISA	University of South Africa
UCT	University of Cape Town
UWC	University of the Western Cape
Wits	University of the Witwatersrand

\* Types of exam question

## CHAPTER ONE: INTRODUCTION

The research that is reported in this thesis has as a central concern a long-standing principle in adult education. This is that the experience of the adult student should be valued, taken account of and built upon in the education process, to the extent that a curriculum may even be negotiable. This principle is further entrenched in the practice of Recognition of Prior Learning (RPL) in which 'learning' from experience is 'recognized' for the purposes of access or credit.

This thesis explores the epistemological complexities associated with the implementation of this principle in a specific disciplinary context, where there is a commitment to the recognition of adult experience, but pre-defined curricula. The focus is on two university courses in Labour Law which admitted students with limited formal qualifications on the grounds that they had relevant prior experience. One, a certificate course, had admitted students with Grade 10 or less. The other, a postgraduate diploma, had admitted students with Grade 12 (matric) or less. (The admission requirement to a course at this level is normally a degree.) The research concentrates on the recruitment and recognition of prior informal experience in the pedagogy of these programmes.

By focussing on recruitment and recognition processes post- rather than pre-entry and with reference to a specific discipline, the study addresses areas of neglect in research and literature on adult education and RPL which tends to speak in generic terms without reference to the demands of specific disciplines. The analytic framework developed for the purposes of analysing the interplay of formal and informal knowledge in a pedagogic context, and its language of description, are methodological contributions that have relevance for all education sectors. The research also has implications for the practice of RPL, the pedagogy of adults and for educational theories concerned with the relationship between formal and informal knowledge, in particular those of educational sociologist Basil Bernstein.

In this introduction, I provide background to the study, by presenting brief accounts of the origins of RPL in this country, some of the issues associated with its implementation in South Africa and my own reasons for embarking on the study and choosing the case studies. The courses are contextualized within education in South Africa more broadly, the research design is discussed and, finally, the structure of the thesis is outlined. First, however, there is a brief explanation of some of the major terms used.

## 1.1 Key terms in this thesis

In any discussion on RPL, the concepts of formal, informal and non-formal learning are central. The term 'formal learning' refers to knowledge, skills and attitudes associated with credentialed courses at universities, technikons, schools etc. 'Non-formal learning' is associated with non-credentialed courses such as on-the-job training and trade union worker education. 'Informal learning' concerns learning from life or work experience. In defining these terms, I draw on the definitions offered by Harris, Saddington and McMillan (1994).

I use the term 'recruitment' (see also Dowling, 1995 and 1998 and Ensor 1999) to denote the ways in which prior experience or learning is 'drawn upon' in the pedagogic process. 'Recognition' refers to the way in which prior experience or learning is acknowledged. In my research question the word 'pedagogy' indicates that my focus is on the recruitment of prior experience within an instructional programme rather than before (I call this 'rpl' as opposed to 'RPL'). Drawing on Bernstein (2000) and Ensor (2002) I define pedagogy as the process whereby a transmitter makes available forms of knowledge, conduct, practice and/or criteria for acquisition by an acquirer. The relationship is essentially hierarchical with the rules of evaluation residing in with the transmitter. Within pedagogy, transmitters adopt various strategies to achieve effective transmission and acquirers adopt various strategies to achieve acquisition. These strategies may be verbal or non-verbal, conscious or unconscious.<sup>1</sup> Following Bernstein (1990, 1996), the terms 'transmitter' and 'acquirer' indicate, in a generic sense, the positions taken up by teachers/pupils, educators/learners, facilitators/participants etc, depending on context and perspective. Where I am speaking about the individuals in my case studies, I use the terms 'lecturer' and 'student' because this is how they were referred to in that context and because these terms are commonly used in higher education. It might be asked why I do not use the term 'andragogy' which has been defined as 'the art and science of helping adults to learn' (Knowles, 1980:43). I avoid this term because of its associations with one particular tradition in adult education, the liberal/humanist movement, rather than adult education as a whole and because it is more a set of guidelines for the teaching of adults than a reflection of what the education of adults comprises. I use the word 'pedagogic discourse' to

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<sup>1</sup> Bernstein (2000:78) distinguishes further between institutional pedagogy which is carried out in official sites and segmental pedagogy which is carried out in the 'face to face relations of everyday experience and practice by informal providers'. This pedagogy may be tacitly or explicitly transmitted and may lead to unrelated competences.

refer to the texts, verbal and non-verbal, produced by both lecturers and students in pedagogy, in other words, the pedagogic communication. Here I depart from Bernstein who defined pedagogic discourse as a principle whereby instructional discourse is embedded in regulative discourse (Bernstein, 1996, 2000). My focus is on verbal texts. Definitions of further terms used will be provided as they are introduced.

## 1.2 The origins of RPL in South Africa

The recognition of prior learning (RPL) has its origins in the return of United States soldiers to civilian society after World War 2 (Michelson, 1997b). In South Africa, returning soldiers<sup>2</sup> were granted access to degree studies through provisions known as 'oupa matriek' (grandfather exemption) and mature age exemption. The former applied to anyone over the age of 45, regardless of their previous qualifications. The latter applied to applicants between 30 and 44 years, provided they had completed four approved matriculation subjects (Ballim, Omar and Ralphs, 2000). In the 1990s, after the unbanning of the liberation movement, ex-combatants were granted access to technical colleges and technikons on a similar basis (COSATU, 2000).

RPL became a widespread practice in the US in the 1970s with the United Kingdom, Australia, New Zealand and France following suit in the 1980s. (For historical accounts see Cohen, Flowers, McDonald and Schaafsma, 1993; Tate, 1999; Evans, 2000; Feutrie, 2000; Flowers and Hawk, 2000; Ker, Melrose and Reid, 2000).<sup>3</sup> The development of RPL in all these countries needs to be seen against a backdrop of increased participation in higher education by all age groups, the development of a market-orientated philosophy of higher education leading among other things to a 'credit culture' (Trowler, 1998) on the part of the institutions and consumerist attitudes on the part of their students. Modularization of courses, outcomes-based approaches to education and qualification frameworks paved the way for the accreditation of 'chunks' of prior learning. From a different quarter, there have been demands, framed in feminist, critical radical and postmodern discourses, for the recognition of knowledges currently marginalized, including that of women and indigenous groups.

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<sup>2</sup> Joe Slovo, general secretary of the South African Communist Party (amongst other contributions to the liberation struggle in South Africa) was one such soldier (COSATU, 2000).

<sup>3</sup> Various terms are used to denote the practice. Assessment of Prior Learning (APL) and Assessment of Prior Experiential Learning (APEL) are common in the UK. Prior Learning Assessment (PLA) is used in the US and Canada. RPL is used in Australia and New Zealand as well as South Africa.

It was not until the 1990s that RPL became a feature of educational discourses in South Africa, along with the development of a National Qualifications Framework (NQF). It was put onto the education policy agenda by the progressive trade union movement following the unbanning of the liberation movement, as a means of redress for those workers who had little access to formal education in the past, but had extensive experience of work. It was hoped that through RPL they would gain qualifications registered with the NQF and access to further learning and better job opportunities (HSRC, 1995; Cooper, 1998; Buchler and Ralphs, 1998).

RPL subsequently became one of the 13 principles of the NQF and an important principle in education policy generally. The White Paper on Education and Training (RSA, 1995) presented RPL as one of the bases of an integrated approach to education and training and suggested it would also:

... open doors of opportunity for people whose academic or career paths have been needlessly blocked because their prior knowledge (acquired informally or by work experience) has not been assessed and certified, or because their qualifications have not been recognized for admission to further learning, or employment purposes.

The White Paper on Higher Education (RSA, 1997) which accepted the principle of a single NQF for all sectors including HE, presented RPL in terms of efficiency rather than redress, as a means to achieve greater horizontal and vertical mobility by learners in the higher education system.

RPL was formally introduced in 1998, when the South African Qualifications Authority (SAQA) stipulated that all qualifications may be achieved in whole or in part through RPL. This includes 'learning outcomes' achieved through 'formal, informal and non-formal learning and work experience' (RSA, 1998).

### **1.3 Issues associated with the implementation of RPL**

The implementation of RPL in South Africa has been a slow and uneven process. Ballim et al (2000) note that realizing the hopes and aspirations associated with RPL in the workplace has proved to be more difficult than expected.

This is evident in a number of bruising experiences that adult workers have had to face in some leading pilot projects initiated in the mid-1990s, which are distinctive in their ability to discount workers' knowledge and ways of knowing whilst privileging status quo standards and assessment techniques (ibid:188).

The experiences of these workers and the slow rate of RPL implementation in education point to some of the key issues associated with the practice in South Africa.<sup>4</sup> To what extent can learning acquired through work or life experience be regarded as equivalent to that acquired in a formal educational context, particularly higher education? If it is not equivalent, what learning counts: formal or informal? If it is formal learning that counts (as it does when formal qualifications are at stake) then RPL will merely re-inscribe existing standards and the candidates who are RPL'ed will be those who have already had access to formal discourses. For those who oppose these inherently conservative effects, the answer to the conundrum is to revise or replace existing curricula to accommodate the knowledge of the marginalized. RPL in this country is ambiguous. South Africa is offering the strongest form of RPL – whole qualifications in recognition of prior informal learning – but in association with the potentially conservative technology of 'learning outcomes' which usually involves the entrenchment of existing standards. The task of assessors and educators is complicated by the internationally-recognized principle of good practice that 'learning' and not 'experience'<sup>5</sup> must be recognized. Furthermore, the extent of educational deprivation in this country means that many RPL applicants do not have the academic literacy and relevant language skills of those catered for abroad.

Concerns about the relationship between formal and informal knowledge are not exclusive to RPL. There are long-standing debates in schooling, particularly in mathematics education, about the role of informal knowledge in the curriculum and pedagogy of a formal programme. This concern echoes even longer-standing debates about the relationship between different forms of knowledge and thought, usually polarized as that which is abstract, scientific, esoteric and that which is concrete, non-scientific or everyday. Some have associated the divide with

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<sup>4</sup> I have discussed concerns surrounding the NQF and RPL in a number of papers. See Breier (1997b,c; 1998; 1999; 2000; 2001a,b). For a more advocatory discussion of its likelihood for success in higher education, see Castle et al (2001).

<sup>5</sup> Essentially it was not enough to state one had 'x' number of years experience, but one also had to prove what one had learned in that time that was relevant to the learning outcomes specified for the programme in respect of which one wanted access or credit.

types of societies (Western vs. non-Western; civilized vs. primitive; oral vs. literate etc), others saw it located within societies, and even within individuals themselves. More recently there have been many attempts to show the science of non-Western, including African, knowledge systems and to argue for the formal recognition of previously marginalized knowledges (that of women and indigenous peoples, for example). Within the 'new literacy studies' (Street, 1986, 1995; and Gee, 1990) researchers have argued that the numerous cognitive effects associated with literacy are nothing but a myth (Graff, 1979) but due to the attitudes, values, norms and beliefs that are associated with literacy and schooling (Gee, 1990). Within this tradition there have been numerous accounts of the competences of illiterate people (Fingeret, 1983; Street, 1993, for example). My own earlier research was within this tradition.<sup>6</sup>

#### 1.4 Origins of this research

By 1998, I had conducted several ethnographic studies among people with limited or no schooling in which I noted the many ways in which they negotiated or circumvented the written texts associated with city living. My interest in their competences made me wonder how these adults could be accommodated in formal education. This progressed into an interest in the epistemological issues associated with RPL. This, and a more general interest in the sociology of knowledge, motivated me to embark on doctoral research that would explore the interplay between formal and informal knowledge in RPL processes, in the higher education sector where I believed that the differences would be starkest.

Initial explorations of RPL in the higher education field in 1998 showed it had barely got off the ground<sup>7</sup> and what was being offered was primarily RPL for access, rather than credit.<sup>8</sup> I could not gain access to any of the university initiatives at the time because they were already part of research projects. (See Chapter 2). At the same time, there were a number of university departments<sup>9</sup> that were undertaking a form of 'RPL' without flagging it as such. They were admitting students without the formal qualifications normally required for study at the level concerned, on the basis of prior experience. They were not requiring applicants to show

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<sup>6</sup> See Breier (1994,1996,1997a); Breier and Sait (1996a,b); Breier, Taetsane and Sait (1996a,b); Prinsloo and Breier (1996).

<sup>7</sup> Since then RPL as a mode of pre-entry assessment has begun to burgeon at higher education institutions, partly because of the decline in enrolments of traditional-age school leavers which has necessitated a rethink of recruitment strategies at some universities.

<sup>8</sup> Castle and Attwood (2001) have since recommended access rather than credit, in universities.

'learning' from experience and their admission procedures were too rudimentary to provide scope for extensive qualitative research but the courses did provide opportunities to explore the relationship between formal and informal knowledge post-entry. And so I resolved to explore the recruitment and recognition of prior informal learning in the pedagogy of the course itself, rather than in the RPL process beforehand.

I soon found that this provided an ideal opportunity to deconstruct the concepts of formal and informal knowledge and to observe interactions between lecturers who had varying degrees of experience of the field of practice but extensive theoretical knowledge of the law, and students with limited theoretical knowledge and extensive practical experience. I also found that it was impossible to distinguish learning that had resulted from prior informal experience from that which resulted from prior formal education. Once it had been translated into an academically-acceptable form of language or practice, its origins were no longer clear. For this reason I confined my research to a study of obvious recruitments of prior informal experience which mainly took the form of personal narratives. The research question which I pursued was:

How is prior informal experience recruited and recognized in pedagogy in a higher education context where there is espoused respect for adult experience and the curriculum is not negotiable?

I chose, as case studies, the two courses in Labour Law which I described earlier. I focused on labour law because I felt it offered unique opportunities to explore the interaction between formal and informal knowledge. Trade unionists have extensive practical experience of the laws which are the subject of labour law courses. They were also responsible for putting RPL onto the education policy agenda in South Africa and as part of a powerful social movement helped to achieve some of the labour law reforms which were to be the topic of the courses. Furthermore, labour law – like law in general – is intricately bound up with everyday (informal) life and knowledge.

The fact that Labour Law was not my own discipline brought advantages as well as disadvantages. It rendered strange what to an insider might have been taken for granted. It inverted the common power relations associated with the outsider perspective (Stanfield,1994)

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<sup>9</sup> Mainly in the fields of business studies and labour law.

in which a researcher from a dominant group researches the less dominant. But becoming *au fais* with the disciplinary content consumed time that might usefully have elsewhere – in acquiring greater qualitative depth, perhaps.

### 1.5 The significance of the case studies

I have mentioned my reasons for choosing Labour Law as the field of study in which to focus my research. What I have yet to mention is the significance of courses such as those which I have chosen as case studies. Courses like these play an important role in increasing the employability of adults who did not complete their schooling or tertiary education. The following figures for 1999 (the year in which I conducted my fieldwork) illustrate this point. The figures are drawn from the South Africa Survey (SAIRR, 2001) and the October Household Survey, (Statistics South Africa, 1999).

- In 1999, out of a total population of 40,5 million, 23,7 million people were aged 20 years or older. Of these, 17,6 million were African; 2,2 million Coloured; 3,2 million White; and 0,7 million Indian.
- Of the total number over the age of 20, 51% had a secondary education only,<sup>10</sup> 25,6% had primary education only<sup>11</sup> and 11,8% had no formal education at all. Only 3,7% had a degree.
- There was a vast discrepancy between the educational profile of Whites over the age of 20 and that of the other race groups, Africans in particular, as indicated in the following table:

**Table 1: Education levels of people in South Africa over the age of 20, in 1999, by race**

Race	No formal education	Primary	Secondary	Dip/cert with Gr 11/12 or NTC <sup>12</sup>	Degree	Other
African	14,8%	29,9%	48,1%	4,0%	1,5%	1,6%
Coloured	7,4%	29,6%	53,4%	5,3%	1,7%	2,8%
Indian	3,2%	12,4%	67,1%	8,1%	6,8%	2,7%
White	0,2%	1,7%	63,0%	16,7%	16,5%	1,9%

<sup>10</sup> Between, and including, Grade 8 and Grade 12.

<sup>11</sup> Grade 7 or less.

<sup>12</sup> National Technical Certificate.

The table shows that:

- High proportions of Africans were unschooled (14,8%) or had primary education only (29,9%). They also had the lowest proportions for secondary education (48,1%) and degrees (1,5%). Only 4% had National Technical Certificates (1 to 3) or diplomas or certificates with Grade 11 or 12.
- The educational profile of Coloureds over the age of 20 was not much better. Although the proportion without any formal education – at 7,4% – was lower than that for Africans, and the proportions with secondary education (53%) and certificates/diplomas (5,3%) marginally higher, they had almost as many with primary education only (29,6%) and almost as few with degrees (1,7%).
- Indians showed the highest proportion with secondary only (67,1%), and the second highest proportions with diplomas/certificates (8,1%) and degrees (6,8%). The figures show a significant number with primary only (12,4%) and 3,2% with no formal education. The percentage for degrees is about four times that for Africans and Coloureds but less than half that for Whites.
- Whites had the highest proportion of degrees (16,5%) and post-Grade 11/12 diplomas and certificates (11,6%) and, next to Indians, the second highest secondary education proportion (67,1%). Only 1,7% had primary education only and 0,2% no education at all.

Against this profile, there were the following harsh realities in relation to unemployment: about 30% of all adults willing and able to work,<sup>13</sup> had Grade 7 or less as their highest qualification, about 39% had between Grade 8 and 11, about 25% had Grade 12 or NTC3, about 4% had a diploma or certificate with a Grade 11 or Grade 12 or lower. One percent had degrees or above. The following table shows the full educational range.

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<sup>13</sup> This figure excludes students, school pupils, full time homemakers and those unable or unwilling to work. It includes people aged 15 to 65 years.

**Table 2: Unemployment in South Africa by level of education, 1999\***

Level of education	Percentage unemployed
None	4,8%
Grade 0-Grade 3	4,2%
Grade 4	3,5%
Grade 5	4,1%
Grade 6	5,8%
Grade 7	8,2%
Grade 8	9,6%
Grade 9	8,9%
Grade 10/NTC1	10,5%
Grade 11/NTC2	9,9%
Grade 12/NTC3	24,8%
Diploma or certificate with Grade 11 or lower	0,6%
Diploma or certificate with Grade 12	3,2%
Degree	1,0%
Other	0,9%
Total	100%**

\* Economically active population, aged 15-65, excluding students and pupils, among others.

\*\* The total of all the figures in this column does not amount to exactly 100%, due to rounding.

Source: SAIRR (2001); Statistics South Africa (1999)

Tables 1 and 2 show the context in which the two courses which form the case studies of this research took place. In 1999 a very small proportion of the South African population had been educated beyond schooling and many had less than matric. Educational disadvantage was closely associated with race, with Africans and Coloureds forming the bulk of the population without a secondary education, or no education at all. Among the unemployed, nearly a quarter had matric or NTC 3 but no further qualifications. More than two thirds had less than matric. At the same time, there was a growing emphasis within the country on qualifications and 'lifelong learning'. This was partly the result of initiatives by industry and government to improve South Africa's competitiveness in global markets but also the result of individual aspirations which accompanied the development of the NQF. The promise of RPL, a major principle of the NQF, is that the labour of workers, exploited under apartheid, will be recognized and accredited in the new democratic era.

Course A provided adults with Grade 10, or even less, an opportunity to gain a certificate and Course B, students with matric only, an opportunity not only to study at university (normally this would require a matric exemption) but also to gain a postgraduate diploma.

## **1.6 Methodology**

A major task was the development of an analytic framework that would enable me to identify and analyse formal and informal knowledge in pedagogy. For this purpose I drew on the work of Bernstein, Bourdieu and Dowling, primarily. The language of description which I developed is the result of a dialectical conversation between their theories and the empirical data. Central to this language are the concepts of 'localizing' and 'generalizing' strategies and their many sub-variants, which I used to identify and disaggregate the concepts of formal and informal knowledge and knowing.

I adopted a range of research methods to pursue my research question and construct this analytic framework. They included non-participant observation of the lectures, in-depth semi-structured interviews with students and staff and the collection and analysis of course notes, assignments and exam questions and of student responses. The marks of the 102 students involved in the study were analysed against biographical information. In 10 cases this was very detailed information, obtained through interviews which were transcribed. Audio recordings of lectures, which were transcribed in full, as well as detailed notes, proved to be the major source of data, because it was in the lectures that there was the greatest recruitment and recognition of prior informal experience. The transcriptions were analysed in terms of transmission/acquisition strategies. These were divided into localizing and generalizing strategies – and these, and their many sub-categories – were represented in the form of a semantic network. This network was used further to analyse written texts produced in the course – both transmitter texts (course notes, exam questions) and the acquirer texts (predominantly exam scripts).

## **1.7 Outline of the thesis**

The first two chapters following this introduction provide background to the study. Chapter 2 explores the construction of informal experience in three perspectives on experiential learning and RPL: the technical/market, the liberal/humanist and critical/radical perspectives. This is followed by a consideration of the role of informal experience in higher (tertiary) education and in trade union education (programmes provided by trade unions for the benefit of their members and unions). These sectors are chosen for particular focus because of their relevance to the case studies which involve university courses in Labour Law and in which many of the

'RPL' students were trade unionists. (The relevance of Labour Law as a field of study is discussed in 1.3.) Included are accounts of some of the pedagogical issues arising out of empirical research on RPL in higher education in South Africa. These show how formal and informal knowledge are being construed in practice and the difficulties which students and lecturers are having in making the transition from informal to formal: difficulties associated mainly with the development of decontextualized, objective accounts.

The oppositions between formal and informal which are accentuated in the practice of RPL are also concerns in other areas of education, predominantly schooling, and have their origins in a long tradition of oppositions between abstract and concrete knowledge and thought. Chapter 3 explores these origins before discussing some of the educational theories in depth, notably the work of Basil Bernstein (1971, 1973, 1977, 1990, 1996, 1999 and 2000) and Muller and Taylor (1995 and 2000). Finally there is a consideration of the relationship between formal and informal in law and labour law.

Chapter 4 presents the analytic framework and associated language of description which incorporates concepts of localizing and generalizing strategies and many variations. The range and inter-relationships of the strategies is presented in terms of a semantic network.

Chapter 5 sets out the research design and describes the methods which, in combination with theoretical inquiry, led to the analytic framework. The implications of choosing a case study approach and of conducting network analysis are discussed. The case studies are introduced and the research methods and their limitations are discussed in detail.

Chapters 6 to 8 present the findings of the empirical study. Chapter 6 discusses the recruitment and recognition of prior learning in the pedagogic transmission texts (lectures and course notes) and student responses in the lectures. Three styles of pedagogy are identified and an analysis of three lectures, considered to be exemplars of these styles, is presented in the form of a network.

Chapter 7 deals with the recruitment and recognition of prior informal experience in the evaluation texts (all written) and student responses. For each course the evaluation texts are described and categorised. Student marks are analysed in relation to biographic details with

particular attention to students with limited formal qualifications, admitted on the grounds of their experience.

Chapter 8 focuses on the recruitment and recognition of trade union experience per se. There is particular attention to eight progressive trade unionists with limited formal qualifications. The relationship between their experience and the production of 'legitimate' texts is discussed and compared with the experience and performance of the two students who achieved the highest marks in each course.

The final chapter, Chapter 9, presents an overview of the thesis, discusses the limitations of the research, draws conclusions about the relationship between local and general in formal knowledge, with specific reference to theories of Bernstein and Dowling, and about the role of prior experience in a pedagogic context. The thesis ends with a discussion of implications of the research for the practice of RPL and trade union education.

## **CHAPTER TWO: PRIOR INFORMAL EXPERIENCE IN EXPERIENTIAL LEARNING AND RPL**

‘...all qualifications may be achieved in whole or in part through RPL. This includes learning outcomes achieved through formal, informal and non-formal learning and work experience’ (RSA, 1998).

‘Adults bring their own experiences to the learning situations. Teachers should use these experiences as a learning resource’ (Jarvis, 1995:103).

‘...[RPL] can become an invitation to attend to traditionally marginalized voices, treat alternative experiences of the world as grounds for contesting the primacy of any, and acknowledge the value of both confluence and divergence in disparate knowledge claims’ (Michelson, 1996a:193).

The concern of this thesis – with the recruitment and recognition of prior informal experience within, rather than before, an academic programme – places it at the nexus of two important forces within the field of adult education: the experiential learning and the recognition of prior learning (RPL) movements. I call them ‘movements’ advisedly because both are advocatory, promoting a rewriting of the relationship between the academy and society, and asserting the importance of work and life ‘experience’ against academic knowledge and instruction.

In this chapter I explore the construction of ‘experience’ in various perspectives on experiential learning and RPL and in the fields of higher education and trade union education which are particularly pertinent to my study. The chapter includes a consideration of pedagogical issues relating to RPL in higher education in South Africa which have emerged from various pilot projects and are relevant to my own study. This research reveals the ways in which formal and informal knowledge are conceptualised in RPL practice and shows the complexities associated with recognizing prior learning in higher education, particularly where the applicant has not had prior exposure to academic discourses. The chapter begins with a consideration of some of the terms used.

## 2.1 An explication of salient terms

The following terms have particular meanings within adult education discourse. In this section I explain these terms and my own usage of them.

### 2.1.1 *Recognition of prior learning (RPL and 'rpl')*

RPL refers to practices to identify and recognise adults' previous learning, which may be from formal, non-formal or informal (work and life) experience. (See definitions in 1.1.) In education and training, the recognition may take the form of access to a program for which the applicant does not meet the usual entry qualifications or credit for the whole or part of the qualification.

In this thesis, I use the term 'rpl' with a small 'r' to refer to the practice of recognizing prior learning in the pedagogic processes of the course itself. It is an important principle of most adult education traditions that this should be done but the issues associated with 'rpl' in specific disciplines have been neglected – a gap which this thesis attempts to fill in respect of one field of study, labour law.

One of the findings of the thesis is that it is not possible (as a non-participant observer, but also as an educator) to distinguish, in a pedagogic context, learning based on prior informal experience from that based on formal instruction. Once informal experience has been transformed into an academically-acceptable form of language or practice, which is what is meant, ultimately, by the RPL concept of 'learning', then its informal origins are no longer visible. For this reason my empirical research focuses on recruitments of 'raw' experience (presented with limited recontextualization), usually in the form of personal narratives, or generalizations based on personal experience.

It should be noted that 'informal experience' in this thesis refers to experience acquired in the practice of professions such as law as well as other occupations. In other words, all work experience.

### **2.1.2 *Experiential learning***

It will be noted that I have already used the term ‘experiential learning’ to refer to a movement within adult education. Within this movement, the term has a number of sub-meanings (this thesis is concerned with the first two):

- the practice of learning from work or life experience, in other words ‘informal learning’,
- the practice of using personal experience as a starting point and vehicle for learning in a pedagogic action,
- the practice of incorporating practical learning experiences into formal and non-formal learning programmes (Millar, 1998; Weil and McGill, 1989).

### **2.1.3 *‘Learning’***

In discourses on experiential learning and RPL, as in adult education discourses more broadly, it is common to speak of ‘learning’ to indicate both the process and product of learning. As a noun rather than a verb, ‘learning’ is taken to mean the knowledge, skills, values and attitudes that result from the process of reflecting on experience. It is generally accepted that it is ‘learning’ that should be recognized, not ‘experience’ (Whittaker, 1989; Flint et al, 1999; Simosko, 1991; Harris et al, 1994).

The use of the term ‘learning’ instead of ‘knowledge’ emphasises the individualistic emphases of some adult education discourses. I will use the conventional terms when I wish to reflect the flavour of those discourses. Elsewhere I will use the term ‘knowledge’. Michelson (1996a:186) makes a similar move when she chooses to use the term knowledge instead of learning ‘to connote a socially-constructed understanding of the world, rather than an internalised, developmental process and to focus on the ways in which theories of “experiential learning” are theories of knowledge, not cognition: in other words, epistemologies’.

## **2.2 Perspectives on informal experience in experiential learning and RPL discourses**

Experiential learning and RPL<sup>14</sup> traditions and perspectives have been characterised in broadly similar ways by a number of theorists. Weil and McGill (1989), and Boud (1989) offer categorisations of experiential learning traditions, which are expanded upon by Usher, Bryant

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<sup>14</sup> The literature on RPL is not extensive and is concerned mainly with providing guidelines for practice.

and Johnston, 1994. Butterworth (1992), Harris (1999 and 2000) and Lockett (1999a) following Harris, categorise RPL perspectives. There is a large measure of overlap.

The three quotations at the start of this chapter represent the three broad groups which I shall call the technical/market, liberal/humanist and critical/radical traditions respectively. My categorisation below draws extensively on Harris (1999, 2000).

Across all the experiential learning traditions is an emphasis on adult experience as a pedagogic resource. In the RPL traditions it is generally recognised that experience has to be reflected on: to translate it into the academically readable knowledge and skills which has come to be known as 'learning' or to remove 'false consciousness'.

### ***2.2.1 The technical/market perspective***

The technical or market perspective<sup>15</sup> accompanies a human capital view of education which prioritises knowledge, skills and values that will be of benefit to the economy, sees students as 'consumers' or 'clients' whose passage through higher and, most often further, education must be facilitated by means of modularization and credit frameworks.

The emphasis of pedagogic practice in this view is on training and efficiency and the goals are made explicit, previously in the form of objectives, now in the form of outcomes. This perspective is associated with performance models of pedagogy (Bernstein, 1996) in technical and professional training and with generic skills training.

RPL within this tradition includes the accreditation of learning from informal experience provided it can be matched against pre-defined learning outcomes. This is usually done through challenge tests, examinations, demonstrations and the production of 'evidence' and sometimes, through 'outcomes-orientated portfolios' (Harris, 2000) that seek credit against specific learning outcomes. The development of standards or clear learning outcomes is an important aspect of this approach. Simosko (1991:117) regards them as the 'kingpin to sound APL [RPL] assessments'.

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<sup>15</sup> Boud's 'Training and Efficiency' tradition, in relation to experiential learning. Weil and McGill's 'Village One', Harris' 'Procrustean RPL', Lockett's 'Technical Paradigm' and Butterworth's 'Credit Exchange model' in relation to RPL.

South African policy, despite its liberatory rhetoric, situates RPL within this perspective, through its emphasis on formal learning outcomes, specific as well as generic, as the quotation at the start of this chapter suggests.

There is the implication within this tradition that the learning acquired from experience in informal settings can lead to knowledge and skills that are directly equivalent to formal learning outcomes. This perception is facilitated by the fact that the 'learning' presented for accreditation consists largely of practical skills and that professional stakeholders are involved in the design of curricula.<sup>16</sup>

### **2.2.2 *The liberal/humanist perspective***

The liberal/humanist perspective,<sup>17</sup> the major influence on the experiential learning movement, could be seen to have two sub-categories. The first draws on the work of David Kolb, David Boud and Malcolm Knowles and has two main concerns: 'that the prior experience of learners, and particularly adult learners, is valued and used as a resource for further learning; and that learning is active, meaningful and relevant to "real life" agendas' (Weil and McGill, 1989).

The second strand of the liberal/humanist view of experiential learning draws on the theories of humanist psychologists, particularly Carl Rogers (1969). It emphasises 'personal and interpersonal experiencing as a basis for personal growth and development' and the achievement of therapeutic goals (Weil and McGill, 1989). Both strands are associated with competence models of pedagogy of the liberal/humanist kind (Bernstein, 1996).

Unlike the technical market perspective, a great deal has been written, within this tradition, about adult learning and appropriate pedagogical practices. Kolb's (1984) 'learning cycle' underlies numerous texts on experiential learning, RPL and adult education (e.g. Boud et al, 1985; Fraser, 1995; Harris et al, 1994; Jarvis, 1995). It theorises the process of experiential learning as involving four stages: concrete experience, reflective observation, abstract

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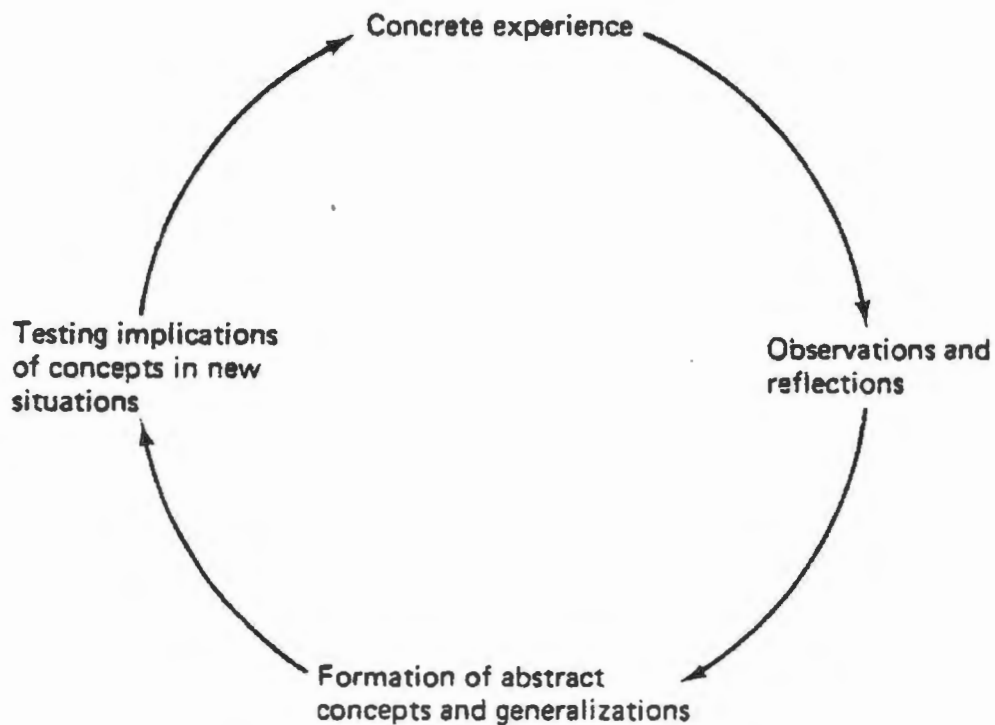
<sup>16</sup> An underlying assumption in this model is that experiential learning is a neutral process and that 'particular experiences can be selected, interpreted and evaluated without considering the influence of the social context on such processes' (Weil and McGill, 1989:7). This assumption has been critiqued by Usher et al (1997); Harris (2000) and Michelson (1996), among others. Weil and McGill also question the further assumption that social change can be achieved through creating opportunities for individuals to progress, whether education, employment.

<sup>17</sup> It contains elements of Weil and McGill's Villages Two and Four and Boud's 'Self Development and Andragogy' and 'Learner Centred and Humanistic' schools of experiential learning.

conceptualisation and active experimentation, as represented in the diagram below and has been developed by Boud et al (1985) and Jarvis (1995).

Kolb argues that learners, if they are to be effective, need four different kinds of abilities which correspond to the four stages of his learning cycle: concrete experience abilities, reflective observation abilities, abstract conceptualisation abilities and active experimentation abilities. These represent the contrasting elements of the two major dimensions of cognitive growth and learning: the concrete/abstract dimension and the active/reflective dimension (Kolb and Fry, 1975).

**Figure 1: Kolb's learning cycle (Kolb and Fry, 1975:33)**



The figure above is one of the most commonly cited in adult education texts. Another common concept within the liberal/humanist tradition of adult education is Malcolm Knowles' 'andragogy' which he originally defined as 'the art and science of helping adults learn' (Knowles, 1980:43, quoted in Jarvis, 1995:90). Knowles' explanations of the term are lists of prescriptions about what adult educators should do or take note of, rather than a theory of transmission/acquisition in the education of adults. Because of its weak theorisation (Jarvis, 1995, and others have also noted this) and its close associations with the liberal/humanist tradition of adult education, rather than adult education more broadly, I avoid this term in this

thesis. I use instead the term pedagogy to refer to the process whereby a transmitter makes available forms of knowledge, conduct, practice and/or criteria for acquisition by an acquirer. This can apply to the education of adults and children alike.

Knowles (1984:9-12) also emphasises the value of adults' experience describing it as the 'richest source of learning' in an adult education setting. He says adults come into an educational activity with both a greater volume and a different quality of experience from youth. This means there will be a wide range of individual differences in a group of adult learners and 'for many kinds of learning the richest resources for learning reside in the adult learners themselves' (ibid:11). If this learning is ignored or devalued, the adults perceive this as rejection of themselves as persons because they derive their self-identity from their experiences. Later, Knowles came to acknowledge that experience also has negative effects – bias, habits, prejudices – which need to be examined (Knowles, 1990). This theme is taken up by Brookfield (1998) who argues there is no basis for assuming that a learner's experience always constitutes a rich resource that educators can build on. In fact the converse is often the case and adult experiences can be distorted, self-fulfilling, unexamined and constraining. In addition, not all adults have the same capacity to learn from experience. He suggests there should be not just reflection but 'critical' reflection' on experience to uncover 'submerged power dynamics', and 'hegemonic assumptions' (ibid:131).

In the liberal/humanist perspective on RPL,<sup>18</sup> adult experience is seen as valuable if reflected upon and turned into 'learning' (as suggested by Kolb). Then it can be 'recognised' by the academy and can lead to self-development or academic advancement. The process of reflection on experience involves extraction of generalisations, abstract concepts and generic competences from that experience. Thereafter 'general' rather than 'specific' credit is sought (Harris, 2000). In other words, the 'learning' is matched against generic learning outcomes, based on a loose notion of equivalence (general credit) rather than being assessed on the basis of its direct equivalence to the programme or module outcomes and assessment criteria. The latter (specific credit) requires candidates to have the same learning.

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<sup>18</sup> Harris' 'Learning and Development RPL', Butterworth's 'Developmental Model' and Luckett's (following Harris) 'Hermeneutic Paradigm'.

This form of RPL usually involves the development of what Harris (2000) calls 'self-orientated' portfolios which allow for far more personal introspection and personal narrative than the outcomes-orientated portfolio, but still require students to 'distinguish between learning and experience, articulate their knowledge and its utilization' (Mandel and Michelson, 1990:2). The difficulty with this approach, as Harris (2000) has noted, is that it tends to recognize only the experience of those who already possess academic literacy skills and are comfortable with processes of reflection.<sup>19</sup>

The effect of this form of RPL on curricula varies. In some cases, curriculum content is largely unaffected although there might be some rewriting to identify and describe generic competences. At the other extreme are institutions which allow students to design their own curricula<sup>20</sup> or offer special degree programmes for RPL students.<sup>21</sup>

### ***2.2.3 The critical/radical perspective***

The critical/radical view of experiential learning and RPL<sup>22</sup> is associated with social movements such as trade union or feminist groups and critical, emancipatory discourses which view education as a means to transform the individual and society.

Learning from work and life experience is seen to result in forms of knowledge that are distinctly different to those of the academy and are ignored by official pedagogic processes (worker knowledge, indigenous knowledge, women's knowledge etc). These forms of knowledge are associated with particular 'standpoints' and 'voices'. In what Bernstein (1996) calls the radical mode of competence pedagogy, learning from informal experience is seen as the basis for group consciousness raising, community action and social change (Weil and

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<sup>19</sup> Among other criticisms, this approach has been accused of involving skills that are sometimes of a higher order than those associated with the course to which access or credit is being sought. There are serious reservations about the usefulness and transferability of generic skills (see Breier, 1998) and the confessional style of writing which it often induces can be regarded as a particularly invasive form of 'symbolic violence' (Bourdieu and Passeron, 1990) and surveillance (Foucault, 1995, quoted in Trowler, 1996). Michelson has suggested further that 'the privileging of inner life over economic necessity is deeply classist and unrealistic given the needs and interests of (particularly economically disadvantaged) working adults and adds that shifting socio-economic realities and moves to more market-oriented pedagogic practices may paradoxically be more relevant to working peoples lives and needs' (Michelson, 1996b:20, quoted in Harris, 2000:42).

<sup>20</sup> Liberal Arts at State University of New York, Empire State College in the USA is an example.

<sup>21</sup> The University of the Free State's Bachelor in Management Leadership Programme is an example.

<sup>22</sup> This discourse resonates with Weil and McGill's Village Three and Boud's 'Critical Pedagogy and Social Action' (in relation to experiential learning) and coincides with Harris's 'Radical RPL', Luckett's Critical Paradigm (in relation to RPL).

McGill, 1989). Here Marx's concept of 'false consciousness' (Marx, 1977) and Freire's concept of 'conscientization' are major influences (Freire 1970, 1973, 1985).

Within these traditions, RPL is seen as a strategy for social redress, a means whereby subjugated or marginalized groups or forms of knowledge can gain access to the academy and challenge the authority of hegemonic discourses.

Some versions of this perspective draw on social constructionist and standpoint theories, which problematise notions of knowledge, experience and subjectivity. There are many knowledges, it is argued, and all are socially constructed and of equal value, if not currency. 'Reason' is situated and culturally and politically influenced, rather than 'universal' and there are many valuable ways of knowing which do not depend solely on reason. Experience should not be seen (as in the work of Kolb and Knowles) as 'coherent, consistent and a site for rational intellectual excavation' (Fraser, 1995:19) nor separated from its history or social and ideological conditions (Brah and Hoy, 1989; Usher, 1992). Furthermore, subjectivity is not unified and autonomous as in the liberal/humanist position but seen as shifting, multiple and situated, shaped and distorted by everyday power relations. Usher (1992:213) argues for

... [a] discourse of the situated subject, a discourse which recognises that we do not make ourselves from ourselves but are constituted in the significations of history, culture and discursive practices. Our experience is therefore always situationally mediated.

The association of informal knowledge with the dominated (typically black and female) and formal knowledge with the dominant (typically white and male) is a theme that threads through the work of Michelson, an American academic and RPL expert who, as a consultant for the US-based Council for Adult and Experiential Learning (CAEL) and South Africa's Joint Education Trust (JET), has come to South Africa on several occasions to assist in the development of RPL in higher education and in workplaces.

Her writings, from the 'standpoint' of 'traditionally marginalized voices' seek to challenge 'the foundations of academic power' and invite a 'sharing of epistemological authority' (Michelson, 1996a). In her celebration of indigenous knowledges and the knowledge of the oppressed, her work echoes some of the Africanisation themes of Seepe (2000) and Odora-Hoppers (2001).

Michelson (1996a) argues that current approaches to the recognition of prior experiential learning, for all their celebration of experiential learning, are consistent with and, in some respects, 'trapped' within 'Enlightenment theories of knowledge'. She draws on alternative epistemologies offered by post-modernist, feminist and anti-racist theory which, she says, 'suggest a different conceptual underpinning for [RPL]'.

Re-inscribed within an epistemology of situated knowledge, [RPL] can grant visibility to outsider knowledge that is valuable for its divergence from academic ways of knowing, not only its similarity, and rewrite the relationship between experiential learning and academic authority (ibid:185).

She also tackles the principle that only 'learning' may be recognised and not experience.

In current procedures whereby experiential learning is accredited, only experience can be exceptional, knowledge must be presented as being similar to that of others and recognizable in terms set by universalised academic norms' (ibid:189).

She supports an epistemology 'that holds knowledge to be at once a social product and invariably partial: different knowledge is available from different "standpoints", that is, from social and historical relations' (ibid:192). (See also quotation at the start of this chapter.)<sup>23</sup>

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<sup>23</sup> Critical/radical discourses remain on the margins of RPL practice in higher education for a number of reasons. They challenge the privileging of time-honoured traditions of disciplinary knowledge – when these traditions are already being eroded – but by market-driven rather than socially conscious forces. It is the vocationally-useful rather than socially-relevant form of knowledge that is making inroads into traditional curricula. The emphasis which they place on collective identities and modes of learning (requiring new collective styles of assessment) obscures the very individualistic aspirations which motivate many individuals, including members of radical social movements, to enter into formal education programmes (see Breier, 2001a; Cooper, 1998). Standpoint theory has been accused of reducing the significance of the appeal for recognition by reducing the significance and value of the field from which the candidate requires recognition (Shalem, 2000). The 'discourse of voice' has been criticised for reducing knowledge to experience in order to 'de-legitimise rational, epistemologically grounded knowledge forms and truth claims that are represented as no more than "standpoints" and "interests" of "dominant" social groups' (Moore and Muller, 1999:189). They say this is a position-taking strategy in which political projects become intertwined with epistemological issues and science is caricatured as 'absolutist and positivist' when the dominant discourse of science has long recognised that science is historically and socially constructed (ibid:194).

#### 2.2.4 A 'radical/social constructionist' vision of RPL

Harris (1999)<sup>24</sup> offers a model of RPL which she describes as 'aspirational' and 'in the making' although there are indications of its practices in some higher education contexts 'particularly in massifying systems where there is a critical/radical tradition, where there is a history of curriculum flexibility and where boundaries are weakening'. It draws on social constructionist as well as critical radical theory. She calls it the 'Trojan-horse model of RPL' and suggests it become 'part of an inquiry into the social construction of knowledge and curricula rather than a measurement of the extent to which individuals' prior learning is similar to, or compatible with, pre-existing bodies of knowledge'.

In this model there would be bold attempts to 'value prior learning in and of itself rather than solely in terms of its degree of fit with existing standards or curricula or with the cognitive capacities deemed necessary to succeed in traditional terms'.

RPL would be concerned with mainstream curriculum design and standards development processes and pedagogical practices as well as with facilitating individual access to those curricula or standards. The notion of 'general credit' would be used to recognise learning gained non-formally and informally, with the portfolio as the prime way of organising and recording prior learning.

Harris (2000:79-80), in a guide to implementation of RPL in South Africa, promotes a form of RPL that echoes some of the principles of Trojan-horse RPL while also accommodating more instrumental means of prior learning assessment. She aims it to be 'optimally socially inclusive', assessing against broad notions of level descriptors, generic assessment criteria and broad programme outcomes wherever possible, in addition to assessment against specific programme outcomes/requirements. The prior learning recognised would be on broad notions of equivalence between formal knowledge and prior learning, with some direct equivalence.

The following is a summary of the perspectives discussed above, their associated modes of pedagogy and practice and their conceptualisations of informal experience and learning.

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<sup>24</sup> In Breier (1997a:223) I identified, as one possible approach to RPL, 'lobbying for radical curriculum change, even as one works towards greater access to formal education in its current form'.

**Table 3: Perspectives on experiential learning and RPL and associated modes of pedagogy**

Perspective	Conceptualisations of informal experience and learning	Associated modes of pedagogy	Site	Mode of RPL Assessment	Type of credit	Impact of RPL on curriculum
Technical/ Market	Some (particularly practical) experience can be equated with specific formal leaning outcomes.	Performance	Mainly vocational education	Challenge tests Examinations Demonstrations Outcomes-orientated portfolios  Against specific learning outcomes	Specific	Mainly practical skills and knowledge. Curriculum unchanged.
Liberal/ Humanist	Formal and informal experience is different but valuable, for self-development as well as academic purposes. Must be transformed through reflection into learning.	Competence: liberal/ progressive form	Continuing education; (access to) disciplinary courses.	Self-orientated portfolios which can be an end in themselves (self-development model) or can be used for assessment of broad equivalence or against generic outcomes	In continuing education (self-development model), credit is not sought. The portfolio is an end in itself.  In generic outcome model, assessment is for general credit.	Curriculum unaffected or rewritten to include generic learning outcomes or curriculum is negotiable.
Critical/ radical	Experience and knowledge of the non-dominant is different and has been marginalized. Subjugated knowledges should replace dominant knowledges.	Competence: populist, and radical forms	Some forms of trade union and feminist, indigenous education			[Critique of existing curricula. Promotion of knowledge of or for the benefit of the marginalized.]
Radical/ social constructionist (Trojan horse/ 'optimally socially inclusive')	[Seen as valuable, socially constructed and power-laden]	[Competence; social constructionist]		[All forms + critical portfolio development]	[Specific, general and access]	[Curricula are critiqued and change is advocated. In the meantime, access to and credit against existing curricula is supported.]

Note: The square brackets and blank boxes indicate that the perspective is visionary rather than reflecting actual forms of practice.

### 2.3 'Experience' and RPL in higher education in South Africa

The previous two sections provided an overview of constructions of experience in various perspectives on RPL and experiential learning. In the following two sections, I explore the way in which experience has been construed in two sites of education that are particularly relevant to the case studies of my thesis. These are the higher education sector and the trade union sector.

### *2.3.1 The implementation of RPL in higher education in South Africa*

South African higher education policy post-1994 has committed the sector to increasing the participation of mature students within a lifelong learning framework. It supports the National Qualifications Framework and (cautiously) the recognition of prior learning. Here the support is for 'developmental work and pilot projects which will help institutions to develop criteria to assess applicants' prior learning and experience, so that those with clear potential to succeed in higher education can be admitted (RSA, 1997:29). It is significant that the White Paper does not mention RPL for credit.

Nonetheless, the energies of the sector have been more concerned with increasing the participation and throughput rates of black school leavers and with reducing the numbers of institutions through mergers than any of the above-mentioned adult-related concerns. A survey on RPL conducted in 2000, at the request of the Council on Higher Education and Joint Education Trust (Breier and Osman, 2000) showed that the historically advantaged Afrikaans universities were leading the field in RPL development, while the historically advantaged English universities were taking a cautious approach and testing the process with pilot projects. The historically disadvantaged institutions were mainly just beginning to grapple with the issue or had not discussed it at all. The exceptions were Peninsula Technikon and University of Durban Westville, which had both developed policies on RPL and were beginning to implement it.

The survey reflected the ambivalent terms in which RPL has been conceptualised in South African policy: a combination of equity, redress (competence-type) principles of the NQF with technical and conservative (performance-mode) international models. Portfolio development processes that one could expect to be accompanied by liberal/humanist visions of education were being used for very technical purposes, to 'squeeze' specific outcomes out of prior, usually practical, experience. In some institutions there was a gap between rhetoric that was liberal/humanist, even radical, and motivations that were market/entrepreneurial. These institutions were primarily concerned with increasing student numbers and attracting stable, mature, fee-paying students. Others were embarking on the process merely because they believed it was compulsory.

Generally, RPL was being offered in its weakest form – RPL for access, even though South African policy allows for its most radical form – RPL for whole qualifications. Arguably, it

was programmes such as the courses in Labour Law which are the focus of this thesis that were providing the strongest form of access for adults with limited education. They were admitting students on the basis of experience without putting them through the tests and portfolio development processes associated with RPL, which can merely serve to 'weed out' students who have not had prior exposure to academic discourses and literacies (as Harris, 2000, has noted). The question is whether students admitted in this way are able to succeed on the courses without the prior induction into academic discourses which portfolio development processes, to a greater or lesser extent, ensure. Will they, in the words of Morrow (1992), gain 'epistemological' as well as physical access? This question is a major concern of this thesis.<sup>25</sup>

### 2.3.2 *'Experience' in higher education curricula in South Africa*

Although RPL is being implemented cautiously, there are indications that in higher education today attitudes towards experience gained outside the academy are changing. In the past this was mainly associated with the practical components of professional development courses. Now, following Gibbons et al (1994) and his many South African followers, there is a new emphasis on 'knowledge produced' in the site of application' (Mode 2 knowledge) and this has shifted the focus away from the products of formal academic research. The problem-based approaches which Gibbons regards as a major feature of the new 'transdisciplinary' curriculum, and which are being introduced in medical faculties locally and internationally, could be regarded as a form of experiential learning. One should not make too much of these shifts, however, because when the system is viewed as a whole it becomes obvious that the focus remains on the school-leaver, and not the adult, and curricula continue to be geared to students without practical experience, as Harris and Michelson have noted.

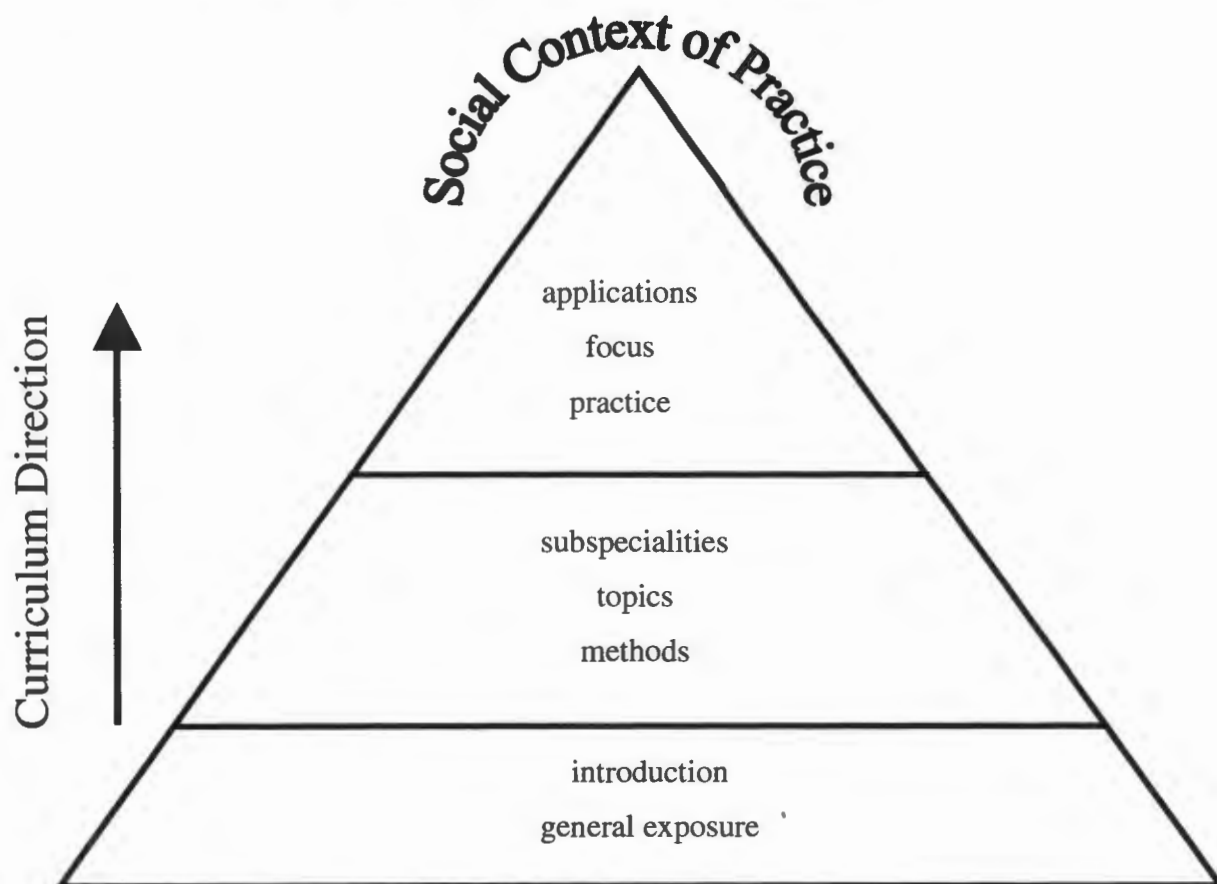
Harris (2000:100-101) presents two diagrams developed by Michelson and circulated to participants at an RPL workshop at the University of Witwatersrand, in April 1998. Harris says they are diagrammatic representations of 'curriculum logic' in existing Higher Education

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<sup>25</sup> Recent research by Thaver, Naidoo and Breier (2002) has found that adults who said they did not have matric who were admitted to first year university courses at the University of the Western Cape in a pilot project performed well, with 70% passing their courses and several achieving distinctions. However, the researchers found that about a third of the students probably did have some form of matric. Why they concealed this in their applications was not established. A Canadian study by Aarts et al (1999) reported very positively on the performance of RPL candidates at college level.

curricula and the way it could be conceived in a more adult-friendly curriculum.<sup>26</sup> Figure 2 below shows the traditional logic of higher education curricula.

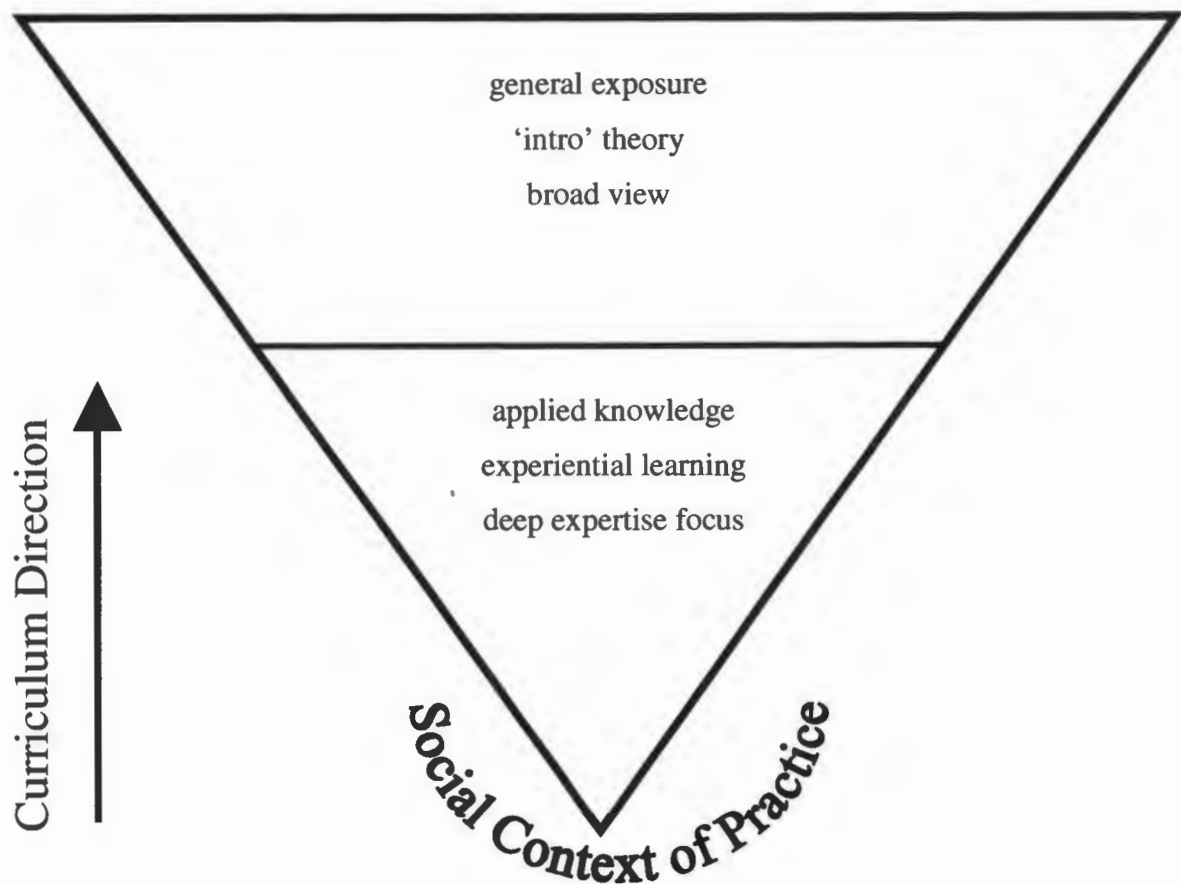
**Figure 2: The logic of many Higher Education curricula**



<sup>26</sup> Harris (2000) presents another vision of an adult-friendly curriculum. From her analysis of RPL in Liberal Arts at the State University of New York-Empire State College (SUNY-ESC) she concludes that RPL can be 'inclusive and democratic'. Here there are no pre-set curricula. Instead, individual students design and negotiate their own degree programmes within a framework of 'permissive notions of academic coherence' to meet particular interests and needs (often professionally driven). In contrast, from her analysis of RPL within higher education in the United Kingdom, she concludes that in traditional academia (the older institutions) 'successful individuals will probably be those who are already socially advantaged, not those whose learning originated at a distance from formal education'. She says this 'underscores concerns about the taken-for-granted assumptions that RPL is by definition an inclusive and democratic practice'. (41)

Harris says Figure 2, on the previous page, illustrates ‘the traditional and current logic of curriculum in many Higher Education contexts. Learning programmes begin with theory before moving to applications’ (ibid:101). She suggests that a curriculum designed the other way around, as in Figure 3 below, would be more conducive to adult learning and RPL.

**Figure 3: The logic of adult learning**



In this figure the movement is from learning from experience and applied knowledge, towards ‘more propositional, Mode 1 knowledge’. Harris regards it as ‘a more appropriate logic for adult learning and RPL’ (ibid:101).

Harris (2000) makes her own exploration of constructions of experience, learning and RPL in two modes of higher education in South Africa: ‘career higher education’ (exemplified by technikons) and ‘new academia’ (exemplified by the University of Cape Town in 1999). Against these, she suggests an alternative vision of higher education which aims at ‘optimal social inclusion’ (ibid:76).

In 'career higher education' experience is seen as an individual asset and 'purported' to be highly valued although differentially across programmes. Learning from experience is 'espoused' as an extremely useful basis for learning and for negotiating the coherence between individual needs and formal curricula'. Institutions are well-disposed to RPL. In 'new academia' experience is valued as a foundation for learning and knowledge, but 'may be seen as more of an asset in future, in a context of lifelong learning'. Learning from experience is 'increasingly capable of being in dialogue with theory, (given more permeable knowledge structures) and RPL is seen as 'worthy of cautious investigation, especially at higher levels'.

In 'optimally socially inclusive' higher education, adult experience would be valued, but also seen as socially constructed. Its 'location in unequal power relations' would need to be opened up, challenged and explored (in terms of the specificity and/or commonality of experiences, for example). There would be 'a more equal and two-way relationship, between theory and learning from experience', the latter in 'critical dialogue' with the former (Harris, 2000:76-77).

Learning would be explored as a 'social/collective practice and process rather than only an individual, cognitive one'. There would be work towards 'a more equal and two-way relationship between theory and learning from experience ... critical dialogue with theory' and a 'hybrid' pedagogy that 'works across theory and practice and does justice to both, in other words, makes explicit and interrogates tacit knowledge and tests broader applicability of implicit theory (ibid:78).

#### **2.4 Pedagogical issues in RPL in higher education in South Africa**

I have found no research that deals directly with the concern of this thesis: the recruitment and recognition of prior learning (experience) in the pedagogy of a specific course post- rather than pre- entry.<sup>27</sup>

There has nonetheless been some significant South African research which explores pedagogical discourse within pre-entry RPL processes, which has relevance for my study. This research provides an indication of some of the complexities of recruiting and recognizing informal experience (or 'learning' from informal experience) in higher education, in particular

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<sup>27</sup> The databases that I searched are listed in Chapter 5.

where the RPL applicant has not had prior exposure to academic discourses. Difficulties experienced related to the transition from specific, context-dependent experience to knowledge and skills that can be regarded as general and decontextualized.

#### ***2.4.1 Generalization and decontextualization concerns in RPL for professional development courses in nursing and adult education***

In a project sponsored by the Human Sciences Research Council,<sup>1</sup> Harris assisted in the development of two pilot RPL projects as a type of 'action research'. Both were professional development courses: an adult educator development course at UCT and a professional development course for community health nurses at Peninsula Technikon. The reports and articles that have emanated from this research present only limited empirical data. Their focus, and that of the project as a whole, was on the development of a conceptual and implementation guide (Harris 2000). Of the empirical findings that were revealed, the following are of relevance to this thesis.

##### ***The RPL pilot project in nursing at Peninsula Technikon***

In the nursing pilot project, an interview procedure and a challenge exam were used to assess candidates' prior learning. Harris, Moses, McMillan and Small (1998) reported that 20 of the 32 candidates who undertook the challenge examination passed it. The results suggested that community-based nurses had acquired significant prior learning within specific areas of practice – particularly those areas of high community concern. In these specific areas, procedural knowledge and skills and an awareness of professional qualities and skills were strongly evidenced. Where there were weaknesses and gaps they tended to relate to 'the ability to generalise from the specific i.e. across domains and in relation to the broader socio-economic context' and 'the possession of updated field knowledge and values to (sic) a democratic primary health care system' (Harris et al, 1998:11).

In the interview procedure, candidates revealed that they had between 10 and 20 years experience. There was a general view that basic training had not prepared them for the reality of their work and therefore that much of their learning had been acquired on the job experientially. The following areas of prior learning were revealed:

- Contextual knowledge, i.e. knowledge about social conditions and particular relationships between health/ill health and local social conditions and hardships.
- Local networking and liaison skills

- Updating/learning strategies (with self-awareness and reflexivity)
- Dedication and commitment to the profession and the 'communities'
- Caring and compassion
- Counselling skills
- Administrative skills

Some areas or prior learning were manifest in the interviews but not in the challenge test. These included cultural sensitivity, professional judgement and understandings of socio-economic context. Harris et al (1998) raise a number of possible reasons for this including literacy and language issues.

#### *The RPL pilot project in adult education at the University of Cape Town*

In the adult educator pilot project an RPL curriculum was designed consisting of a one-day orientation workshop, individual consultations and a 4-day programme. The programme centred on the production of a portfolio consisting of two main texts: one describing, analysing and evaluating an aspect of own adult education practice, the other involving a structured engagement with an academic text. Candidates also included in their portfolios an individual motivation for acceptance onto the advanced diploma and any other 'evidence' that attested to the assessment criteria. Harris described the whole process as a 'learning and development' (liberal progressive) type of RPL.

Ten potential candidates attended the orientation workshop, of which seven entered the RPL process. Of these, five were white, one coloured and one African. Their qualifications ranged from Std 9 (Grade 11) to M + 2 (matric plus two years tertiary education). Almost all had taken non-formal courses. Length of practitioner experience ranged from 10 to 20 years.

In a section on 'the interesting tensions and contradictions that emerged' Harris refers to the particularity of the candidates' experience, learning and engagement with the RPL process and suggests this should have been accommodated by the 'learning or development' conceptualisation of RPL which involved 'the building of bridges between potentially different knowledges and the developing of cognitive capacity and confidence to assimilate into the dominant knowledge structure' (Harris et al, 1998:29).

However in the case of the candidate who was not admitted (the only African candidate), the 'learning and development' approach did not allow for "complete translation" into the dominant discourse of the diploma (and the assessment criteria). This led to one of Harris et al's (1998) conclusions: that RPL needed to 'speak to the background knowledge or "habitus" that candidates drew on'.

The candidate who was not admitted was also found to have been unable to produce a sufficiently decontextualized account.

One assessor said that the main reason for not admitting him was that he had produced very "contextualized" accounts of practice and learning experiences. He was seen as not being able to translate his contextualized knowledge into the dominant discourse of the diploma. It was felt therefore that he would not be able to deal well with "decontextualized knowledge – seen as crucial for diploma students". Conversely, the successful candidates were seen as able to decontextualize and translate their prior experiences and learning into "diplomaese" (ibid:29).

#### ***2.4.2 Abstraction and theorisation issues in RPL for a rural development programme at the University of Natal***

Luckett (1999b) has reported on a pilot study in which students without Std 10 (Grade 12) were admitted to a certificate course in Rural Resource Management at the University of Natal on the basis of their prior life experience. The aim was to widen access while ensuring 'that candidates would be admitted responsibly i.e. that they would have a reasonable chance of succeeding on the programme' (ibid:22). This was to be done in the context of a university where the dominant discourse was one of liberal/humanism, the dominant ethos individualistic and competitive and knowledge was understood as 'free-standing, decontextualized, propositional and hierarchically pre-classified and structured by the academic disciplines' (ibid:5).

A selection instrument in the form of a workbook was designed and workshops were held to take the candidates through the book, explain instructions and answer queries. Section A of the workbook asked candidates to describe their backgrounds and work experiences and asked questions about their communities or organisations. This could be done in Zulu or English.

Section B comprised a short comprehension exercise which included maths word problems. There was also an open-ended question that sought to test confidence, experience and reasoning skills. This section had to be completed in English. The marks were allocated in such a way that the test weighted experiential learning over maths and English proficiency.

54 candidates wrote the test of whom 36 were eventually accepted onto the programme. Of these, 13 could not have gained admission had the old criteria been used. This group tended to be older than the remainder of the students and there was a high proportion of men (11 out of the 13, or 85%).

Luckett (ibid:14-15) finds that assessment as envisaged within the technical 'paradigm' (what I call the technical/market perspective) is not suitable for such a programme.

If learners have acquired as opposed to learned<sup>28</sup> their prior learning, then (as demonstrated in the pilot study) they will have neither the ability or inclination to abstract and theorise about their experience in such a way as to match the abstracted and generalised learning outcomes or assessment criteria of a technical (or hermeneutic) curriculum; even when these have been derived from a research-based profile of a RDW [rural development worker] in the field (ibid:14).

The only way in which one might find the technical approach useful would be if one were to observe performances in real world contexts, particularly if one was looking for practical competence.

But even here, the way the context influences performance would have to be taken into account, and one would be unlikely to find any direct 'fits' between their practice and specific learning outcomes. Nor could one assume any sort of

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<sup>28</sup> Here Luckett uses Gee's distinction between acquisition and learning. Acquisition is a process of apprenticeship in a community of practice in which the learner is exposed to models in natural, meaningful and functional settings. Learning is a conscious process gained through explicit teaching, usually in 'decontextualised' settings, such as schooling and involves the analysis and explanation of the object of learning which in turn requires learning a meta-language to talk about, as opposed to perform, a certain practice. (Gee 1990, quoted in Luckett, 1999:13).

transfer from contexts of practice to new contexts. In any case this form of assessment would be very costly and labour-intensive (ibid:14).

Luckett concludes that the implementation of RPL does require an outcomes-based curriculum and criterion-referenced assessment but that outcomes should be interpreted very loosely, with space given to learners to show what else they know and can do.

We should aim to capture the diversity, specificity and “thick descriptions” of the learners’ experiences rather than force these into some false correspondence with learning outcomes (ibid:14).

Luckett says the experience from the pilot study suggests that RPL within what she calls the ‘hermeneutic paradigm’ (my liberal/humanist perspective) presents further difficulties.

... learners who have tacit knowledge acquired from very specific contexts of practice do not possess a reflexive meta-discourse which they can use to talk and write about their practice. Add to this very limited literacy and English language skills and it is clear that such practices would seriously disadvantage the typical RDW [rural development worker] look for access to the RRM [Rural Resource Management] certificate (ibid:14).

#### ***2.4.3 Extracting learning outcomes from experience in pilot portfolio courses at the Johannesburg College of Education and Wits’ Department of Adult Education***

Osman and Castle (2001) report on two RPL courses at the Johannesburg College of Education (JCE) and Wits Department of Adult Education.

The JCE course was a six week ‘stand-alone course’ which students were to complete in the year before entering the Higher Diploma in Education (HDE). The aim of the course was ‘developmental’ rather than ‘credit exchange’

...meaning there was a strong commitment to in-depth reflection on past experiences, and support for such reflection, including the integration of this reflection with the discourse of the disciplines in Educational Studies. The aim was to record learning experiences in order to reflect on and integrate these

experiences with other ideas about teaching and learning, encouraging personal growth and nurturing professional consciousness (ibid:56).

The Wits course was one of four compulsory courses running throughout the second year of a part time, honours level BEd degree.

The course aimed to develop students' capacity to reflect critically on their prior experience as learners and educators by analysing learning moments and events which were significant to them. It also aimed to develop their knowledge, skill and confidence in the design of RPL policies and practices for use in their own workplaces (ibid:57).

Osman and Castle seemed surprised that students in the JCE course tended to respond 'according to their perceptions of what the tutor/assessor wanted' (ibid:56) when they had asked students to be 'active creators and participants in the construction of knowledge and their own professional identity'. The authors suggest that the problem lay with the fact that while they had invited students to use critical incidents as an opportunity for 'self exploration and reflection on embedded theories', there was 'always a requirement to do this in the context of other relevant and established theories, and in the discourse of the disciplines in education'.

This created in students the suspicion that there must be a "right answer" so they tended to respond according to their perceptions of what the tutor/assessor wanted (ibid:56).

They found the same desire to please the assessor in the Wits course:

Like the JCE students some of the Adult Education students produced narratives which were not a true reflection of their experience, but rather a contrived or distorted version of what they assumed the tutor/assessor/ institution wanted. As Fraser remarks: "experts" continue to define or frame the area around which experience is described and there is always someone or something "pulling the strings" (Fraser,1995:140).

This article points to the essential ambiguity of what Harris (1997) calls 'self-orientated' portfolios. On the one hand they invite candidates to be open and confessional, on the other

they can only be accepted if the confessions they contain have been related to academic discourses and are 'readable' by academics. If this is not made sufficiently clear to students, they flounder in the dark, not knowing what is expected of them, and drawing on past learning habits to assist them. This point is taken up by Shalem and Steinberg (2000) in a paper discussed below. In Bernstein's terms, the pedagogic relations remain hierarchical, even if the rhetoric suggests otherwise.

#### ***2.4.4 The complexities of a competence-type portfolio development process***

Shalem and Steinberg (2000) offer an empirical account of a student's struggles to develop an academically acceptable portfolio and their own frustrations with the invisible pedagogy demanded by the portfolio development process. The central aim of their paper, as summarised in the conclusion, is to describe the 'pedagogical complexity which is hidden in the experiential learning approach advocated for RPL' (ibid:24). This complexity derives from two very different aims which assessors are expected to attain simultaneously: recognition of prior learning (a retrospective action) and socialisation into a learning course (a prospective action).

Shalem and Steinberg question the value of the pedagogical type that dominates portfolio-based assessment courses, namely the 'competence' type (ibid:24) which foregrounds knowledge equivalence and personalised communication and backgrounds the criteria of specialisation. They argue that a portfolio-based assessment course cannot really prepare candidates for a learning programme, nor can it mediate between the 'vocational' and the 'scholastic' discourses of learning.

The competence mode is also associated with 'invisible pedagogy' which has 'dire consequences for the candidate as it sets up an appearance of low specialisation, whereas in fact, the assessor's gaze is located in the speciality of her context' (ibid:12).

At this point, Shalem and Steinberg present some of the ways in which invisible pedagogy 'constrains the process of translation' (ibid:12-14):

- When the relationship between fields of knowledge is not classified, the impression is created that it is easy to access fields of knowledge. Candidates find it difficult to position themselves.

- Where demarcation between the scholastic mode of production of knowledge and the everyday vocational mode of production of knowledge is denied, candidates do not know in what form they should present their ideas in the portfolio. The assessor does not control the order, pacing and content of the knowledge brought by the portfolio, she can only pace and order her teaching in response to the development of the writing.
- When the speciality of each field is denied and yet the assessor works with specialized criteria, albeit in an invisible way, candidates have to guess, continuously, in a form of a cat and a mouse chase, the discursive context of the feedback they get (why they have been asked to engage with a specific idea in a specific way etc.).

#### **2.4.5 Educator accountabilities in RPL**

Shalem (2001) examines the claim that as long as academics do not challenge the conservative epistemological assumptions underpinning assessment of prior learning, they will continue to exclude the candidates who deserve it most.

She examines the arguments of researchers who claim that rational-based assessment is a form of epistemological oppression. These arguments contain both ‘difference claims’ that assert the ‘specific otherness’ of the applicants’ experience and ‘equivalence’ claims that what the learner knows is equivalent to university knowledge.

Shalem argues that standpoint theory reduces the significance of the appeal for recognition by reducing the significance and value of the field from which the candidate requires recognition. ‘Academic recognition is reduced to an instrumental exchange conducted without criteria of real value’ (ibid:60).

She gives two examples of advocacy (the appeal of Michelson, 1997b, for recognition of different experiences of motherhood and Beckett and Hager’s 1999 study of decision-making in workplaces) and argues that both use rational, academic-type means to defend the recognition of the practice of the other.

Drawing on Bourdieu, Shalem suggests that logical accountability to a field of practice is a sociological notion that ‘points to a way of examining the limitations of the “scholastic gaze”

without marking these limitations as a proof of subjectivism or hidden forms of hegemonic domination' (ibid:67).

She has to assure the candidate that she can hear her story but also needs to assure the opponents in her own field of practice (her critical reviewers, sociologists) that she constructs a methodical and accountable story (ibid:69).

#### **2.4.6 *Expectations of adult learners***

Odyseos (1998) in a MA (Clinical Psychology) thesis<sup>29</sup> at the University of the Free State investigated the expectations of adult learners in an RPL project at the same university. One of these expectations was that their background and experience should be acknowledged. They also expected lecturers to enhance their abilities, to understand their needs as working adults, to communicate and interact with them as adult learners and to offer assistance, encouragement and to be patient (ibid:53).

Although Odyseos did not explore the students' actual results, she did report that 50% listed the failing of subjects as a 'low point in the programme' (ibid:60). In the student interview responses provided in an appendix to her thesis, 9 out of 14 students indicated they had failed courses or experienced failure.

#### **2.4.7 *A summary of the issues arising from these studies***

The studies recounted above reveal a number of issues associated with the recognition of adult informal experience in RPL in higher education, that are of relevance to the pedagogy of adults in higher education generally. These can be summarised as follows:

It is relatively easy for adults with limited formal education, coming into a higher education context, to display procedural and practical competences. However, where their experience has not produced competences that are directly acceptable in the formal context, they have difficulty presenting it in a form that is acceptable (can be 'recognized' and complies with academic criteria) in an academic context. This usually involves drawing generalizations and

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<sup>29</sup> Most of the masters and doctoral dissertations on RPL in higher education which have been produced in South Africa have been concerned with developing models for implementation (Venter, 1999; Hodgkinson, 2000).

abstractions from their experience and presenting this in a decontextualized way. But they often have neither the meta-discourses nor the academic literacy skills to do this.

This is aggravated by the fact that their knowledge or competences have often been tacitly acquired rather than 'learned' (Gee, 1990) and cannot be articulated (Bourdieu, 1990a; Gamble, 2002). In addition these adults are used to assuming a passive rather than active role in the formal education system (based on their experience of apartheid education) and try to please the lecturer (guessing what he/she might find acceptable) instead of providing authentic reflections on their experience.

Lecturers also experience difficulties. Those using performance type approaches find they cannot equate formal and informal knowledge and those using competence type (portfolio development) approaches find that the associated invisible pedagogy confuses lecturer and student alike. The lecturers has a double task: recognizing the knowledge of the student while also knowing and meeting the demands of her discipline and field of practice.

## **2.5 Experience and RPL in trade union education in South Africa**

In the two courses that form the empirical case studies of this thesis, many of the students admitted on an 'RPL' basis were trade unionists. The course providers expected that their daily experiences would have equipped them for a course that focussed on labour legislation. Yet only a minority of these students passed or completed the courses, for reasons which are discussed in detail in Chapters 7-10. This was despite the fact that all had attended trade union education courses – some a great many.

In this section I will try to provide some contextual background, against which the performance of these students can be viewed. It shows a shift in the past three decades from a critical/radical view to a more technical/market-orientated focus.

### ***2.5.1 International approaches to trade union education***

Cooper (1998) has distinguished three approaches to trade union education internationally. The radical, 'transformative' approach emphasises the building of class consciousness and can be located in a long-standing radical or socialist tradition. The instrumental approach can be

located within a reformist tradition of trade unionism which gives priority to training for organisation-building and for facilitating the conduct of union business. A recent 'human capital' approach has been seen as a response to increasing union weakness at the bargaining table (the need to provide members with benefits other than higher wages) and the rising income and desire for upward mobility on the part of membership.

In South Africa, Cooper says, the transformative discourse occupied a hegemonic position as late as the 1980s. The human capital approach is a relatively recent addition, emerging along with the transition to non-racial democracy in the 1990s.

### ***2.5.2 The valuing of experience in trade union education in South Africa***

Within the transformative discourse, trade union education in the 70s and 80s emphasised the value of workers' experience. Knowledge was perceived as arising out of collective experience, including active struggle. Trade union education foregrounded the political character of workers' education and the fact that workers' experience was rooted in a black, working-class view of the world. 'A large priority in union education was the development of worker leaders and education played an important role in constructing their class identity and building their confidence.

An important role of union education was to build workers' confidence to assert their own voice, thus giving a voice to the experiences – and hence knowledge – of workers...

This tradition of showing respect for workers' knowledge and skills was clearly linked to one of the key social purposes of trade union work in the South African context. The trade unions afforded black workers not only material improvements to their lives but also the opportunity – through the experience of self-organisation and self-activity – to win back some of the dignity and self-respect denied them under apartheid and in the workplace (Cooper, 1998:146).

Trade union education during the 1980s became increasingly planned and structured, according to Cooper, taking the form of seminars, workshops and programmes. But worker education was also seen as an informal process that took place at a variety of events including meetings, rallies and debates. Education work within COSATU built on cultural initiatives such as poetry

readings, worker choirs, plays and art exhibitions. A quest for new knowledge was stimulated leading to a range of new forms of literature, aimed at a worker readership, including in-house union publications and educational booklets.

### **2.5.3 *Pedagogy in trade union education***

Cooper's description of trade union education in the 70s and 80s is reflected in an instruction pamphlet for trade union educators produced by the British Trade Union Council (TUC) in 1981 and other similar documents which have been used by trade union educators in the Western Cape.<sup>30</sup> Entitled 'Methods in Trade Union Education', the pamphlet (TUC Education Service, 1981) emphasises the importance of experience as the starting point of any education programme, as a means to facilitate learning.

It says people learn by moving from concrete experiences, examples and problems to abstract principles, definitions and concepts.

Trade unionists come along to courses with their experience of work, the union, management, the working environment, the problems they have, and so on. The tutor should frequently draw on this experience for examples of the jobs union reps do and the problems they face (ibid:6).

The guide suggests that tutors should ask questions like 'give me an example of....' (issues such as grievance, safety, organisation problems etc) and says concrete questions like this are much more useful than 'abstract' or general questions.

This order of doing things – moving from concrete examples, problems and experience, to principles and concepts, is very much more effective than trying it the other way round. People develop concepts through comparing and analysing their experiences – just as young children develop their ideas about the world through activities, games and play (ibid:7).

### **2.5.4 *RPL and trade union education***

RPL is associated with the emergence of the human capital discourse in worker education in the 1990s. COSATU's education and training proposals (which included proposals for the

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<sup>30</sup> According to a librarian at the Trade Union Library, Salt River, where the documents can be found.

development of an NQF and RPL) were strongly influenced by the Australian and New Zealand models of competency-based education and training, but had been adapted with the aim of winning substantial gains for black workers and increasing labour's bargaining power. Ironically, both the NQF and RPL have come to be regarded as sources of division within union ranks and have undermined the valuing of informal experience. Traditionally trade union education courses were not assessed on an individual basis. Now unionists are demanding that they should be because they want these educational experiences to be accredited as qualifications. Attempts to introduce individual assessment for this purpose have jeopardised the collective and the traditional role of trade union education – to achieve change within the union or society as a whole, rather than the individual alone.<sup>31</sup>

Cooper (1998) speaks of the impact of the new human capital discourse on the valuing of workers' experiences. She said earlier traditions of worker education placed strong value on oral-based context-embedded and common sense forms of knowledge. By doing so they 'foregrounded the role of worker experience in the process of knowledge production' (ibid: 151). Earlier, she said this sometimes led to an 'anti-academic' and 'anti-intellectual' stance Cooper (1996:57). In the future, however, the formalisation of virtually all forms of education within the NQF would privilege 'hierarchical knowledge structures which carry more specialized languages and are more distant from everyday experience'. In the labour education movement itself, there was already evidence that less value was being placed on workers' experience as a site of knowledge production, and more value on the knowledge of 'outside experts' (Cooper, 1998:151).

The dominant meaning associated with work experience and knowledge is being transformed from that of a shared resource (a source of knowledge and a guide to action) which can be drawn upon in order to advance the collective interests of the working class, into the notion of "experience" as a commodity which is individually "owned" and can be exchanged for a qualification in order to compete with other workers on the capitalist labour market, and in a struggle for individual mobility and "career paths"(ibid:152).

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<sup>31</sup> Interview with the director of a trade union service organisation.

### ***2.5.5 The changing role of the trade union educator***

The primary identity of the union educator, according to Cooper and Qotole (1996), is that of 'trade unionist first and foremost'. The knowledge which they require is primarily contextual: knowledge about the structure, functioning and goals of the union and knowledge about the broader context- industrial relations, labour law and the political economy. Even in areas such as health and safety education where content expertise is important, the emphasis has been on contextual understanding.

Trade union educators are expected to educate workers but are also expected to be representatives and propagandists. They are accountable to worker-led structures which make decisions about the priorities in terms of education work needed, and they are required to respect those decisions, as well as the broader policies and guidelines of the union, in designing their education programmes. At the same time, educators – like other organisers and worker leaders – have an organising and mobilising function – they must help to facilitate the united action which often underlies the successful achievement of the union's demands.

The role of the trade union educator is being complicated by the new focus on expert skills.

A contradictory discourse of 'deficit of expertise' has come to permeate the union movement. Expert knowledge and research skills are highly valued and many unions and the federations have come to rely heavily on outside academics, researchers and intellectuals for their specialist expertise in many fields. The union educator is caught between this need for expert knowledge and the desire not to undermine workers' own knowledge and experience. In addition he/she has to try to find ways to 'reinterpret' the contributions of experts in ways that make them accessible to workers and relevant to their immediate concerns – at times an almost impossible task (Cooper and Qotole, 1996:58).

An ongoing issue for the trade union educator is the discrepancy between the intellectual acumen of trade union leaders and their academic literacy skills and confidence. Cooper and Qotole said an interviewee argued that while worker leaders could 'intellectually outsmart Harvard graduates', they were weak on the 'technical side' and 'even top leadership has very serious confidence problems in areas such as writing, statistics or mathematics'. The

interviewee concluded that union educators required very special skills to deal with learners 'who have very high levels of contextual or political understanding but low levels of basic education' (ibid:58).

## 2.6 Conclusions

In this chapter I have argued that my study, with its emphasis on recognition of prior learning post- rather than pre-entry, and with fixed rather than flexible curricula, is at the nexus of the experiential learning and RPL movements. I have considered various perspectives on experiential learning and RPL, following the categorisations developed by others, particularly Harris, with reference to Bernstein.

I found experience constructed as potentially equivalent to formal knowledge and skills (the technical/market perspective), as deficit and in need of reflection (the liberal/humanist and radical perspectives) and as valuable knowledge in itself (the standpoint position associated with the critical/radical perspective). The practice of RPL is currently concentrated in the first of these two approaches where it is generally accepted that experience must be converted into 'learning' (specific learning outcomes or generic competences) in order to be recognised for access or credit.

In higher education in South Africa, there is a policy commitment to increase access for mature students and a cautious acceptance of RPL, but policy implementation has focused on attempts to increase participation and throughput rates of black students and to reduce the numbers of institutions through mergers. There would appear to be some changes in attitudes towards experience, along with a new valuing of 'knowledge produced in site of application' (Gibbons' Mode 2 knowledge) and the introduction of new problem-based curricula which could be regarded as a form of experiential learning. Whether RPL will increase access to students who have not been exposed to academic discourses is a moot point. Harris has found that in the UK higher education RPL can serve to merely privilege those who are already socially advantaged.

In trade union education, the role of RPL has been curious and mixed. Trade unionists were responsible for putting RPL and the NQF on the education policy agenda in the early 1990's, influenced by developments in Australia. Now both the NQF and RPL are seen as a conservative influence in trade unions. The emphasis on qualifications and credentialing has

divided the ranks and devalued workers' experience and knowledge in favour of the knowledge of experts, including academics.

I found no research that explored the recognition of prior learning (what I call 'rpl' with a small 'r') within a pedagogical programme but a number of studies that explored this process within RPL assessment procedures, primarily portfolio development. These provided some insight into the ways in which formal and informal knowledge is being conceptualised and the difficulties associated with recognition of the latter.

I found informal knowledge being conceptualised as 'learning' from informal experience, and characterised as tacitly acquired rather than formally learned, context dependent, local, practical, skills-orientated and affective. In contrast formal knowledge involved the ability to generalise from the specific, to abstract and theorise and use abstract concepts, to provide decontextualized accounts. It also encompassed generic competences, up to date disciplinary (propositional) knowledge and values and reflective meta-discourses. Following Bernstein, it was seen as vertically structured.

Unsuccessful recruitments of prior informal experience by students were too 'conceptualised', demonstrated poor English language and academic literacy skills and in one case were regarded as 'contrived and distorted'. These descriptions indicated that only decontextualized accounts in 'good' English, written according to dominant academic literacy conventions, could be recognised. Furthermore the accounts had to be recognised as 'true reflections of experience' by the assessors. Competence-type portfolio development was criticised for its 'invisible pedagogy' which failed to make clear the specificity and structure of academic discourse.

In these studies, there was no consideration of the recognition of prior experiential learning within rather than before an academic programme. There was some acknowledgement of the need to consider different forms of RPL for different disciplines but no attempt to explore in depth the epistemological implications of such an approach and no attempt to consider differences at different levels of specialisation (higher as opposed to further, general or adult education, for example). Those studies which did discuss the complexities associated with the conversion of 'experience' into 'learning' lacked empirical, discipline-specific details.

The case studies which form the empirical focus of this thesis have the following features which are relevant to the gaps mentioned above. They not only involve a form of RPL (for access) but also involve a specific field of study – labour law – at two distinct levels (certificate and postgraduate). The students with limited formal education were admitted to the courses on the basis of their experience. They were not required to demonstrate learning. As a result the courses included some students who had not had prior access to academic discourses. Finally, the focus of the research is on the way in which their experience was recruited and recognised in the curriculum and pedagogy of the course itself.

The research could be regarded as making an original contribution to the field of RPL, and adult and higher education more broadly, because it enters territories which have not yet been explored in RPL research and literature, using research methods that enable ‘thick’ description.

In the following chapter, I provide further background to the empirical study by pursuing the distinctions between formal and informal knowledge which emerge from the literature on RPL and experiential learning in other education theories and also in relation to law and labour law, the fields of study which find particular focus in this thesis. I start with a brief discussion of the anthropological theories from which these distinctions arise.

### **CHAPTER THREE: INFORMAL AND FORMAL KNOWLEDGE IN OTHER EDUCATIONAL THEORIES AND IN LAW AND LABOUR LAW**

'In a sense, educational knowledge is uncommonsense knowledge. It is knowledge freed from the particular, the local ...'(Bernstein, 1971:215)

'...there is a definite limit to the usefulness of everyday knowledge in inducting learners into school mathematics ... the progressive strategy consists in finding out how to empower people by ensuring that they have the wherewithal to cross the border safely. That means there is no everyday short cut to competence in the discipline of school mathematics' (Muller and Taylor, 2001:71).

The empirical research on RPL discussed in the previous section revealed a number of oppositions associated with formal and informal knowledge. Informal knowledge based on work or life experience was described as context-dependent, practical, tacit and affective. To be 'recognized' in the academic context, it had to be translated into acceptable propositional and procedural knowledge and generic competences or, in RPL terms, 'learning'. To effect this translation, one needed to be able to abstract and generalize from the specific and to produce decontextualized texts. For some proponents of RPL the concern was how to assist adults to show their 'learning' and an academic orientation. For others it was how to transform the academic canon to accommodate (or be replaced by) the knowledges and ways of knowing of the marginalized.

These oppositions and their challenges are not unique to the RPL and experiential movements or even to adult education. They are also concerns in other areas of education, particularly schooling, and stem from a long tradition of oppositions between abstract and concrete forms of thought and knowledge, between and within societies and individuals, which have their origins in early 20<sup>th</sup> century anthropology.

In this chapter, I give a brief overview of the anthropological distinctions – and attempts to conflate them – before focusing on educational theories. I then consider the relevance of these theories for my study, which is essentially about the interplay between formal and informal knowledge in a formal education context. My empirical research confirms the need to recognize distinctions between abstract and concrete thought and knowledge but it also

complicates those distinctions, showing the complex interweaving of abstract and concrete in the discourse of both lecturers and students.

The final part of the chapter pursues the distinctions between formal and informal knowledge in law and labour law, as fields of practice and of education. Here the relationship between formal and informal knowledge follows a deductive principle. Rules, principles and concepts are applied to particular cases, rather than the reverse. The generation of laws, however, is in response to changing socio-economic conditions and values – an inductive principle. The empirical work of this thesis shows the importance of an understanding of this logic by lecturers and students alike.

### **3.1 Theories for and against the ‘great divide’**

The opposition between informal and formal knowledge which is at the heart of the notion of ‘recognition of prior learning’ and the major theme of this thesis, has its origins in a long tradition of oppositions between abstract and concrete forms of thought, between and within societies and individuals. The theories that generated these polarities – sometimes called dualist theories – originate in turn in the division between mind and body which underpins Western epistemologies. Peaking at the beginning of the 20<sup>th</sup> century they were chiefly the product of anthropological research but they cannot be disassociated from developments in other disciplines, psychology in particular. Around this time Freud was developing his distinction between the ego and the id and complicating this divide with the notion of superego.

#### **3.1.1 Distinctions between societies**

The Freudian themes of morality/rationality/irrationality resonate in the ‘great divide’ theories of early anthropologists – if unconsciously.<sup>32</sup> The most infamous of these attributed abstract thought, rationality and ‘science’ to Western societies and relegated concrete, non-rational and magic and mystical thought to the exotic other.

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<sup>32</sup> Bourdieu (1990:93) has noted that at the time of Levy-Bruhl, ‘there would have been less amazement at the oddities of the “primitive mentality” if it had been possible to conceive that the logic of magic and “participation” might have some connection with the most ordinary experience of emotion or passion (anger, jealousy, hatred etc)’.

In this vein, anthropologist Levy-Bruhl (1921), came to the conclusion that primitive' mentality was mystical and prelogical and very different to that of his own society (which he describes only obliquely: by implication it is characterized by capacity for rational, logical thought). Four decades later, Levi-Strauss (1962) was reaching much the same conclusion, although far less pejoratively: contrasting the scientific thought of the modern with the mythical thought of the primitive, which he described as a kind of intellectual bricolage.

Tylor (1903), and Frazer a few decades later,<sup>33</sup> both proffered developmental theories of culture: from myth through religion to science. Others sought to show commonalities between western societies and the exotic other. Durkheim (around 1912)<sup>34</sup> collapsed the dichotomy between religion and science, but developed another divide between the sacred and profane. Boas (1938) argued there was 'no fundamental difference in the ways of thinking of primitive and civilized man'. Malinowski (1925:16, quoted in Nader, 1996:5) said 'primitive humanity was aware of the scientific laws of natural process, that all people operate within the domains of magic, science and religion'.

More recently there have been numerous accounts of the 'science' of non-Western societies (Watson-Verran and Turnbull, 1995; Nader, 1996; Worsley, 1997, for example) and of African indigenous knowledge systems (Odora-Hoppers, 2001; Seepe, 2000; Van Sertima, 1984, 1999).

### **3.1.2 *Distinctions within individuals***

Particularly relevant for this thesis are those theories that distinguish different modes of thought within individuals, rather than between cultures and societies.

In the 1920s Vygotsky presented the thesis that socio-cultural change forms the basis for the development of higher memory and thinking processes. Within this broad theory, he developed a number of concepts which echo the distinctions between context-dependent (concrete) and – independent (abstract) thought which emerged in the previous chapter. He distinguished between 'thinking in complexes' in which the bonds are concrete and factual and 'thinking in concepts' in which the bonds are abstract and logical (Vygotsky, 1986:112-113). He also distinguished between scientific concepts with their roots in formal educational instruction and

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<sup>33</sup> See Frazer (1978).

<sup>34</sup> See Durkheim (1995).

spontaneous concepts which emerge from the child's reflection upon everyday experience (ibid: 146-209).

His principle of the decontextualization of mediational means – the process whereby the meaning of signs become less and less dependent on the unique spatio-temporal context in which they are used (Wertsch,1985b:33) – features repeatedly in his account of the socio-cultural history of higher mental functions. For example, he said forms of counting among primitives was heavily dependent on context, that is it relied on the perception of concrete objects and settings. In calculation, decontextualization was tied to the emergence of a number system in which a quantity can be represented independently of any concrete perceptual context.<sup>35</sup>

Bourdieu (1990a) provides another perspective on the relationship between concrete and abstract in his contrast between formal logic – ‘a mode of thought that works by making explicit the work of thought’ with the logic of practice which ‘flouts logical logic’ and cannot be made explicit (ibid: 91). These distinctions are accompanied by a distinction between formal and practical mastery. An agent who possesses ‘practical mastery’ is ‘no better placed to perceive what really governs his practice and to bring it to the order of discourse, than the observer, who has the advantage over him of being able to see the action from outside, as an object...’ (ibid: 90-91). When questioned about the reasons and *raison d’etre* of his practice,

...he cannot communicate the central point which is that the very nature of practice is that it excludes this question. His remarks convey this primary truth of primary experience only by omission, through the silences and ellipses of self-evidence (ibid:91).

The practical master speaks a ‘language of familiarity’ which

...recognizes only particular cases and details of practical interest or anecdotal curiosity, which always uses the proper names of people and places, which

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<sup>35</sup> In similar vein, Walkerdine (1988, quoted in Muller and Taylor, 2000) has shown how a child is taught to move from concrete to abstract conceptualisation. This is represented in terms of a signifying chain. Hasan (2001) has studied the ontogenesis of orientation to decontextualised meanings.

minimizes the vague generalities and ad hoc explanations appropriate for strangers, leaves unsaid all that goes without saying (ibid:91).

The logic of practice 'understands only in order to act' and excludes attention to itself (that is, to the past). It is unaware of the principles that govern it and the possibilities they contain, it can only discover them by enacting them, unfolding them in time (ibid:91).

In addition to practical 'logic', and in a slightly different vein, Bourdieu speaks of practical 'sense'. This, he says, is a 'quasi-bodily involvement in the world which presupposes no representation either of the body or of the world, still less of their relationship. A particularly clear example of practical sense is the 'feel for the game'.

This phrase ... gives a fairly accurate idea of the almost miraculous encounter between the habitus and a field, between incorporated history and an objectified history which makes possible the near-perfect anticipation of the future inscribed in all the concrete configurations on the pitch or board (ibid:66).

### **3.1.3 Literacy and abstract thought**

A range of 'great divide'<sup>36</sup> theories have attempted to draw links between literacy and capacity for abstract thought. Luria, working with Vygotsky, compared groups of illiterate farmers in Uzbekistan, with other residents of the same villages who had gone through brief literacy courses or who had participated in short teacher-training programs. He used a variety of experimental tasks dealing with perception, word associations, concepts, classification and reasoning. The most traditional and isolated of his populations, with neither literacy nor schooling, tended to respond to the tasks in a concrete, context-bound way, guided by the perceptual and functional attributes of things. The most schooled group, on the other hand, tended to take an abstract approach and were responsive to the conceptual and logical relationship among things. Minimal literacy groups fell in between (Luria, 1976:10)

His research confirmed Vygotsky's thesis that socio-cultural change forms the basis for the development of higher memory and thinking processes. However, as Wertsch (1985b) argues,

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<sup>36</sup> This term is used by Goody (1977) and Street (1995). Gee (1990) provides a very comprehensive overview of these theories.

the differences in performance could not be attributed to literacy or schooling experience per se because the groups also differed in age and exposure to other novel activities such as collective management and planning of agricultural operations.

Nonetheless the argument that literacy facilitates the development of logical, rational and objective thought has persisted (see Goody and Watt, 1963; and Goody, 1977; Olson et al, 1985; Olson, 1994). Of those who oppose this theory, Scribner and Cole and Street have probably had the greatest influence. They provide social practice theories of literacy in which cognitive skills are 'intimately bound up with the nature of the practices that require them' (Scribner and Cole, 1981:237) and literacy practices are inextricably linked to cultural and power relations (Street, 1984, 1995). Scribner and Cole's research, among the Vai in Liberia, calls into question Vygotsky's assumptions about the relationships between literacy, decontextualization and higher mental functions (Wertsch, 1985a,b). The non-school forms of literacy in the study were not associated with higher-order intellectual skills. However, literacy in English, acquired in a school setting, was associated with some types of decontextualization envisioned by Vygotsky.

#### ***3.1.4 Social practice and standpoint theories of knowledge***

Social practice theories have not been confined to debates about literacy. From the perspective of cognitive anthropology Lave argues that all knowledge is situationally specific and has its everyday dimensions. These are the concerns of practice theories of knowledge. Everyday activities have been associated with the characteristics usually attributed to primitive thought and with the work of women and the lower classes (Lave, 1988:81-82). But the everyday is not confined to mundane activities in domestic settings but 'what people do in daily, weekly, monthly, ordinary cycles of activity' (Lave, 1988:15).

A schoolteacher and pupils in the classroom are engaged in 'everyday activity' in the same sense as a person shopping for groceries in the supermarket after work and a scientist in a laboratory. It is the routine character of activity, rich expectations generated over time about its shape, and settings designed for those activities and organized by them, that form the class of events which constitutes an object of analysis in theories of practice (ibid:15)

Adult educationists Usher and Edwards (1994:33), have also argued for a social practice theory of science which they argue is currently seen as transcendent and decontextualized.

'Standpoint theories' offer another form of opposition to the 'great divide' arguing not only that 'all scientific knowledge is always, in every respect, socially situated' (Harding,1991:59) but also that to obtain a critically objective view of society as a whole, one needs to start one's research with marginal lives. They have influenced the rhetoric, if not the practice, of RPL in South Africa, through the work of Michelson (see Chapter 2). She has argued that RPL can provide opportunities to recognize knowledge that is not 'academic' because it is not available from positions of 'epistemological and social privilege'.

'...by seeing the lives of women, of people of color and of workers as sites from which knowledge is produced, we can correct inaccuracies and broaden the range of knowledge via "knowledge claims that are different from and in some respects preferable to knowledge claims grounded in the lives of men in the dominant groups"' (Harding, 1991:47)' (Michelson, 1996a:194).

## **3.2 Dualist theories in education**

In the dualist tradition, educational sociologist Basil Bernstein has made a prolific contribution to debates about the relationship between formal and informal knowledge, in education in particular. His theories will be given some attention here because they are particularly relevant to my study, exploring the boundaries between different forms of knowledge in different modes of pedagogy and the degree of control over those boundaries by teacher and taught (his concepts of classification and framing); links between social class and context-dependent and independent orientations (elaborated and restricted codes); and the structures of formal and informal knowledge (vertical and horizontal discourse). I will discuss each of these sets of concepts, before considering the way in which Bernstein's theories have been extended, locally, in the work of Muller and Taylor.

### ***3.2.1 Classification and framing***

Bernstein (1971), as quoted at the start of this chapter, regarded educational knowledge as 'in a sense ... uncommonsense knowledge'.

It is knowledge freed from the particular, the local, through the various explicit languages of the sciences or the implicit languages of the arts which make possible either the creation or the discovery of new realities (ibid:215).

The question arises as to the extent to which local, particular ('commonsense') knowledge should be allowed into the curriculum? In Bernstein's terms, one can raise the question of the 'strength of the boundary, the degree of insulation between the everyday knowledge of teacher and taught and educational knowledge' (Bernstein, 1971:206). As tools for this exercise Bernstein offered his now-well-known concepts of classification and framing. Classification refers to the degree of boundary maintenance between contents. Where classification is strong contents are well insulated from each other by strong boundaries. Where classification is weak, there is reduced insulation between contents for the boundaries are weak or blurred. A collection type curriculum has strong insulation between contents and in an integrated type there is less insulation.

Framing is about 'who controls what'. It refers to the nature of the control over the selection of the communication, its sequencing, its pacing, the criteria and the control over the social base which makes this transmission possible (Bernstein, 1996:27). Where framing is strong the transmitter has explicit control, where framing is weak the acquirer has more *apparent* control (Bernstein's emphasis). In his earlier formulation of classification and framing, Bernstein (1971) uses the term frame to refer not only to the pedagogical relationship between teacher and taught but also to the strength of the boundary between what may be transmitted and what may not be transmitted in the pedagogical relationship.

He suggests that the strong frames associated with collection code curricula 'very early in the child's life, socialize him (sic) into knowledge frames which discourage connections with everyday realities', or encourage only 'highly selective screening of the connection' (ibid:215).

Through such socialization the pupil soon learns what of the outside may be brought into the pedagogical frame. Such framing also makes of educational knowledge something not ordinary or mundane but something esoteric which gives a special significance to those who possess it (ibid:215).

Weak frames in relation to 'experiential, community-based non-school knowledge' are often associated with the education of the 'less able'.

I suggest that when this frame is relaxed to include everyday realities, it is often and sometimes validly done, not simply for the transmission of education knowledge, but for purposes of social control of forms of deviancy. The weakening of the frame occurs usually with the less 'able' children whom we have given up educating (ibid:215).

The balance of power between teacher and taught is shifted under integrated codes. While the student gains apparent authority, he/she also loses privacy and indirectly, becomes more available for control by the teacher. Relaxed frames not only change the nature of the authority relationships by increasing the rights of the taught, they can also weaken or blur the boundary between what may or may not be taught, and so more of the private experience of teacher and taught is likely to enter this pedagogical frame (ibid:218).

Collection codes, by creating strong frames between the uncommonsense knowledge of the school and the everyday community-based knowledge of teacher and taught, also create areas of privacy.

For, inasmuch as community-based experience is irrelevant to the pedagogical frame, these aspects of the self informed by such experiences are also irrelevant. These areas of privacy reduce the penetration of the socializing process, for it is possible to distance oneself from it. This still means, however, that the socialization can be deeply wounding, either for those who wish for, but do not achieve, an identity, or for the majority for whom the pursuit of an identity is early made irrelevant (ibid:222).

### ***3.2.2 Elaborated and restricted codes***

Bernstein's theory of elaborated and restricted codes, which attributed context independent orientations to middle class children and context dependent orientations to working class children, has had the misfortune of being interpreted as an extension of some of the earliest 'great divide' theories. Lave (1988) has said that Bernstein's classification of differences between classes is an indication that the contrast between civilized and primitive had merely

shifted to differences between classes. In South Africa, Bernstein's work has fallen into political disfavour in some educational circles on account of such interpretations.<sup>37</sup> Yet Bourdieu and Passeron (1977), who presented a crude distinction between bourgeois and working class language, have escaped such disapproval. Bernstein, himself, accused his critics of misinterpreting his work. My own research shows that Bernstein's distinction between orientations is useful, and might have relevance for the education of adults as well as children, but needs to be presented in a more nuanced and disaggregated form.

Bernstein's concepts of elaborated and restricted codes date back to his earliest work and underwent considerable development and refinement. The distinction, initially, was between public and formal language where the fundamental characteristic of a public language was that it was a 'language of implicit meaning' (Bernstein 1973:70). The terms implicit/explicit represented the extent to which the principles underlying the social structuring of relevant meaning were made public and elaborated through the use of language in the process of socialization.

It appeared to me (as to many others) that as the emphasis changed from implicitness to explicitness... then such a change in emphasis would act selectively on the grammatical and lexical choices (ibid:70).

Writing in 1973, Bernstein said this idea of implicitness and explicitness underwent a series of transformations in which it became a distinction between universalistic and particularistic and between context independent and context dependent. The latter distinction has persisted through subsequent refinements.

### *Research*

Bernstein's code theory rests on a number of empirical studies in which working class children were shown to demonstrate restricted coding orientations while middle class children had access to both elaborated and restricted coding orientations.

One of the most famous studies within this genre, was that designed by Bernstein and Adlam and analysed and published by Holland (1981). White middle class and lower working class

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<sup>37</sup> Personal communication with academics and postgraduate students.

children aged 7 were invited to sort pictures of different kinds of food, at one time provided as part of the primary school lunch. The children gave different reasons for the grouping of pictures that they made. This is how Bernstein (1990:103) summarised their responses:

The lower working class children gave principles that had a direct relation to a specific local context of their lives and which took their significance from local activities and meanings, e.g. "It's what we have for breakfast" or "It's what Mum makes" ... These sorting principles had a direct relation to a specific material base. The middle class children gave principles which had an indirect relation to a specific material base: "They're vegetables", "They've got butter in them", "They come from the sea".

When asked to sort the cards a second time, many middle class children switched their principle and produced principles similar to those produced by the lower working-class, whereas the latter continued to use the principle they had initially selected. Bernstein concluded that the difference between the children was not a difference in cognitive facility/power but a difference in recognition and realization rules used by the children to read the context, select their interactional practice, and create their texts (ibid:104)

Bernstein (1990) discusses research by Adlam et al (1977) in which children were given a reproduction of a work by a Belgian naive painter and asked to talk about it. Probe questions could be understood as a request for narrative or for description of persons, objects, events, relationships depicted on the card. The researchers found that in general the focus of the child's speech was more a function of the child's class background, than of the child's "IQ". The middle class child, irrespective of gender produced a text similar to a description whereas the lower working-class child produced a text which was either oriented towards narrative or oriented to description but 'much more embedded in the context in the sense that it was less likely to be understood without the picture card' (Bernstein, 1990:56).

The children were also asked to explain the rules of a game (hide and seek) to a child who did not know how to play, after first indicating to the researcher their own knowledge of the rules. In general the middle-class children created a relatively context-independent text that was not embedded in a local context/practice. The text created by the lower working-class children was generally relatively context-dependent in that it was not embedded in a local context/practice.

Bernstein said it did not necessarily follow that the middle-class child's text was a more effective instruction. Indeed, there might well be grounds for believing otherwise.

It was from research such as this that Bernstein concluded that the modal orientation of the middle-class children was elaborated, whereas the modal orientation of the lower working-class children was restricted.

### *Definition*

By 1990 Bernstein was defining code as 'the regulative principle, tacitly acquired which selects and integrates relevant meanings, the form of their realization and evoking contexts' (Bernstein, 1990:15).

Codes generate recognition and realization rules.

Recognition rules create the means of distinguishing between and so recognizing the speciality that constitutes a context, and realization rules regulate the creation and production of specialized relationships internal to that context. At the level of the subject, differences in code entail differences in recognition and realization rules (ibid:15).

Elaborated and restricted orientations were associated with the social division of labour, with restricted orientations associated with simple divisions of labour and elaborated orientations with more complex divisions of labour. Different locations generated different interactional practices, which realized different 'relations to the material base' and so different 'coding orientations' (ibid:20). The simpler the social division of labour and the more specific and local the relation between an agent and its 'material base', the more direct the relation between meanings and a specific material base, and the greater the probability of a 'restricted' coding orientation. The more complex the social division of labour, the less specific and local the relation between an agent and its material base, the more indirect the relation between meanings and a specific material base, and the greater the probability of an 'elaborated' coding orientation (ibid:20).

For example, a peasant on a sugar cane plantation would view him – or herself as part of a simple division of labour and his/her interactional practices would 'have as their centre of

gravity interactions within a simple division of labour regulating practices with respect to a local, specific material base' (ibid:20).

The patron would see himself as part of a complex division of labour, which would include the total local division of labour of the plantation, the local market and circulation of capital, and which would also include national and international markets with their entailed capital circulations. The patron's centre of gravity would lie within a complex division of labour regulating practices with respect to a generalized material base.

### *Criticisms*

Bernstein's theories have received a number of criticisms over the years. One has been that they present a deficit theory of working class speech. Bernstein emphasized that this was not a theory of deficit or difference but one that 'draws attention to the relations between macro power relations and micro practices of transmission, acquisition, and evaluation and the positioning and oppositioning to which these practices give rise' (Bernstein, 1990:119).

Bernstein has also been accused of making suggestions about capacities for abstract thought from research that shows only that working class children are less explicit than middle class children. Critics have interpreted the findings of the research above as indicating only that the lower working-class children were aware that both the researcher and the researched were looking at the picture card, and as a consequence there was no need to make verbally explicit a context which was shared.

Bernstein replied that this criticism is ad hoc and selective in that it fails to account for a number of other aspects of the findings and also why the lower working-class children's speech orientation was similar in other situations in which the presumption of a shared perspective between researcher and researched could not be postulated (instructional and control situations).

### **3.2.3 Vertical and horizontal discourse**

Much later Bernstein (1996, 1999) produced a language of description which produces greater differentiation within and between formal and informal knowledges and explores the social basis of this differentiation. These forms of knowledge are realized, he said, in two discourses:

vertical discourse and horizontal discourse, the former corresponding to formal knowledge and the latter to everyday or commonsense knowledge.

Everyday knowledge has a group of well known features: it is likely to be 'oral, context dependent and specific, tacit, multi-layered and contradictory across but not within contexts'. Crucially, it is segmentally organized. 'Horizontal discourse entails a set of strategies which are local, segmentally organized, context specific and dependent for maximizing encounters with persons and habitat' (Bernstein, 1999:159)

Vertical discourse, on the other hand, takes the form of a 'coherent, explicit and systematically principled structure, hierarchically organized, as in the sciences, or it takes the form of a series of specialized languages with specialized modes of interrogation and specialized criteria for the production and circulation of texts, as in the social sciences and humanities' (ibid:159).

Bernstein fine tunes the divide, then, by examining the internal properties of horizontal and vertical discourse and their interdependence with the social context, field/arena in which they are enacted and constituted. Both forms can be analysed in terms of their distributive principles, social relations and forms of acquisition.

In horizontal discourse a distinction can be made between potential practice (the reservoir) and actual practice (repertoire) with the extension of reservoir and repertoire depending on the extent to which social relations allow for the circulation of strategies and their exchange.

Vertical discourse, on the other hand, is constructed, evaluated and distributed to different groups and individuals, structured in time and space by 'principles' of recontextualizing.

Acquisitions of horizontal discourse are likely to be local activities, segmentally structured and often, but not always, tacitly acquired through demonstration and exemplar modelling. Horizontal discourse is segmental and context specific. Acquisition of vertical discourse is not elaborated beyond an indication in a table that it involves 'graded performance' as opposed to 'competence'.

### **3.2.4 Hierarchical and horizontal knowledge structures**

Within vertical discourse, Bernstein distinguishes further between hierarchical knowledge structures which take the form of 'coherent, explicit and systematically principled structure(s), hierarchically organised' and horizontal knowledge structures 'which take the form of a series of specialized languages with specialized modes of interrogation and specialized criteria for the production and circulation of texts' (Bernstein, 1999:159).

Knowledge which can be described as having a hierarchical knowledge structure attempts to create very general propositions and theories, which integrate knowledge at lower levels, and in this way it shows underlying uniformities across an expanding range of apparently different phenomena. Such knowledge structures appear to be motivated towards greater and greater integrating propositions, operating at more and more abstract levels. They could be said to be produced by an 'integrating' code. In contrast, horizontal knowledge structures consist of a series of specialized languages with specialized modes of interrogation and criteria for the construction and circulation of texts. They are based on collection or serial, rather than integrating, codes. See diagrams on page 64.

The relationship between the languages of a horizontal knowledge structure and the empirical phenomena to which they refer is depicted by Bernstein through two further concepts: the General Approach Plane (GAP) and the Specific Problem Plane (SPP).

The GAP is a space where meta languages are produced which attempt to provide a basic orientation, a language of description and the rules of its use, which legitimise how phenomena should be understood and interpreted (Bernstein, 1996:173)

The SPP is produced by empirical study of particular problems or areas. Occasionally work in this area leads to the development of local, context-specific languages. In rare cases, work initially in the SPP produces a language which developmentally appropriates a space in the GAP.

Development in the case of a hierarchical knowledge structure is the development of theory which is more general, more integrating, than previous theory. Development in the case of a horizontal knowledge structure is the introduction of a new language. For Bernstein, physics is

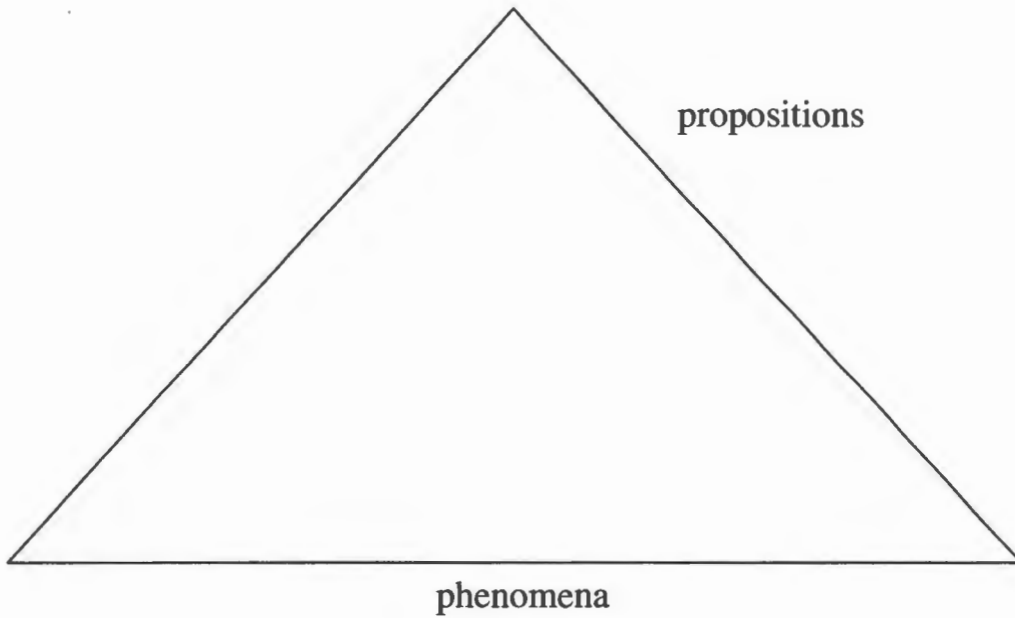
an example of a hierarchical knowledge structure and mathematics, sociology and other areas of the social sciences and humanities are examples of horizontal knowledge structures. Bernstein does not consider the structure of law.

Within horizontal knowledge structures, Bernstein makes a further distinction: between those with strong grammars, whose languages have an explicit conceptual syntax capable of “relatively” precise empirical descriptions and/or of generating formal modelling of empirical relations, from those languages with weak grammar where these powers are much weaker.

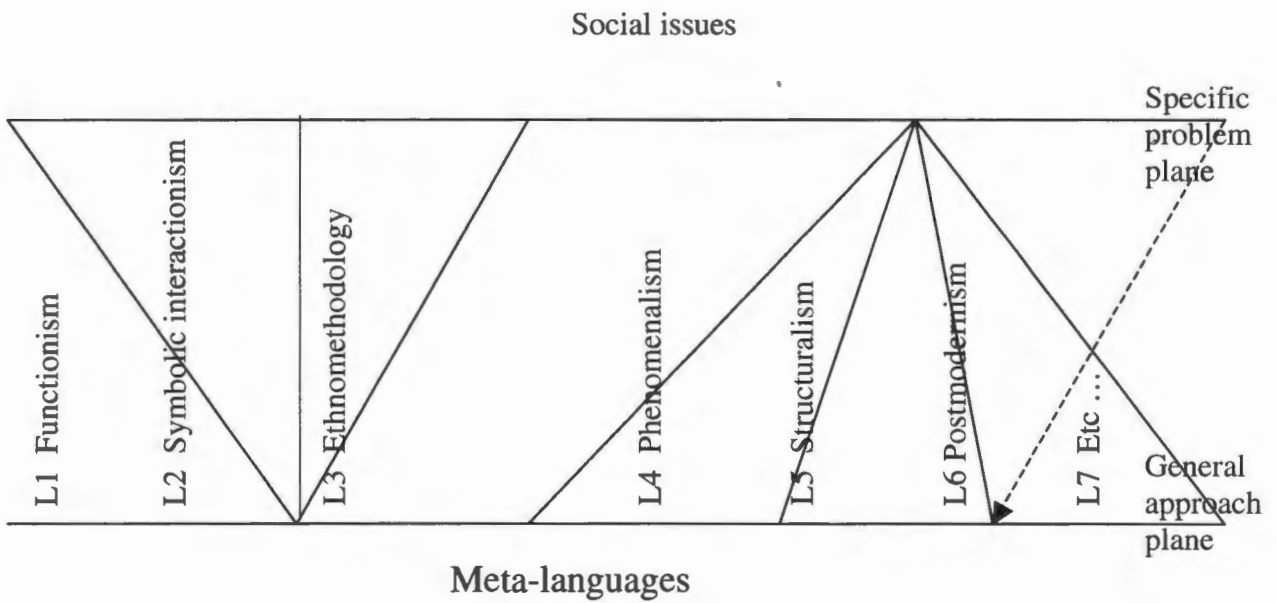
He lists economics, linguistics and parts of psychology as examples of strong grammar, and mathematics and logic as having the strongest grammars while social anthropology, sociology and cultural studies would be examples of weak grammars.

The strong grammars of horizontal knowledge structures often achieve their power by rigorous restrictions on the empirical phenomena they address.

**Figure 4: Vertical and horizontal knowledge structures: An elaboration of Bernstein (1996)**



**A vertical knowledge structure, e.g. physics**



**A horizontal knowledge structure, e.g. sociology**

Note: The oblique lines show that a particular meta-language can refer to a number of social problems while a single issue can be addressed by a number of meta-languages. The broken line indicates the elevation, occasionally of a local language into the realm of meta language, as in grounded theory research.

### 3.2.5 *School(ed) and everyday knowledge*

In South Africa, debates about the relationship between formal and informal knowledge in education have centred mainly around concerns as to what the appropriate relationship should be between school(ed) and everyday knowledge and how one should accommodate children who lack formal education but are proficient in an everyday context.<sup>38</sup> This concern is not peculiar to this country. Young (2002:2) refers to a growing tension between 'the fluidity and openness to innovation of successful advanced economies ... and the persistence of relatively rigid divisions between the different school subjects and disciplines and between curriculum knowledge in general and the everyday knowledge that people need in employment and more generally in their adult lives.' On the other hand, he says, the traditional curriculum which institutionalised this separation is 'an almost universal feature of education systems and has been associated with the massive expansion of knowledge and economic growth of the last two centuries'(ibid:2).

Muller and Taylor (1995) and Muller (2000) situate this concern within a broader debate about the distinction between insulation and hybridity. Insulation stresses the differences between systems of knowledge and the forms and standards of judgement appropriate to each and argues for their separation. It has come to be associated with insularity and with conservatism and reaction. Hybridity stresses the continuity of different kinds of knowledge and argues for 'border crossing'. It has come to be associated with 'opposition to cultural imperialism and to the stultifying effects of tradition' (Muller, 2000:57).

Young (2002:4) says there are practical reasons why a curriculum based on the principle of hybridity has begun to appeal to education policy makers: 'it appears to converge with the new policy goals of social inclusion and accountability'. The hybridity principle also supports the belief that decisions about the curriculum should depend, ultimately, on market pressures and political priorities: 'an example is the growing number of programmes designed with the primary purposes of attracting more students' (ibid:4).

Muller (2000) transports the debate further into the field of mathematics education where there is concern about the manner in which (and extent to which) everyday knowledge should be brought into the curriculum. There is the assumption that mathematics can be made accessible

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<sup>38</sup> There is an extensive body of literature in the field of mathematics education on this issue. See Carraher (1991), for example. Lave et al (1984) address similar issues in relation to adults.

to all children, especially the disadvantaged, by means of everyday examples. Here Muller refers to Dowling's (1993) analysis of school mathematics textbooks in the UK, saying it led Dowling to conclude that the texts provided for lower ability students, that incorporated numerous examples intended to model everyday situations, succeeded only in further excluding their readers from the esoteric discourse. On the other hand, higher ability students were inducted directly into 'esoteric mathematics' (Muller, 2000:67).

Commenting on Dowling's research, Muller said the recontextualization of everyday material into the curriculum for disadvantaged learners involved a 'two fold deformation'. First it 'does violence to its everyday setting'. The examples are neither 'real' mathematics, nor 'real' life, having been recontextualized according to the curricular needs of the mathematics it purports to exemplify. Secondly, it further disadvantages the lower ability student by teaching procedures rather than generalizable principles and by suggesting that mathematics could be seen as a series of specialized solutions to particular problems rather than as a connected set of axioms and theories (ibid:67).

The texts designed for the higher ability students also included examples but generalizable principles were foregrounded. The induction of the higher ability student involved a subjugation to the discipline and resulted in a new subjectivity, alongside the localized individuality of the everyday subject: 'this is the subject who passes mathematics'.

The 'lower ability' student, paradoxically, is left free to be a local individual but a failed mathematics learner. The constructivist approach, a 'wishing-to-say' pedagogy uncomfortably close to the pedagogical strategy of the ruling classes in seventeenth and eighteenth century Britain, produces a result opposite to its explicit intent, visiting the exclusion on disadvantaged students that it was constructed to avoid (ibid: 68).

Muller concluded that there was no 'everyday short cut to competence in the discipline of mathematics' and suggested that the progressive strategy would be to help students to 'know the border' and then provide them with the wherewithal to 'cross the line' (ibid:71).

Summarizing this paper and drawing further on Bernstein, Taylor (1999:112-113) distinguishes between 'performance' and 'competence' approaches to the relationship between schooled and everyday knowledge in school curricula. For the proponents of performance models, he says,

everyday knowledge is a private matter which has no place in the school curriculum, the principal task of which is to teach the principles of formal knowledge through its various manifestations in school subjects and canonical texts.

The competence approach, in all its varieties, recognizes the value of everyday knowledge, 'first and foremost, because it is crucial to defining the identity of individuals and hence to building the self-confidence of citizens who not only value their own heritage, but also respect the differences exhibited by others. In addition, the two-way relationship between everyday and school knowledge provides important pedagogical tools for inducting learners into the art of formal discourse, and for the practical application of formal knowledge to problems in the real world' (ibid:113).

Taylor distinguishes further between 'progressive' and 'radical' competence modes. The former 'recognises the political nature of knowledge and the difficult boundary between school and everyday knowledges' and develops a 'careful set of strategies for negotiating these boundaries which is particularly difficult for students not located within the middle class of the culturally dominant group'. In contrast, the radical approach is to 'wish away the boundary and to demand that all knowledges be equal' (ibid:118). The effect is exactly the opposite of what is intended. By ignoring the boundary between school and everyday knowledges, radical modes 'increase the difficulties that working-class children will have in trying to acquire formal discourse' (ibid:118).

### ***3.2.6 Theories from professional and vocational education***

Within the field of professional and vocational education, theories have developed which complicate the traditional concrete/abstract boundary by giving attention to process and knowledge.<sup>39</sup> Eraut (1994) distinguishes between propositional, personal and process knowledge. He would appear to be replacing the traditional binary with a three-part division, but in his terms personal knowledge can be propositional and what is not propositional, by his definition, would appear to be process-orientated, so the binary remains.

For Eraut propositional knowledge consists of discipline-based theories and concepts derived from bodies of coherent, systematic knowledge; generalizations and practical principles in the

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<sup>39</sup> This is not to say that others have not considered this type of knowledge (Polanyi, 1958, is a celebrated example), only that these theories give renewed emphasis to the inquiry.

applied field of professional action and specific propositions about particular cases, decisions and actions.

Process knowledge includes knowledge about acquiring information, skilled behaviour, deliberative processes such as planning, problem-solving, analysing evaluation and decision-making), giving information and meta-processes (the thinking involved in directing one's own behaviour and controlling one's engagement in the other processes described above.) Here, Ryle's (1949) distinction between 'knowing that' and 'knowing how' is relevant: '... process knowledge can be defined as knowing how to conduct the various processes that contribute to professional action' (Eraut, 1994:107).

Personal knowledge, which also includes impressions and the interpretation of experience, concerns the knowledge acquired 'through experiences the purposes of which have little overt connection with learning, through social interaction and trying to get things done' (ibid:104).

Furthermore:

Such knowledge covers people and situations encountered, communications received and events and activities experienced through participation and observation. While some of this knowledge is sufficiently processed to be classified as propositional knowledge or process knowledge, much will remain at the level of simple impressions. Nevertheless impressions gained from experience contribute to professional action in ways that are only partially understood (ibid:104).

Guile and Young (2002), referring to vocational education, present three distinctions that can be drawn between different forms of knowledge. Firstly, they say, one can distinguish between situated knowledge which is embedded in specific contexts but can be made explicit or codified (such as the rules, structures and geography of an organisation) and tacit knowledge which is associated with activities that cannot be codified (such as knowing 'how' to behave in specific situations). Secondly, one can distinguish between situated knowledge that is embedded in specific contexts and can be acquired by participation in those contexts (such as craft knowledge) and knowledge that is codified in bodies of rules that apply in a range of contexts (school subjects or disciplines). Finally one can draw distinctions between corporate knowledge which refers to the knowledge an organisation codifies for its own needs (the

explicit knowledge people have to acquire if they are to be accepted as members of an organisation); disciplinary knowledge which is the form of codification traditionally associated with research, largely located in universities; and pedagogic knowledge, codified for instructional purposes (particularly school subjects).

Historically, say Guile and Young, most vocational curricula have treated theory (codified knowledge) and practice (situated and tacit knowledge) separately. They say their distinctions, between tacit, situated and codified knowledge, suggest that the relationships between types of knowledge and sites of learning are extremely complex.

### **3.2.7 Summary**

In this chapter so far I have discussed a number of theories about the nature of formal and informal knowledge. Dualist theories originated in the division between mind and body that underpins Western epistemologies and emphasise distinctions between different modes of thought and knowledge. They have been tainted by the work of anthropologists, in the early 20<sup>th</sup> century mainly, who attributed capacities for abstract, rational thought to Western societies alone or argued for a developmental vision of knowledge – from myth or magic, through religion, to science. Others have contrasted oral and literate societies and argued that literacy brings capacities for abstract thought and a range of other cognitive effects associated with Western rationality.

In opposition to these distinctions, there have been theories that ‘domesticate’ the divide between rationality/irrationality by showing how it exists within societies and even individuals, and more recently, many attempts to show the science of non-Western and African societies. Social practice theories have argued that all knowledge is socially constructed, situated and context dependent, that it is schooling, and not literacy, that produces the cognitive effects so desirable in Western society, that no society can be regarded as purely ‘oral’ or ‘literate’ and literacy practices are inextricably linked to cultural and power relations. ‘Standpoint’ theories argue for a new vision of knowledge, from the perspective of the marginalized – women, blacks, indigenous groupings etc – and for new epistemological power relations.

The question arises: if one accepts that the distinctions between primitive and civilized were pejorative and ethnocentric and grossly misrepresented the knowledge systems of people branded as ‘other’, and if one accepts that knowledge is socially constructed and situated and

accompanied by social practices, can there still be a point in drawing distinctions between different forms of knowledge and thought?<sup>40</sup>

The work of Bernstein suggests there is. Drawing links between pedagogic discourse and power and control, he shows that it is important to distinguish between formal and informal and the ways they are kept apart or put together in a curriculum; between orientations to context-dependence and -independence and between the structures of different forms of knowledge. The thrust of this position is that one needs to know the border in order to cross the line (Muller and Taylor, 2000).

Recent theories about vocational knowledge foreground the importance of the process and tacit elements of professional and worker knowledge. In Bernstein's theory, tacit knowledge is associated only with horizontal discourse or, within horizontal knowledge structures, craft knowledge.

With these complexities in mind, I have tried to explore the interplay between knowledge that is abstract, general etc and knowledge that is concrete, particular etc in a formal education context, with particular attention to the role of prior informal experience. It should be noted that in line with the terminology in adult education policy and practice in South Africa, I have referred to the first of these distinctions as 'formal' knowledge and the second as 'informal'. As the thesis progresses, these terms will be replaced by more nuanced concepts.

In exploring the roles of the abstract/general/distant and the concrete/particular/local in pedagogy and curriculum I enter an area of considerable tension in the field of education, and more broadly. Enquiries such as these 'throw long shadows', as Hasan (1995:193) put it, when she raised the following questions:

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<sup>40</sup> An emerging social realist position (see Muller 1999,2000; Moore and Young, 2001) presents a middle view. They do not deny the social construction of knowledge, nor its associations with positions of power and dominance. But they insist that distinctions between different forms of knowledge should still be drawn. The sentiment is reflected in the following comment of Muller in relation to research:

'Inferences may be formally the same but, especially as guides to action, as research for policy certainly is, they are not all equally commendable. They differ in terms of their "superempirical virtues" – consistency, explanatory power, fecundity, comprehensiveness and simplicity. They differ, in other words, in terms of their *coherence* or epistemic gain (Muller, 2000:152)

‘Are there no logical reasons for better valuing such higher mental functions as those of abstraction, generalization, deductive reasoning, disembodied thinking and so on? Are these functions valued highly only because they are associated with the dominating codes? Or are they valued because they are the ultimate point in the programs of the development of the human mind necessary for subjugating the environment?’

Hasan says these questions have not been addressed because ‘the answers are immensely disquieting’ and they ‘certainly mock the facile pseudo-revolutionary postures of many academics today’.

By working within the parameters of an existing curriculum, and exploring what is rather than emphasising what might or should be, I enter another area of disquiet, particularly in the RPL field in South Africa today. I can best describe it by quoting Singh (1998:1) who has identified a similar tension in school education in Australia between ‘reforming curricula and pedagogy by listening to the voices of oppressed students on the one hand, and on the other hand giving members of disadvantaged groups access to school curricula, that is, knowledge which has been deemed to provide socially powerful skills and identities’.

The aim of my work, ultimately, is to address the second half of that tension, in other words, to do research that will be of benefit to adults who are trying to gain access to what is currently hegemonic knowledge, while also making suggestions that might be useful in the design of future curricula and pedagogy.

Another distinguishing feature of my research is that it places emphasis on the need to understand the structure of a discipline – and the role of abstract/concrete, general/particular etc within that structure – in order to gain and facilitate access to its esoteric domain (Dowling, 1998). It is this aspect of the research that I address in the final part of this chapter.

### 3.3 Formal and informal knowledge in Law and Labour Law

Bernstein (1996:170) has argued the importance in pedagogical research of examining symbolic systems (disciplines) as well as the fields within which they are positioned.<sup>41</sup> In this he takes issue with Bourdieu who said symbolic power did not reside in symbolic systems but

...it is defined by a determinate relationship between those who exercise this power and those who undergo it, that is to say, in the very structure of the field in which belief is produced and reproduced. What makes the power of words to command and to order the world is belief in the legitimacy of the words, and of him who utters them, a belief which words themselves cannot produce. (Bourdieu, 1977:177, quoted in Bernstein 1996:170).

In contrast, Bernstein asserts:

Has the internal structure no structuring significance? The form of the specialization of this symbolic system and the structure of the field may, under certain conditions, interact and so contribute in a fundamental way to the games, practices and strategies (ibid:170).

The concern of this thesis could be said to be the 'games, practices and strategies' in two courses in labour law, and the role, within them, of prior informal knowledge. Following Bernstein, I shall attempt to depict in this section the internal structuring of law and labour law as fields of education, while also providing a sense of the relationship between this structuring and that of law and labour law as fields of practice. I will show that the relationship between formal and informal knowledge, in particular, between knowledge that is general and abstract and that which is particular and concrete, is a crucial consideration in that inner logic.

#### 3.3.1 *The logic of law*

In law, as a body of rules governing social conduct, there is ongoing interaction between the 'everyday' and the 'esoteric'. The law consists of rules, principles and concepts (Cotterell, 1985), all of them forms of abstraction, but law is also the 'warp and woof of social life', as

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<sup>41</sup> This is also a concern of Maton (2000) and Moore and Maton (2001).

Hahlo and Kahn (1968:3) have put it. Virtually every aspect of daily human life is governed, if invisibly, by the legal rules and obligations which are regarded as 'law'. At the same time, to a greater or lesser extent, prevailing laws do not only influence human actions, they are also influenced by them, changing from time to time to reflect changing social and economic conditions and social values and power relations.

The laws (of the lawyer) state what rational human beings ought to do or not to do<sup>42</sup> and it is generally accepted that laws should not only be general (in the sense of widely applicable) but also reasonable and equitable.<sup>43</sup>

Law should consist of general rules which apply equally to all persons of the same class or condition... In order to meet exceptional circumstances, exceptions and qualifications have to be attached to the general rules. But these exceptions and qualifications, too, should have regard not to individuals, but to all those falling within their terms (Hahlo and Kahn,1968:32).

Because they are required to be general, reasonable and equitable, laws provide a certain degree of certainty. In this way the result of a law suit can generally be predicted and a science of law is possible. However, laws are not always felt to be equitable by those to whom they are applied. Certainty produces rigidity, averages do not match easily against specific situations and there are individual cases where a rule works harshly or even unjustly. Nonetheless it is generally considered to be 'more important that the law is certain than that it should be bent whenever the exceptional case arises'(ibid:35). The general must not be sacrificed to the particular.

This point was made in a literary context by Dostoevsky (1963:306) in his novel 'Crime and Punishment'

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<sup>42</sup> In this way they are similar to the laws (rules) of games, etiquette, honour, ethics etc. They differ from these 'practical' rules, however, in that they are recognised as binding by the state and can be enforced. They must also be distinguished from scientific laws which are 'empirical generalizations stating principles of uniformity in the physical universe or human society'. Scientific laws can be used but not broken. The principles of order and regularity which scientific laws describe are beyond human volition. Notions of truth and falsity apply to scientific laws but not to 'legal' laws.

<sup>43</sup> This does not mean that laws have not been developed, as in the South African apartheid era, for example, that meet none of these criteria.

...the general case, the case for which all legal forms and rules are intended, for which they are calculated and laid down in books, does not exist at all, for the reason that every case, every crime, for instance, as soon as it actually occurs, at once becomes a thoroughly special case and sometimes a case unlike any that's gone before.

From the perspective of sociology, Bourdieu (1990b) made a similar argument, quoting Weber's assertion that formal law takes into account only the general, unequivocal characteristics of a case. This form of abstraction was ignored by the 'practical prudence' of the 'sense of equity', Bourdieu said. This sense proceeded 'directly from one individual case to another, from a particular transgression to a particular punishment, without passing via the mediation of the concept or of the general law' (ibid:84).

A formal law ensures calculability and predictability (at the cost of abstractions) which mean that the judgement which is most formally in conformity with the formal rules of law may be in formal contradiction with the evaluations of the sense of equity: *summum ius summa injuria* (ibid:84).

The practice of 'law' is essentially about the application of rules, principles and concepts to real-life experience or, in legal terms, particular 'cases'. The process of law is essentially deductive, while the development of laws may be inductive. Hahlo and Kahn (1968:32) said:

The typical legal process consists in the application of general rules of law to the facts of a particular case. It is a mode of deductive, not inductive, reasoning, in which the rule is the major premiss (sic) and the facts, as found by the court, are the minor premiss. The application of the rule to the facts (called subsumption by the logician) produces the conclusion – the judgement.

While the application of legal rules is mainly a deductive process, the same does not hold true of the development of legal rules themselves. Many factors other than logic enter the growth of law and law, if it is to remain a living force, must adapt itself to changing economic and social circumstances and to changing views of justice.

The life of law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics (Holmes, 1881, no further reference given, quoted in Hahlo and Kahn, 1968).

In Labour Law, the inductive principle relating to the development of laws is particularly pertinent. Many aspects of the new labour legislation are the result of pressures by workers and trade unions for change, as Du Toit, Woolfrey, Murphy, Godfrey, Bosch and Christie (1998:17) have pointed out:

The urgency with which the government tackled the task of re-writing the country's labour laws can to a large extent be explained by the role that organised labour had played in the struggle against apartheid and in the ANC's electoral success. COSATU, in particular, looked to its alliance partner for satisfaction of its long-standing demands – for example, on the issue of centralised bargaining – with respect to the labour relations dispensation.

My research shows that in labour law education trade unionists, familiar with the power of worker intervention, may be reluctant to conform to the pedagogical hierarchy.

### **3.3.2 *Law as a field of education***

Law as a discipline or perhaps more precisely, a field of education, is integrally bound to the practice of law and to a greater or lesser extent depending on its focus, reflects that structure. This means, among other things, that it has a number of divisions<sup>44</sup> each reflecting an area of

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<sup>44</sup> Law has numerous branches, of which labour law, is a recent addition. Although there are various classifications, it is common to make a major distinction between public law and private law. Thereafter public law can be seen to include constitutional and administrative law, which deal with the composition, authority and functions of governmental bodies, criminal law and international law. Under private law, one can distinguish between the law of persons (which defines the legal subject and his/her legal subjectivity), family law and the law of patrimony (including the laws of property, succession, obligations and intellectual property), law of personality and indigenous law. These divisions of public and private law can be regarded as substantive law, which is that part of the law which determines the content and meaning of the different

application and that each shares common deductive and inductive principles. The common deductive principle is that the process of law consists of the application of legal rules, principles and concepts to particular instances. The common inductive principle is that new rules are developed in response to changing socio-economic conditions and changing societal values. The distinguishing factor of each division of law, in the academic and the practical context, lies with the nature and scope of the empirical phenomena to which the rules, principles and concepts apply or must be applied. Specialisation within each division is associated with the range and depth of knowledge about the law and its application (case law) and, in the academic context, with depth of theoretical and contextual knowledge.

It is this theoretical (including contextual) knowledge which distinguishes knowledge of the law acquired in the academic context (law as a discipline) and knowledge acquired in the field of practice. As Du Plessis (1999:3) has put it, that theoretical knowledge is 'knowledge in general' and 'makes possible a rational grasp of greater wholes, but not of each one of the many concrete cases (in particulars)'. A sound theoretical knowledge of the law, he says, 'will not ensure that an advocate wins court cases or that an attorney will always give clients the best advice. The ability to "think oneself into" a concrete situation, as well as having a feeling for its particular demands, is also necessary ...' That is the domain of the knowledge acquired 'on the job'. Theoretical knowledge, says Du Plessis, involves theoretical abstraction or 'reflective systematic abstraction'. It is systematic in that it involves identifying and distinguishing, classifying and categorising. It is reflective because it involves thinking about thinking, wondering and asking why.

### **3.3.3 Law, in Bernstein's terms**

In considering the structure of law and labour law as fields of study, I will again refer to Bernstein's work because I believe that the pioneering way in which he has attempted to classify disciplines provides a useful starting point for such a discussion. It should be

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legal rules and principles, while the laws of criminal and civil procedure, evidence and the interpretation of statutes could be regarded as divisions of adjective law, which is that part of the law which regulates the enforcement of substantive law. (Du Plessis, 1999:257-263; Hahlo and Kahn, 108-138). Some legal theorists have decried the traditional division between public and private law, saying it obscures the interrelationship between the various branches. How labour law should be positioned in relation to the public/private division is debatable. A distinction is made between individual and collective labour law that could relate to the broader division, but some have warned that 'rigid adherence to the distinction will perpetuate the dichotomy between private and public law in the employment context, thereby reinforcing the common law's individualism and its preference for the privatisation of disputes. The approach of the common law has always been an individualistic one' (Rycroft and Jordaan, 1992:8).

emphasised, however, that at no stage does he consider the structure of law or even mention the field. A consideration of the structure of law, in the light of the formal/informal knowledge theme which is the concern of my thesis, brings into conversation several aspects of Bernstein's later work which he had not discussed in relation to each other although they obviously had mutual relevance: his distinction between disciplines and professional fields of study (singulars and regions), his distinction between vertical and horizontal knowledge structures and his distinction between horizontal and vertical discourses. I have already discussed the concepts of horizontal and vertical discourses. In this chapter I will outline the former two distinctions briefly before considering the three in relation to each other.

Bernstein (1996:65-68) distinguishes between three performance modes of pedagogy: singulars, regions and generic modes. Singulars are specialized discrete discourses with their own intellectual fields of texts, practices, rules of entry etc. Bernstein mentions physics, chemistry, history, economics and psychology as examples. Regions are constructed by 'recontextualizing singulars into larger units which operate both in the intellectual field of disciplines and in the field of external practice'. They are 'at the interface between disciplines (singulars) and the technologies they make possible'. Examples are engineering, medicine and architecture and, more recently, cognitive science, management, business studies, communications and media. Generic modes are 'constructed and distributed outside and independently of pedagogic recontextualizing fields' and found, predominantly, in further education. They are produced by a 'functional analysis of what is taken to be the underlying features necessary to the performance of a skill, task, practice or even area of work. These underlying apparently necessary features are referred to as "competences" (ibid:67).

In Bernstein's terms, law as a field of study, might be regarded as a 'region' like engineering, medicine and architecture, by virtue of its relationship with an external field of practice. It consists of numerous, fairly discrete elements, the various traditional divisions of law which are reflected, with some minor variations, in the curricula of university law degrees.<sup>45</sup> These

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<sup>45</sup> Here the primary legal degree is the LLB (Bachelor of Laws). At the two universities with which this thesis is concerned, in the year in which the empirical research was undertaken (1999), the LLB curricula covered most of these elements, along with courses on jurisprudence (University A) or 'Foundations of South African Law' (Universities A and B) and a course entitled 'Introduction to Law' (University A). Labour law was not part of the curriculum at University B, although it had been a half course the year before and was a half course at University A. The courses which are studied in this thesis fell outside of the 'mainstream' legal programmes (LLB, LLM and LLD) at the universities concerned.

divisions are areas of specialization and could be said to share some of the features which Bernstein attributes to singulars: they have their own texts, their own specialist examinations and, in some cases, their own practices.<sup>46</sup> But all within the umbrella of law, as a field of practice or study. Family, labour and company lawyers write the same basic examinations to be admitted as attorneys or advocates. Bernstein does not consider the concepts of horizontal and vertical knowledge structures of a region perhaps because they are considered to be a collection of singulars, each with their own vertical or horizontal knowledge structure. The issue remains: what is the knowledge structure of the singular that is recontextualized, before recontextualization, and after?

What is the nature of labour law? In some senses it is a microcosm of law as a whole, although it is a field of application. It is governed by the same principles of induction and deduction. The difference lies with the context. Perhaps one could describe law as a horizontal knowledge structure because of the various elements (law of property, law of delict, family law, labour law etc) but these are better defined in terms of the nature and scope of their field of application than as 'languages'. However, law as a whole can be said to have a particular language (the legal jargon which confuses the layperson). This is associated with its strong grammar: there are not only restrictions on the empirical phenomena which each division addresses but also rules for the production of legal texts. However, these rules apply, with some relatively minor variations, to all divisions. (They include the appropriation of terms from legislation, use of traditional procedural terms, Latin phrases and reference to cases, often without much explication, in what often appears to be a form of code.)

Jurisprudence, the philosophy of law (sometimes called the science of law), is not a division of law in the sense that labour law is or the law of matrimony, for example. It is regarded, rather, as an overarching or, some might say, underlying subject. But it is a component of the curricula of modern university courses in law and is interesting for the purposes of this analysis because it could be seen to a sub-category that in its own right is a form of horizontal knowledge structure more closely approximating Bernstein's definition. Its elements are

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Course A was a certificate level course which meant it did not count as a credit towards any degree or diploma. It was offered by a unit within the faculty which had been set up to provide education and training support for unions and non-governmental organisations. Course B was a postgraduate diploma offered by a unit founded initially to conduct research into labour and development issues.

separate schools of thought. These schools would include those of natural law theorists, legal positivists, legal realists, those concerned with issues of justice and those which provide a feminist or Africanist or 'critical' perspective (see Johnson, Pete and du Plessis, 2001). In Bernstein's terms, these would make up the General Approach Plane. On the Specific Problem Plane would be theoretical questions such as: 'What is law?', 'What is justice?', 'What is the relationship between law and morality?' etc.

Bernstein also provides for the development of a discourse, through the development of theory, in the case of a vertical knowledge structure, and through the introduction of a new language in the case of a horizontal knowledge structure. The development of law as a discipline is once again along slightly different lines. As I have said earlier, the discipline of law is concerned with general, theoretical and contextual knowledge about the field of practice. Therefore its development is closely aligned with developments in the field of application. In this field law is developed through precedent,<sup>47</sup> statutes,<sup>48</sup> legal commentaries, case law<sup>49</sup> and developments in common law<sup>50</sup>. Labour law is also developed through the norms emerging from the collective bargaining process, employment customs and practices, the rulings of private arbitrators when published, foreign labour law and international labour standards.

To a lesser extent, the development of law has also been influenced by the academic environment. Certain schools of theoretical lawyers have been influential and some theoretical questions have practical ramifications. A professor in law who I interviewed as part of my case studies gave as an example the principle of affirmative action, which could be interpreted as an exception to the law of equal treatment or as a manifestation of the law of equal treatment. Those who argued it was an exception believed it had to be interpreted in a very restrictive way, in order to make it as limited as possible. But if it was seen as a manifestation of the law of equality then it had to be interpreted extensively. This obviously had implications for the

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<sup>46</sup> The practices of labour law or family law, for example, might be somewhat different to those of company law, primarily because of the nature of the courts in which their cases are heard and the procedures and culture associated with these courts.

<sup>47</sup> A decision of a court in applying the law to a set of facts creates a precedent – an authoritative statement of the law that binds all other courts, subject to the court hierarchy. (Course B notes, p 4).

<sup>48</sup> The enactments of law-making bodies, particularly Parliament.

<sup>49</sup> The law as reported in case reports. It is an expression of developing common law as well as authoritative statements on the prevailing statutes. (Course B notes, p 7).

<sup>50</sup> The basic, historical underlying law in South Africa is Roman-Dutch common law – a body of rules developed and handed down over the ages by (mainly) judicial bodies. Parts of the English common law have also been infused into our common law. (Course B notes, p4).

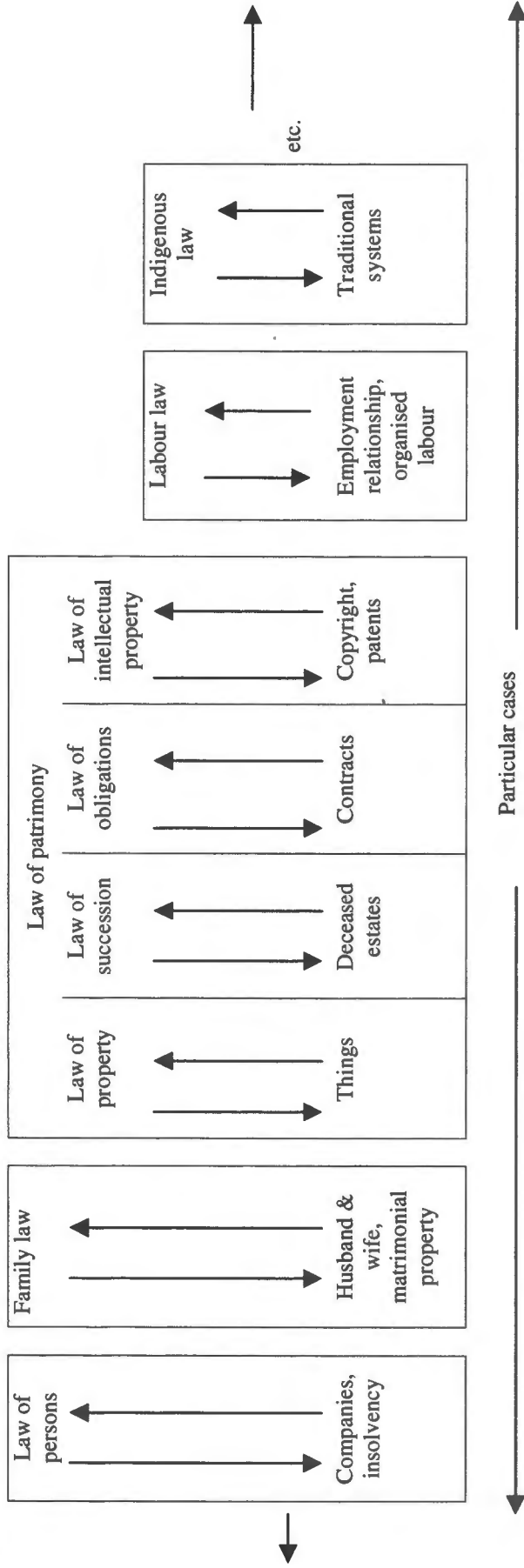
development of this area of law in practice. At the same time law could never really become an abstract discipline, the professor said. This was because law was 'very integrally about the organisation of society in all its facets' and 'particularly responsive to what you might call reality'. Labour law in particular was intertwined with the organisation of production.

Like medicine and engineering, what one says and does in the practice of law has very immediate and tangible consequences. A particular course of action could cause a client to lose a million rand or a factory to close down or have a thousand workers claiming compensation of a few thousand rand each for unfair dismissal. That's serious stuff.

Law also develops through the addition of new fields of application. In these terms Labour Law could be seen as a relatively recent development bringing new concerns (issues relating to the organisation of labour or to employment equity, for example) and developing old (such as employment relationships). Electronic law, relating to new technologies of communication, would be another example of a very recent addition to the legal stable. Jurisprudence develops with the addition of new 'schools of thought' and with the raising of new theoretical questions which might be related to new social conditions.

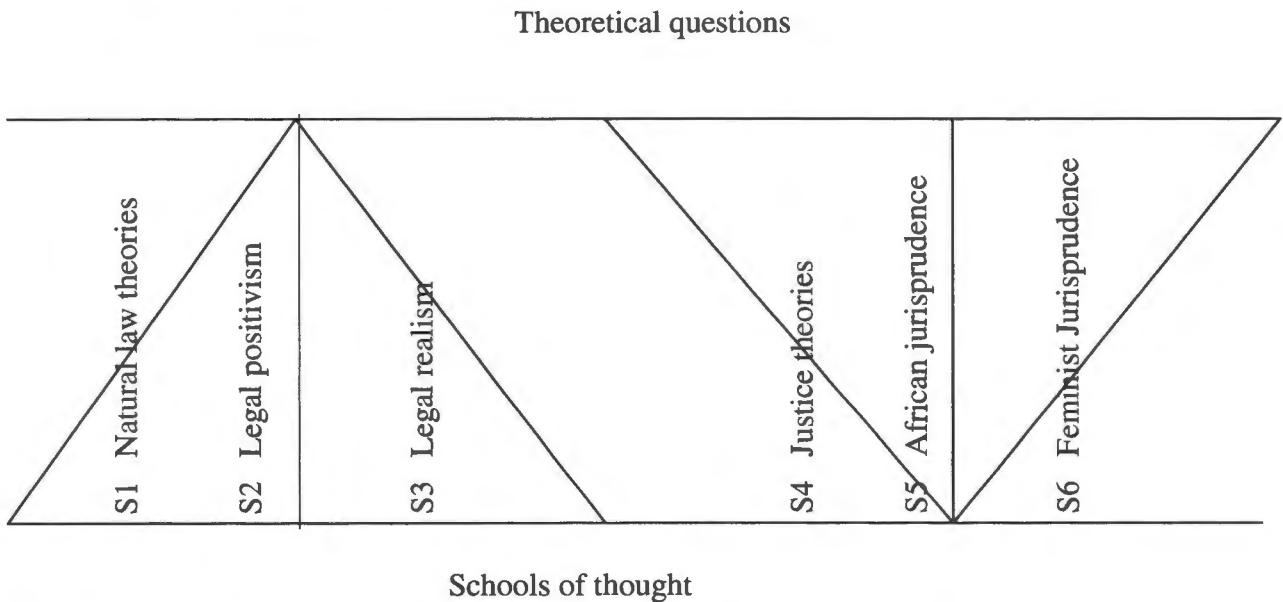
The following diagrams attempt to depict the structure of law in relation to Bernstein's concepts of hierarchical and horizontal knowledge structures. The first shows law as a field of practice and of education. The second draws on a jurisprudence textbook at one of the case study universities (Johnson et al, 2001) to show a possible structuring of jurisprudence as a field of study.

**Figure 5: Law in practice and as a discipline**



Note: (1) The taller columns indicate long-established divisions of law. Labour law is a relatively recent addition. (2) The deductive process whereby laws are applied to 'real life' cases is indicated by the downward arrows. The inductive process whereby laws are developed in response to changing socio-economic conditions and changing societal values is reflected by the upward arrows. Law as a discipline is concerned primarily with the deductive process, although the inductive process is important 'background'. Likewise, labour law as a discipline is concerned primarily with the process whereby laws relating to the employment relationship and to the organization of labour are applied to particular cases. The socio-economic conditions under which such laws are developed and applied in particular ways provide important contextual background. These definitions, of course, are very broad and within particular educational programmes the disciplines may be realized in different ways. For example the certificate level Course A concentrated on the rules and procedures without often considering the ways in which they have been applied. In Course B, at a higher level, the focus was not on the substance of the rules but on their application in actual cases as well as contextual factors.

**Figure 6: Jurisprudence**



Note: Jurisprudence is concerned with theoretical questions about law as well as social issues. It could be seen as a horizontal knowledge structure, with elements comprised of different schools of thought or discourses. The oblique lines indicate that a single school of thought/discourse can be concerned with many different questions, while a single question can be addressed in various discourses.

### 3.3.4 Summary

In this second half of Chapter 3, I have argued that the relationship between formal and informal knowledge and the principle whereby the latter is recruited by the former is at the heart of the practice and discipline of law.

I have argued that law consists primarily of rules, principles and concepts. Legal rules are required to be general and it is the business of law to apply these to particular situations. The process of law, then, is primarily deductive. However, it also has an inductive principle: legal rules themselves are developed in response to a number of factors 'on the ground' including changing socio-economic conditions and social values. Law has numerous divisions distinguished by the nature and scope of the empirical phenomena to which their rules, principles and concepts apply or must be applied. Specialisation within each division is associated with the range and depth of knowledge about the law and its application (case law) in a particular field of application.

In the academic context, law as a discipline is integrally bound up with the practice of law and to a greater or lesser extent depending on its focus, reflects its structure. The difference lies

with the nature of the knowledge imparted in the academic context. Law as a discipline is concerned not only with knowledge about specific laws but also with contextual and theoretical knowledge, in other words knowledge in general. This knowledge has limitations in legal practice where one is required to deal with specific cases. At the same time there are limits to the usefulness of practical knowledge in theoretical (academic) practice -- this is a major concern of this thesis.

### **3.4 Conclusion**

The concern of all the theories outlined in this chapter is with the relationship between different modes of thought and knowledge: primarily, that which is regarded as abstract, general, context-independent, codifiable and that which is regarded as concrete, particular, context-dependent and, sometimes, tacit.

The recognition of prior informal experience and learning, which is the focus of this thesis, operates at the juncture of formal and informal knowledge and for this reason has the potential to raise complex epistemological issues. A major concern is how to relate formal to informal knowledge or, in RPL discourse, 'experience' and 'learning from experience' to 'learning'. To what extent are these forms of knowledge equivalent, exchangeable or, even compatible, in the educational environment? The previous chapter discussed various approaches to this issue. The rest of the thesis is devoted to an empirical study of the interplay between formal and informal knowledge in the context of two university courses in labour law. In that branch of education, as shown in the final section of this chapter, the relationship between the general and the particular, between the deductive and the inductive, is a crucial feature of the inner logic of the discipline.

## CHAPTER FOUR: A FRAMEWORK FOR THE ANALYSIS OF THE RECRUITMENT AND RECOGNITION OF PRIOR EXPERIENCE IN A PEDAGOGIC CONTEXT

'... we all have models – some are more explicit than others; we all use principles of descriptions – again some are more explicit than others ... My preference is to be as explicit as possible. Then at least my voice may be deconstructed' (Bernstein, 1996:129)

In this chapter I present an analytic framework whereby the relationship between formal and informal knowledge can be viewed in pedagogy. The framework builds on the work of Bernstein, Bourdieu and Dowling primarily and is the result of a dialectical conversation between their theories and the empirical data from case studies of two university courses in Labour Law (presented in Chapters 6 to 8). In this sense it is a 'language of description' (Bernstein 1996:135) defining the principles whereby 'information' gathered in the research process is translated into 'data' and interpreted. A language of description specifies what is to count as data (in Bernstein's terms, provides 'recognition rules') and how that data should be interpreted ('realization rules'). It aims to provide the kind of explicitness which Bernstein refers to in the quotation above. Bernstein distinguishes further between external languages of description whereby the internal languages are activated as a reading device or vice versa.<sup>51</sup> In this thesis, the theories outlined in the previous two chapters and extended in 4.1 of this chapter could be seen to constitute an internal language of description, while the framework outlined at the end of this chapter is an external language of description.

A major feature of that framework is a systemic network, showing the relationships between pedagogic strategies associated with the particular, the local and the concrete and those associated with the general, the distant, the abstract. This network arises out of a close analysis of the empirical data and the method of analysis is described in depth in the following chapter.

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<sup>51</sup> The relationship between these languages and the empirical phenomena to which they refer is depicted by Bernstein (1996:173) through two further concepts: the General Approach Plane (GAP) and the Specific Problem Plane (SPP). See Chapter 3.

Although this analytic framework is the result of extensive dialogue between the findings of the empirical research and the general theory, it might seem in subsequent chapters to merely 'overlay' the empirical findings. This is a mirage, common to all languages of description. It is hoped that this chapter, and the previous two, along with close study of the 'raw' information contained in the appendices, will illuminate the complexities that underlie the 'reading' of the 'data'.

## **4.1 Theoretical antecedents**

A key distinction in my analytic framework is that between 'localizing' and 'generalizing' strategies. Here I draw on the long tradition of distinctions between formal and informal knowledge and thought which I outlined in the previous chapter, and also on theories of 'strategy' developed by Bourdieu and Dowling which I present in this chapter. Bernstein's theory of horizontal and vertical discourse was an important impetus to draw such distinctions, but of less use empirically as I explain below. The bulk of the chapter is concerned with identifying and defining strategies, providing examples and showing their relationship through network analysis.

### ***4.1.1 Bernstein's horizontal and vertical discourses***

Bernstein developed the concepts of horizontal and vertical discourse in the last years of his life and the theory is not well-developed, in particular the concept of 'horizontal discourse'. In Bernstein (1999) he spoke of horizontal discourse in numerous ways: as everyday or commonsense knowledge, as entailing a set of strategies for maximising encounters with persons and habitus and as leading to segmental competences, knowledges and literacies (ibid:159). Segments of horizontal discourse could become resources to facilitate access to vertical discourse, which, when recontextualized, reduce vertical discourse to a set of strategies to improve effectiveness of the 'repertoires made available in horizontal discourse' (ibid:169). In Bernstein (1996:181) he said horizontal discourse was a 'crucial resource for pedagogic populism in the name of empowering knowledge or unsilencing voices or to create participatory acquisition to combat the elitism and alleged authoritarianism of vertical discourses'.

These concepts include, but also refine Bernstein's earlier concept of everyday knowledge which he juxtaposed against educational or 'uncommonsense knowledge'. In Bernstein (1971:215), he said:

[Educational knowledge] is knowledge freed from the particular, the local, through the various explicit languages of the sciences or implicit languages of the arts which make possible either the creation or the discovery of new realities.

Everyday knowledge was defined then as 'commonsense knowledge, everyday community knowledge, of the pupil, his family and his peer group' (ibid:215).

It is unclear where Bernstein might have situated two other areas of interest in education debates about formal/informal knowledge: indigenous knowledges, and the everyday dimensions of scientific activities (laboratory practices, for example). Under academic scrutiny, the former might well be vertical knowledge structures while the latter would probably be horizontally and segmentally structured.

I found Bernstein's definitions of horizontal and vertical knowledge structures could not be mapped directly onto the structure of law. It was clear that he had not given the 'regions' of professional education the same attention he had accorded 'singular' disciplines. Although he spoke of singulars being recontextualized in regions, he did not explore the way in which their structures would change in the process. Furthermore, the concepts of horizontal and vertical discourse did not provide the indicators that would enable one to identify these discourses empirically.

The following transcript extract is presented to illustrate my dilemma. It is from the transcript of a lecture on arbitration by LB1 in Course B. He has been talking about grounds for dismissal and the question has arisen: how does one deal with a situation where an employer wants to dismiss on grounds of incompatibility, which is not specified in the Act? Student B14, a lawyer, presents the issue in legal terms, which could be regarded as an indicator of vertical discourse, but the lecturer responds by referring to de facto practice: the way 'courts get round these things'. His answer contains segments of horizontal discourse but the point he is making is ultimately, vertical, if one considers the logic of law, which is essentially about the

application of laws in real-life cases. What happened and happens in practice are vital dimensions of legal knowledge.<sup>52</sup>

- SB14: [name of lecturer] just because you can't put something in a category, that doesn't exclude you from dismissing someone for incompatibility? Because you can't, because it doesn't fit a category, does it mean it doesn't exist as a ground?
- LB1: Do you mean incompatibility? Because it is not listed in the Act ?
- SB14: Ja, does it mean you can't dismiss him?
- LB1: My understanding is that you can only dismiss on three grounds: it's misconduct, incapacity, operational (requirements)
- SB14: [Inaudible]
- LB1: That's what I am saying. We all understand an employer must at the end of the day be able to dismiss where the workplace has been undermined because of people who can't co-exist and you have gone to the lengths of trying to make it work and it hasn't. And that's what I am saying. What the courts will do is they will fit it back in to one of those categories or they will just fudge it and call it incompatibility and not raise the issue. The courts are very good at doing at that. They just don't raise the issue, they say incompatibility, they don't point out, oh hell you know, we have had a look at the act, there's no(thing) here, they just say incompatibility. And everybody is too sensible to challenge it because they know at the end of the day it's a wise decision even if it is not technically in line with what the act says. So that is how courts get around these things.

The transcript above shows the complex relationship between horizontal and vertical in pedagogic discourse. Verticality is not the preserve of the lecturer (note the student's phrasing) and horizontality (everyday practice) is shown to have a place in the vertical discourse of law. Later in this thesis I will show further complexities including generalizations in statements that have a particularizing trajectory and opinions expressed in informal language but with academic origins. In 4.9 I will demonstrate how I categorised segments of this transcript in terms of the analytic framework which I developed.

My exploration of transcripts such as these led me to the work of Bourdieu and subsequently, Dowling.

#### ***4.1.2 Bourdieu's concept of strategy***

I needed a concept that could be used in the analysis of pedagogic texts to describe utterances or sets of utterances that constitute a textual 'move' (Coulthard, 1985). The recruitment or recognition of prior informal experience would be one such move. Bourdieu's concept of strategy captured the mixture of spontaneity and preconception which I wanted to convey.

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<sup>52</sup> See Appendix A and B for a list of lecturers and students and Appendix C for a list of transcription conventions.

The term 'strategy' is usually understood to signify an act or plan or other form of tactic (most often in the service of war, business or politics). Bourdieu's concept of strategy<sup>53</sup> differs substantially from this signification in that it incorporates responses that are unconscious and/or relatively spontaneous and without manipulative intentions. He developed the concept in opposition to the rules (generalisations) presented in structural analyses, particularly those of Levi-Strauss. He replaced the notion of rules which govern or produce conduct with a model of social practice in which what people do is bound up with the generation and pursuit of strategies within an organising framework of cultural dispositions (*habitus*). So, in Bourdieu's terms, actors are not rule followers or norm obeyers but strategic improvisers who respond dispositionally to the opportunities and constraints offered by various situations (Swartz, 1977:99-100).

*Habitus* is a structuring mechanism that operates from within agents, though it is neither strictly individual nor in itself fully determinative of conduct (Wacquant, 1992:18). Bourdieu offers many, often varying definitions of the concept. The one that is most useful for my analysis defines *habitus* as

... the strategy-generating principle enabling agents to cope with unforeseen and ever-changing situations ... a system of lasting and transposable dispositions which, integrating past experiences, functions at every moment as a matrix of perceptions, appreciations and actions and makes possible the achievement of infinitely diversified tasks (Bourdieu, 1977:72,95, quoted in Wacquant, 1992:18).

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<sup>53</sup> The origins of this concept lay in Bourdieu's research on Kabyle marriage customs, in which he noted that variants in marriage ceremonies corresponded to variations in the genealogical, economic and social relations between the spouses and consequently in the social significance and function of the unions sanctioned by the ritual.

Since this strategy is the product not of obedience to norms explicitly posited and obeyed or of regulation exerted by an unconscious "model", it became clear that it could not be explained without taking into account not only the purely genealogical relationship between the spouses (which can itself undergo strategic manipulation) but a whole range of information about the families united by the marriage such as their relative positions within their groups, the history of their past exchanges ... etc (Bourdieu 1990a:15-16).

And so he conceived of the various aspects and forms of the marriage ritual as social strategies defined by their position in a system of strategies generated by *habitus* oriented towards the maximizing of material and symbolic profit (ibid:16).

In my observations of lectures and analysis of lecture transcripts, I found I could distinguish between verbal and non-verbal pedagogic strategies, and, within verbal pedagogic strategies, those associated with transmission, acquisition or regulation. My focus on the recruitment and recognition of prior experience indicated that I needed to concentrate on transmission and acquisition strategies and in particular, strategies that involve prior informal experience. I resolved to analyse entire texts, rather than search for examples of these strategies, so I could contextualize them within the wider pedagogic discourse.

I distinguished two types of transmission/acquisition strategies: localizing and generalizing, with various sub-types. Here I draw on the work of Dowling (1993, 1998) although there are substantial differences between his localizing and generalizing strategies and my own.

#### ***4.1.3 Dowling's localizing and generalizing strategies***

Dowling (1993, 1998) uses the term 'strategy' within the context of his particular version of activity theory. In terms of this theory, activity (by which he means ideology) is the contextualizing basis of social practice. It specializes practices and thereby regulates what can be said or done or meant. Further, it establishes positions which can be occupied by human individuals and are constitutive of human subjectivity.

The practices and positions of an activity are also realized in texts, where a text is 'an utterance (linguistic or non-linguistic) or set or sequence of utterances made within the context of one or more activities'. All texts construct authors and readers and all texts 're-produce, in part, the practices of the activity (or activities) of which they are utterances.' Pedagogic texts construct authors as transmitters and readers as acquirers (Dowling, 1998:131).

The practices and positions of an activity are instantiated in pedagogic texts, the practices as message and the positions as voices. Pedagogic texts distribute messages over a range of voices and so (re)produce the practices and positions of activity (ibid:131).

#### ***Domains***

Dowling's concern is with school mathematics as an activity and in this context he distinguishes between four domains:

His 'esoteric domain' is the mostly strongly classified with respect to other activities and contains the principles of the activity (ibid:135). As an example of esoteric domain practice, Dowling presents standard algebra exercises such as ' $18x + 92 = 137$ ', in which there is no reference to the everyday (ibid:133).

The esoteric domain also casts its 'gaze'<sup>54</sup> upon external practices and recontextualizes them, sub-ordinating them to its principles and creating a 'public domain' of practice. This domain is weakly classified and has the appearance of non-specialized practice. However, it remains, to a greater or lesser extent, subject to the regulative principles of the esoteric domain. This domain is a crucial component of the practices of an activity, because ... it is the domain through which apprentices must enter the activity (ibid:136). In illustration of the public domain, Dowling presents a mathematical exercise which is expressed entirely in the everyday: students are required to total a series of shopping lists (ibid:133).

Two further domains are constructed: the expressive and the descriptive. In the former the gaze combines non-specialized forms of expression with specialized content. Here Dowling offers, by way of example, a multiplication exercise represented as a 'machine chain' (ibid:134). In the descriptive domain, the gaze recontextualizes a non-specialized setting, the contents of which are described in terms of mathematical forms of expression. The illustration here is of an everyday example (a café's daily order list) in which the quantities are expressed in specialized mathematical expressions. 'A café orders  $p$  white loaves and  $q$  brown loaves ...' (ibid:134).

### *Discursive saturation*

Dowling distinguishes between practices that exhibit high discursive saturation and those which exhibit low discursive saturation. While all practices are material, he says, those with high discursive saturation (such as mathematics) minimize their dependency upon the material 'via the production of highly developed and articulated – that is highly systematized – discursive structures' (ibid:137).

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<sup>54</sup> Bernstein (1999) takes issue with Dowling's notion of 'gaze'. Bernstein uses it to refer to the acquirer not to the discourse to be acquired. 'The pedagogic discourse to be acquired is constructed by the recontextualising process of the transmitter(s), which creates a specific modality of the specialized knowledge to be transmitted and acquired. The acquirer rarely has access to the transmitter(s) recontextualising principle but this principle is tacitly transmitted and is invisibly active in the acquirer as his/her 'gaze' which enables the acquirer,

The crucial distinction between the two forms of practices is the extent to which their regulating principles are realizable within discourse. Practices exhibiting high discursive saturation (DS+) are 'at the level of discourse, highly complex and exhibit comparatively complete articulation' (ibid:138). Activities whose practices exhibit low discursive saturation (DS-) are characterized by implicit regulating principles and what Bourdieu terms "polythetic" thinking. Utterances within these practices are highly particularized or context dependent<sup>55</sup>. Utterances within practices with high discursive saturation are relatively context independent and generalized (Dowling, 1993:66).

### *Distributing strategies*

In Dowling's theory, pedagogic texts reproduce the features of activity by means of pedagogic strategies which position voices and distribute message. It is his distributing strategies which are of greatest relevance for my study. In Dowling (1998:145) he distinguishes between transmission/acquisition strategies that expand the range of the message and those that limit it. Expanding strategies broaden the message in terms of the range of esoteric domain topics and recontextualized public domain settings. Limiting strategies exclude message relating to the esoteric domain, as in certain mathematics textbooks which he researched which were designed for 'low ability' students.

Within expanding strategies he distinguishes between principling strategies and proceduralizing strategies. Proceduralizing strategies 'exchange instructions for definitions' (ibid: 146) and present the practices of a DS+ activity as a DS- activity. Like metaphor, they are examples of particularizing strategies. In principling strategies, the use of definitions and taxonomic classifications 'facilitate the expression of the regulating principles of a DS+ practice, such as school mathematics' (ibid:146). Where exemplars are used their abstractive properties will be made explicitly available. 'In this way the metaphorical relationships between exemplars are reduced metonymically, so that the context dependency of the message is reduced' (ibid: 146-147). Principling and metonymy are instances of abstracting strategies.

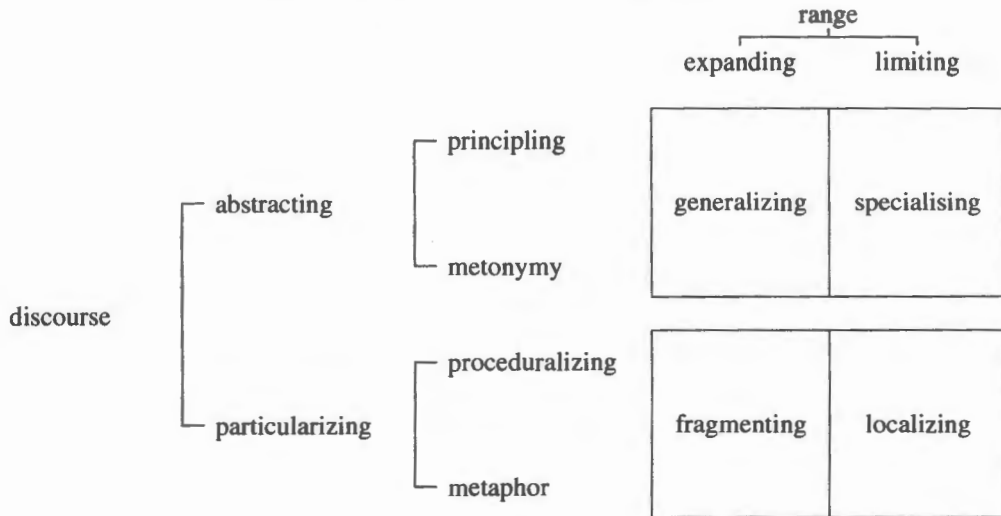
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metaphorically to look at (recognise) and regard, and evaluate (realise) the phenomena of legitimate concern.' (Bernstein, 1999:172).

<sup>55</sup> Here Dowling distinguishes between 'context specific' and 'context dependent'. He says 'all utterances are context specific, in the sense that they must be interpreted within the context of a particular activity. However an utterance within a DS- activity is also context-*dependent*, to the extent that it cannot be

Generalizing strategies are both expanding and abstracting. Specializing strategies construct abstract message with respect to a specific topic or setting. Fragmenting strategies realize the esoteric domain as segmental rather than articulated. Localizing strategies establish the instance (esoteric or public domain) rather than generating segments or collections (147-149).

**Figure 7: Dowling's distributing strategies (Dowling 1998:147)**



Ensor (1999:79) uses Dowling's categorization of strategies to discuss the induction of student teachers into the privileged repertoire of teacher educators. She says abstracting strategies realise the (privileged) repertoire as largely context independent practices and involve a relatively high degree of regulation on language. Particularising strategies realize the repertoire as largely context dependent. Localizing strategies present the repertoire as a limited range of topics: fragmenting strategies present the repertoire as a more extended range of topics but as 'segmental rather than articulated', a collection which is presented without the principles that generate it being made explicit. Specialising strategies present the repertoire as relatively context independent with respect to a narrow range of topics whereas generalizing strategies present the repertoire as relatively context independent across a range of topics.

Ensor emphasizes that these distributing strategies are precisely strategies and not states or achievements. 'By this I mean that the deployment of a generalizing strategy does not mean that the discourse is generalized, but that the strategy used to transmit it is extended in a range

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unambiguously interpreted outside of the context of its immediate production'. These include manual activities (Dowling, 1998:139)

of topics and disembods, abstracts or 'pulls' the discourse away from context in order to extend its degree of context independence' (ibid:79).

My own versions of localizing and generalizing strategies differ from Dowling's in several respects. I have simplified the concepts for my purpose (by not attempting to locate them precisely within activity theory) but have also complicated them (by disaggregating them further in order to distinguish empirical indicators). I show the range and inter-relationships of my strategies in terms of semantic networks (Dowling has also done this) but the terminal strategies are somewhat more delicate than his.

## **4.2 The language of description**

So far I have outlined some of the theoretical origins of my analytic framework. Future chapters will present the empirical data which, in dialogue with the theories outlined in Chapters 2 and 3, has given rise to this 'language of description'. In the following sections of this chapter I will present the theoretical propositions which arose out of the empirical/theoretical dialogue and the concepts of localizing and generalizing strategies (with sub-categories) that were developed in the analysis of data. These will be defined, with reference to examples from transcripts and written texts and their interrelationship will be shown in terms of a network (see Chapter 5 for an account of how the network was generated).

### ***4.2.1 Theoretical propositions***

Pedagogy involves transmitters and acquirers,<sup>56</sup> whether assumed (as in the case of distance learning or textbooks) or actual (as in a conventional school classroom). Transmitters adopt various strategies (conscious and unconscious, verbal and non-verbal) to achieve the effective transmission of content. Acquirers adopt various strategies (conscious and unconscious, verbal and non-verbal) to achieve the successful acquisition of content and gain access to the recognition and realization rules whereby they will be able to identify and produce acceptable texts. Recognition rules enable acquirers to recognise the speciality of the context that they are in, the power relations that are involved and their position within them and to put together 'appropriate realizations'. Realization rules enable them to 'produce the legitimate text' (Bernstein 1996:31-32). There are, of course, other purposes which some actors pursue in the pedagogic context. For example, in adult education it is common for some students to attend

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<sup>56</sup> See 1.1 for a definition.

programmes for social and recreational purposes rather than strictly educational aims. Schooling also has a regulative function (to keep youngsters off the streets) as well as educational purposes. However, the focus of this thesis is on pedagogic (transmission/acquisition) purposes and practices.

The analysis presented here is of verbal strategies employed for pedagogic purposes. Not all forms of pedagogic strategies are analysed, only verbal (as opposed to non-verbal)<sup>57</sup> strategies which recruit or recognize formal and informal knowledge for acquisition or transmission purposes. In other words strategies that recruit the generalizations and abstractions associated with academic knowledge and strategies that recruit the concrete, context dependent statements associated with informal knowledge, including recruitments of 'raw', unprocessed experience. The former I call generalizing strategies, and the latter localizing strategies. Verbal strategies that fall beyond this frame are identified but not analysed.

#### **4.2.2 Pedagogic strategies, utterances and moves**

It should be noted first that the primary unit of analysis is the pedagogic strategy, which, in an oral text, is an utterance or set of utterances which alone or together constitute a pedagogic 'move' (Coulthard, 1985). In dialogic texts, an utterance is that which is punctuated by the voice of the interlocutor (Bakhtin, quoted in Dowling, 1998; Bernstein 1971:85). Following Singh (2001) I will refer to these as 'turns' when referring to written transcripts. Following Dowling (1998:131) a text consists of an utterance which can be verbal or non-verbal or a set or sequence of utterances.

In my analysis a verbal pedagogic strategy can straddle several promptings/interruptions, and a single turn can contain a number of strategies, as the following transcript from the lecturer on Conciliation in Course A indicates.

- 1 Lecturer LA3: Only disputes that have been referred, only disputes that came into operation after the 11<sup>th</sup> of November 1996 can be dealt with by the CCMA. All disputes that arose prior to the 11<sup>th</sup> of the 11<sup>th</sup> 1996 need to be dealt with in terms of the old provisions.
- 2 Student SA13: It depends why you are dealing with this.
- 3 LA3: Okay, you tell me why, give me an example.
- 4 SA13: An incident that happened prior to the 11<sup>th</sup> of November.

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<sup>57</sup> Kress et al (2001) have shown the significance of non-verbal dimensions of pedagogic communication in research on multimodal teaching and learning in the science classroom.

- 5 LA3 Like what? Dismissal?
- 6 SA13: Unfair labour practice that occurred prior to that and then the institution has the recognition agreement.
- 7 LA3: Yes.
- 8 SA13: Right. They [inaudible] procedure within certain time frame, right, according to the recognition agreement, with the result time has lapsed, okay, right, the case is still pending, there is still a case hanging, now, after 11<sup>th</sup> November 1996, the case landed up at the CCMA but it happened prior to the 11<sup>th</sup> November. Those circumstances couldn't
- 9 LA3: Well, it's very difficult to talk about the specifics of that in the absence of the specific circumstances. The general rule is, let's just say there might be very very very particular circumstances, the general rule, and again I would like to suggest for your purposes – apply the general rule. The general rule is that any dispute that arose before the 11<sup>th</sup> of November 1996 can't be dealt with in terms of the dispute resolution procedures in the act...

Note: See Appendix C for a list of transcription conventions followed in this thesis, and Appendices A and B for lists of students' and lecturers' name codes.

In the above interchange, turn 1 contains two statements by the lecturer to the effect that (a) only disputes that came into operation after 11 November 1996 can be dealt with by the Centre for Conciliation, Mediation and Arbitration (CCMA) and (b) that disputes that arose before must be dealt with in terms of the old provisions. These are coded as one strategy.

Turns 2, 4, 6, 8 contain the following statements by a student: (a) this rule is contingent on other factors (b) this was demonstrated by a case involving an incident which occurred prior to 11 November 1996 and (c) because a recognition agreement was involved, this case is still pending. Turn 2 is coded as a separate strategy from Turns 4, 6, 8 which are coded as one. Turn 9 contains two statements by the lecturer: (a) that it is difficult to comment without knowledge of the details of the case and (b) that the general rule is ... These were coded as two strategies. The exchange shows the way in which statements can straddle several utterances and strategies several statements. Later this same transcript will be used to demonstrate the concepts of localizing and generalizing strategies.

The pedagogic strategies which I define here were generated initially through analysis of my primary data: transcripts of lectures. The relationship between the strategies is shown in the network diagrams Figures 8 to 10 and further refinements, effected after the network was applied to evaluation texts, are contained in Figure 11.

### 4.3 The Generalizing Strategy

Generalizing strategies consist of statement/s that recruit the abstract and the general. They transcend particular instances while still having relevance for them and include statements of general rules, principles, procedures, concepts or propositions, as well as their explanations or interpretations. A sub-set of generalizing strategies are concerned with the application of rules, concepts etc to particular instances. In the field of labour law, which is the concern of this thesis, generalizing strategies are primarily concerned with what the law says one should do and how to do it and with the abstract concepts (such as 'unfair discrimination' or 'sexual harassment') that govern the legislation.

There are two main types of generalizing strategy: formal generalizations and formal applications.

#### 4.3.1 Formal generalizations

Formal generalizations include statements, explanations or interpretations of general rules (or exceptions), principles, concepts or propositions, or solicitations of these. The first of the following extracts is an example of a formal generalization, the second and third are examples of formal solicitations.

- Example of formal solicitation from the lecture on conciliation (Course A):

LA3: All disputes that arose prior to the 11<sup>th</sup> of the 11<sup>th</sup> 1996 need to be dealt with in terms of the old provisions. [Transmitter states general rule.]

- Example of formal solicitation from the lecture on sexual harassment (Course A):

LA1: I want you to define gender, sexual harassment and discrimination.... Who wants to make an attempt at a definition of gender... [ Transmitter solicits definition of abstract concepts.]

- Example of formal solicitation from lecture on arbitration (Course B):

Student: Does that mean that what the worker alleges becomes the terms of reference? [Acquirer solicits general rule.]

### 4.3.2 Formal applications

Formal applications include instances in which the transmitter or acquirer applies a general rule (or exceptions), principle, concept, definition or proposition to a particular scenario, actual or hypothetical, or solicits such an application.

- Example of formal applications and application solicitations from lecture on conciliation (Course A)

Student: ...so if one gets ... confidential information and you know with that information that the employee is at a total disadvantage. Can you disclose that information? [Acquirer solicits application of general rule to hypothetical scenario.]

LA3: Are you talking now about information released to you during a caucus session? [Transmitter seeks clarification]\*

Student: One on one. [Acquirer clarifies]\*

LA3: One of the rules for caucusing is that information that is released from the party to the commissioner is confidential, and you can only release that information to the other side if you have a specific mandate to do so. [Transmitter states general rule] Er, so for instance if you give me a whole lot of information that is prejudicial, where you might say 'Look, as the employer I know we made a mess of this whole thing? ... [Transmitter applies general rule to hypothetical scenario]

\* Clarifications are among the pedagogic strategies which I have identified but not analysed in any depth.

- Example 2 from lecture on arbitration (Course A)

Student: Let us say I apply for a package. They approve it, tell me my termination date is the end of say March. [Acquirer presents hypothetical scenario]

LA3: Yes

Student: But then, in the meantime, they actually change my rating, say from a clerk to a chief clerk and then I decide I want to stay on. Do[es] my service end at the end of that period ... [Acquirer requests application of general rule to hypothetical scenario]

Within the four generalizing categories which I have specified here there is potential for a great deal more differentiation, and research that focuses on the nature of formal knowledge would require this. However, for the purposes of this thesis, which is primarily concerned with informal knowledge, the focus of my analysis is the localizing strategy and it is here that I have sought the greatest possible disaggregation. I do however, draw further distinctions within formal solicitations. These are discussed in 4.6.

## 4.4 The Localizing Strategy

Localizing strategies background the general and the abstract and foreground the particular and the concrete. Like generalizing strategies they include both statements and solicitations. Localizing strategies can be divided into local generalizations and local particularizations, depending on their emphasis: on the general or the particular.

#### 4.4.1 Local generalizations

Local generalizations can be divided into impersonal and personal generalizations, depending on their source of authority. Impersonal generalizations are based on secondary written sources or on local knowledge. Personal generalizations are based on personal opinion or personal experience. Very often it is difficult to discern a generalization's sources of authority and in my analysis I have often had to make a conjecture, based on other contingent information.

##### *Impersonal generalizations*

Local impersonal generalizations include statements in which the transmitter or acquirer asserts a generalization based on secondary, written sources or on local (for example, 'worker') knowledge. I have called the first type the 'academic' generalization and the second the 'local' generalization.

- Example of an 'academic' generalization from the lecture on worker participation (Course A):  
LA2: Read your law reports, Labour Court reports, CCMA reports, you will find that the orders go against the employers a great deal of the time.
- Example of 'local generalization' from lecture on worker participation (Course A):  
Student: At the end of the day, workers don't have rights.<sup>58</sup>

##### *Personal generalizations*

Personal generalizations include statements in which the transmitter or acquirer asserts a generalization as part of a personal (emic) opinion or based on personal experience, as shown in the examples below. Please note that in the first, the italics indicate the generalization. Emic opinions are defined in 4.4.2.

- Example of personal opinion generalization from lecture on sexual harassment (Course A):  
Student: I feel the problem comes in when we have a certain perception of what that pass is and the female has a certain perception and that is actually different. And I don't think some men are flexible to accept that perceptions differ (*They are*) conditioned around that. (*It is*) difficult for some men to get to a point: *this is not the way we should conduct ourselves, we shouldn't flirt, we shouldn't whistle, we shouldn't make lots of various remarks* [Inaudible] Some men should get to the point where they accept it.

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<sup>58</sup> The origins of this generalization cannot be read off the statement itself. To establish them one must obtain other, contingent information. In this case, it was not clear whether this generalization was based on personal experience or local knowledge and therefore it is discussed tentatively in both categories.

- Example of personal experience generalization from lecture on conciliation (Course A):

LA3: But by and large the proceedings are fairly informal. The meeting will take place around the table and this is very generally what a conciliation hearing would look like. The conciliator would say – would introduce him or herself to the parties, would let the parties have a sense of how they are going to be spending the next period of time together to try and resolve the dispute, okay. (Concerning conciliation proceedings at the CCMA.) [Transmitter refers to practice in the labour law field]

#### 4.4.2 *Local particularizations*

Local particularizations can be divided into those that are concerned with the impersonal, which in turn can be hypothetical or actual, and those that are concerned with the personal, which can involve expressions of opinion or experience.

##### *Impersonal, hypothetical: class and particular*

Hypothetical, impersonal particularizations can be grouped further into those that refer to a group or class and those that are concerned with one particular example. I consider participation in a role play to be a variant of the latter.

The following are examples of class particularizations, in other words, local particularizations that are impersonal, hypothetical, and involve class examples.

- From the lecture on sexual harassment (Course A)

LA1: What behaviour constitutes sexual harassment?

Student: Suggestions

- From the lecture on conflict resolution (Course B)

LB5: What does the word conflict bring to mind?

Students: Aggression. Disagreement. Lose-lose. Emotion. Win-win....

The following is an example of a local particularization that is impersonal, and presents a specific hypothetical example (a hypothetical particularization).

- From lecture on disclosure of information and retrenchments (Course A):

Student: Can I just ask you a question? I hear you say private, personal and confidential. Let's say for instance the company is going under voluntary liquidation but I am an employee of the company but then I, as employee, am buying the company...

In Course A students were required to participate in role plays in three of the lectures. I have categorised such participation as a form of hypothetical particularization. The following is an example:

- From the role play on conciliation (Course A):

Student: We'd like seven days, seven working days' paternity leave, paid paternity leave. It's very necessary for fathers to bond with their children at birth. [Acquirer assuming unionist role in role play on conciliation procedure]

*Impersonal actual: Experience 'far' and 'near'*

Actual, impersonal particularizations can be grouped into those that refer to non-localized experience that does not include the experiences of either transmitter or acquirer (I call this 'experience far') and that which refers to experience of the direct 'other' in the pedagogic relationship, where the transmitter, for example, speaks of the experience of the acquirer, or solicits it, or vice versa. I call this 'experience-near'. It should be noted that these terms resemble those of Geertz (1983:57) but I am using them in a far more literal sense. He refers to concepts that are 'experience-near' and 'experience-distant' making a distinction that is similar to the emic/etic distinction which I draw in relation to personal opinion strategies (see below).

'Experience far' local particularizations include descriptions of or references to actual cases in which the speaker was not involved, the provision of information that constitutes background to legislation and references to actual events in which the transmitter or acquirer was not involved, or without mentioning their involvement

- Example of an 'experience far' case reference from the lecture on conciliation (Course B):

LB3: Now that happened in the case of Faure Bros vs. Marais....

- Example of 'experience far' background information from the lecture on worker participation (Course A):

LA2: ...it is only in the recent 10 to 15 years, if that, that we have seen more or less normal industrial relations systems ruled by world standards emerging where employees and unions regularly meet to negotiate about wages and conditions of employment. That is a recent thing for us.

- Example of 'experience far' reference to an actual event, from lecture on conciliation (Course B)

Student: Recently a professor at UCT who had ME was dismissed for incapacity and the insurance of Pension Fund refused to pay out because they didn't think he was incapacitated ...

}

In impersonal particularizations involving 'experience-near', transmitters or acquirers solicit the experience of the other party in the pedagogic relationship (usually the acquirer/ transmitter, respectively) or recruit it themselves or comment on it. The following are examples:

- Example of 'experience-near' solicitation from the lecture on conciliation (Course A):

LA3: I'd be interested to get a sense of what experience people have of those two dispute resolution procedures...How many people are in the trade union movement that are here? [Transmitter solicits acquirer's personal experience]

- Example of 'experience-near' solicitation from the lecture on conciliation (Course B)

LB3: [name of student] what's happened to the trapping cases? Have you had any decision from the Labour Court?

- Example of 'experience-near' recruitment from the lecture on worker participation (Course A)

(Here the lecturer's recruitment of student experience is indirect. He makes the assumption that it involves situations where a certain freedom is allowed.)

LA2: And if we had more time I could have gone round the room and asked some of you the kind of things which you are doing in your workplace where in fact no employer, no supervisor can tell you how to do it only you can work that out ...

- Example of 'experience-near' comment, from lecture on conciliation (Course A):

Student: There are cases like that. It happened.

LA3: You might well get an experience like that, but I'm not sure that you would then be able to say that the company's refusal to allow you to continue working amounts to a dismissal.

### *Personal opinion particularizations: etic and emic*

Personal particularizations can be grouped into those that express opinion and those that speak of experience. Furthermore, opinions can be 'etic or 'emic' and experience particularizations can refer to experience that is past or 'here and now'. I will discuss these in turn.

An etic opinion is based on an abstract or decontextualized understanding or expressed as such. An emic opinion arises out of contextual or situated understandings, or is expressed as such.

The terms are related to the distinction between emic and etic interpretations, which is commonly used in anthropology but has its origins in the linguistic concepts of phonemics and phonetics and the work of linguist Kenneth Pike in the 1950s followed by anthropologist Marvin Harris in the 1960s (see Headland, Pike and Harris, 1990). In an anthropological context, an emic perspective is an insider perspective or interpretation of native customs or

beliefs. An etic perspective is the external researcher's interpretation of the same customs/beliefs, in other words an analytical, anthropological perspective.<sup>59</sup>

The terms are implicated in Geertz's distinction between 'experience-near' concepts which a person might 'naturally and effortlessly' (unconsciously) use to define what 'he or his fellows see, feel think, imagine and so on, and which he would readily understand when similarly applied by others' and 'experience-distant' concepts which 'specialists of one sort or another ... employ to forward their scientific, philosophical, or practical aims'. 'Love', says Geertz, is an experience-near concept, while 'object-cathexis' is experience-distant (Geertz, 1983:58).

Denzin and Lincoln (1994:506) summarise the distinction as follows:

[Experience-near] refers to words used by local interpreters that actually operate in the worlds studied. They are associated with emic or contextual, situated understandings. Scientific interpreters use [experience-distant words] – words whose meanings lie in the observer's theory. They produce etic, or abstract, non-contextualized interpretation.

I have used the concepts of emic and etic to help me define two strategies that are difficult to identify from research observations alone. Usually the distinction is accompanied by informal or formal language, which marks out the difference, but sometimes the language is deceptive – when a theoretically informed opinion is presented in colloquial language, for example – and the origins of the opinion emerge only through further research – an interview with the speaker, perhaps. For this reason I refer to emic opinions as those which are 'presented as such' unless I am sure of their local origins, from further research. The following are examples:

- Example of an etic opinion, from the lecture on sexual harassment (Course A)

LA1: Now in the course of this course, I am going to be using the word 'recipient' rather than victim. ...I don't actually agree with the word 'victim' [which is used in the Code of Good Practice on Sexual Harassment] This is my personal opinion and you are welcome to disagree but I don't actually agree with the word victim simply because it tends to disempower people further. [Opinion based on her study of sexual harassment for a masters degree. ]

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<sup>59</sup> Pike (1990:28) defines an emic unit as 'a physical or mental item or system treated by insiders as relevant to their system of behavior and as the same emic unit in spite of etic variability'. Harris (1968:571,575, quoted in Headland et al, 1990) says: 'Emic statements refer to logico-empirical systems whose phenomenal distinctions or "things" are built up out of contrasts and discriminations significant, meaningful, real, accurate, or in some other fashion regarded as appropriate by the actors themselves... Etic statements depend upon phenomenal distinctions judged appropriate by the community of scientific observers'.

- Example of an emic opinion, from the lecture on sexual harassment (Course A):

Student: I feel the problem comes in when we have a certain perception of what a pass is and the female has a certain perception and that is actually different. And I don't think some men are flexible to accept that perceptions differ. (They are) conditioned around that. (It is) difficult for some men to get to a point: this is not the way we should conduct ourselves.. we shouldn't flirt, we shouldn't whistle, we shouldn't make lots of various remarks [Inaudible] Some men should get to the point where they accept it.

### *Personal experience particularizations: past and present*

#### Experience past

It is here that the recruitment of prior informal experience – one half the focus of my research question – is to be found. Recognition of prior informal experience (comments on a recruitment of prior informal experience), the other half, is located with 'experience-near'. Sometimes, as in the second example below, there is non-recognition, in the form of a classification strategy, that turns the discussion to another topic.

- Example of a recruitment of prior personal experience from the lecture on dispute resolution in Course B [Here the lecturer illustrates a point by referring to an actual case which she conciliated in which an employer dismissed an employee on the basis of operational requirements and was subsequently accused of unfair dismissal.]

LB3: ...what I raised with the employer was by and large that the Act said that he had to do certain things. It wasn't simply a guideline, like Schedule 8 is a guideline about what your procedures should be. This is the Act and the Act said you must do x, y and z. And I asked him time and again 'Tell me, did you comply with that?', and he had to answer 'No.' So I said – I couldn't tell him 'You are wrong and you will lose if the matter goes to arbitration'. Well actually it wouldn't go to arbitration, it would go to Labour Court. So what I said is 'This is where this dispute is heading. This dispute is heading to the Labour Court [Transmitter recruits personal experience]

- Example of a past personal experience particularization from the lecture on conciliation, Course A

[It is interesting to note here that the recruitment of prior experience by the acquirer meets with non-recognition on the part of the transmitter.]

Student: When we asked that the secret payroll be disclosed, the CCMA said you can't see it, you don't have the right. [Acquirer recruits personal experience] So workers at the end, workers don't have rights. [Acquirer makes local generalization based on personal experience]

LA3: Well I think um we will discuss the disclosure of information aspects of the Labour Relations Act now. [Transmitter uses classification strategy to close the discussion]

#### Experience 'now'

'Experience now' particularizations were not common but they did occur in the lecture on Sexual Harassment. The following is an example:

- From the lecture on sexual harassment:

Student to LA1: It's not a matter of harassment, that's how I view you, I mean, as a female. This is with respect. I view you as a female. Especially standing there, I mean.

## 4.5 Other pedagogic strategies

The strategies detailed above are all forms of pedagogic strategy and within that category, they are verbal transmission/acquisition strategies, transmitting message through the medium of texts, oral (as in the examples above) or written. There are a number of other resources which can be employed to facilitate transmission/acquisition including:

- Spatial resources (the manipulation of space). The lecturer standing in front, before a raked lecture hall, focuses attention on the transmitter message and emphasizes its importance, facilitating generalizing strategies. Dividing the class into groups minimizes the hierarchy in order to facilitate formal application strategies.
- Visual resources (overhead transparencies, slides videos etc) reinforce the points made by the lecturer, usually the generalizing strategies.
- Non-verbal human resources (tone of voice, body language, to support and demarcate both generalizing and localizing strategies).

The analysis also identified further pedagogic strategies which were of considerable importance in the pedagogic communication but fell beyond the scope of my research. It is arguable whether they should be regarded as forms of transmission/acquisition strategy or not. I have chosen not to regard them as such on the grounds that their association with transmission/acquisition is indirect rather than direct. They concerned:

- The literacies associated with the course, e.g. Lecturer: 'Have you all got the notes ...' or 'You need to read the law reports...' or Student: 'What page are we on...?'
- The positioning of topics by the lecturer, e.g. Lecturer: 'Today we are going to focus on ...'
- Phatic communication, e.g. greetings, pleasantries.
- Classification, e.g. Lecturer: 'Enough of that now. Let's get back to the topic of ...'
- Confirmation, e.g. Lecturer: 'Exactly. A very good question ...'
- Prompting, e.g. Lecturer: 'Yes' or 'and then?'
- Evaluative, e.g. Lecturer: 'For the exam, I suggest you learn the Code ...'
- Regulative, e.g. Lecturer: 'Will you all get into groups now'
- Questions, rhetorical, e.g. Lecturer: 'And do you think they took it up? No.'

- Questions, clarificatory, e.g. Lecturer: 'Do you mean by that ...?'

The importance of literacy strategies for success in the course became obvious when I examined the written exam scripts and assignments. They were not the focus of my study, however, and I have not attempted to explore them in depth. It is suggested in the final chapter that there is a need for research in this important area.

#### **4.6 Strategy networks**

The strategies defined in 4.3 together constitute the range of acquisition/transmission strategies which I identified in the context of my case studies – two courses in Labour Law. In this section I present these strategies in the form of networks, to show both range and interrelationships. (See 5.4 for an account of the generation of the networks and their theoretical origins.) Non-verbal transmission/acquisition strategies and non-transmission/acquisition strategies have been identified but have not been represented in network form because they are not the focus of the study and to do so would require analysis that is beyond the scope of the study.

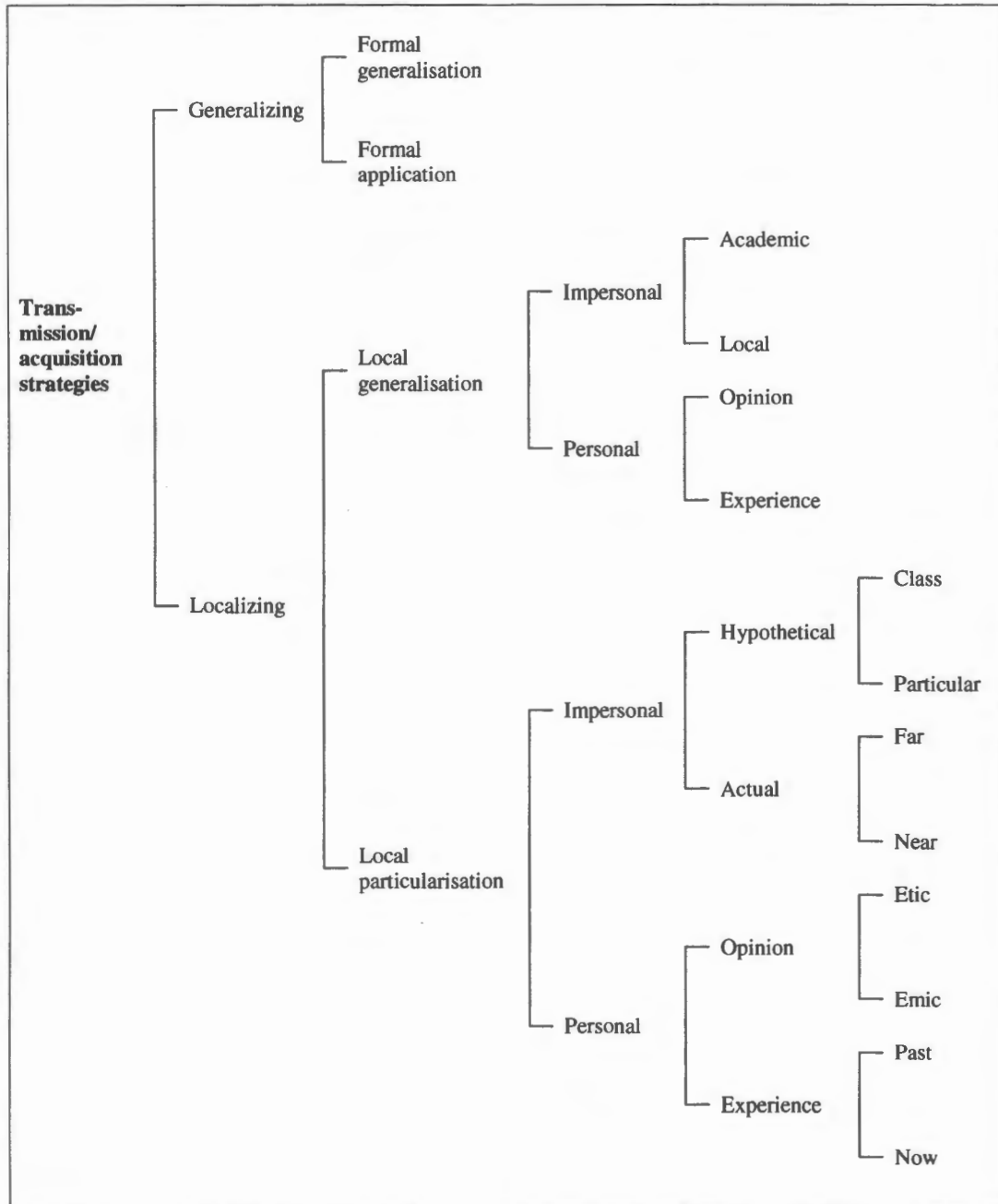
The following should be noted:

- The strategies depicted in these networks are available to both acquirers and transmitters although, as the analysis of the empirical data (presented in Chapter 6 shows) some strategies are more commonly associated with transmission and/or the transmitter role and others with acquisition and/or the acquirer role.
- In each network the trajectory is from general (or abstract or multiple or distant) to particular (or concrete or singular or immediate) within every fractal relationship. In other words, I have presented the most abstract element of the distinction at the top of each pair and the more concrete element below.
- All strategies can be in the form of solicitations or statements. This is not always stated.

**4.6.1 The basic network of verbal transmission/acquisition strategies**

Figure 8 presents the basic network of transmitter/acquirer verbal transmission/acquisition strategies which I identified, distinguishing at its crudest level between generalizing and localizing strategies and thereafter making finer and finer distinctions within the category of localizing strategies.

**Figure 8: The network of transmitter/acquirer transmission/acquisition strategies**

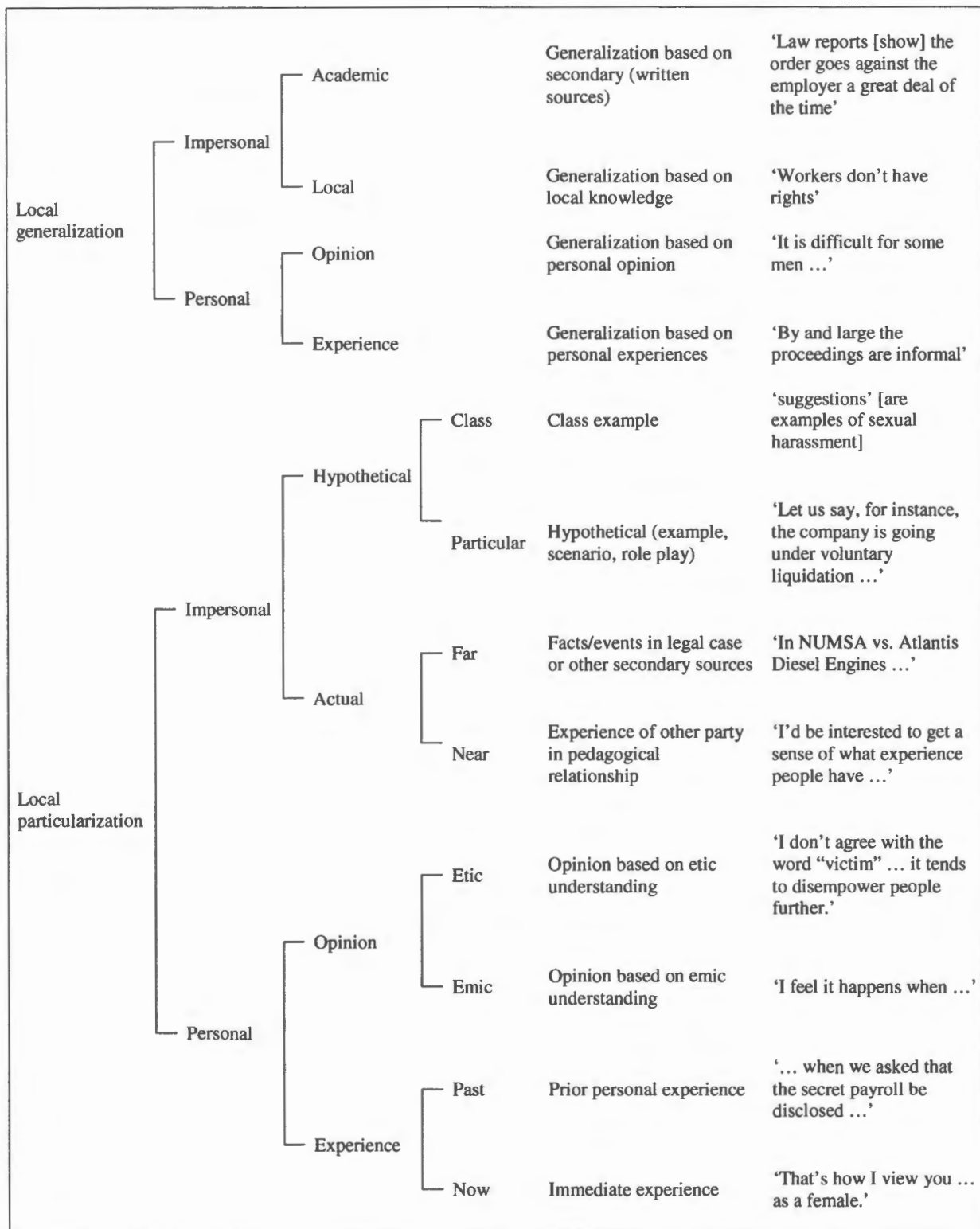


The figure above presents the basic network of verbal transmission/acquisition strategies, showing the trajectory from general (the top half of each fractal pair) to particular (the bottom half).

#### 4.6.2 The network of localizing strategies

In the following figure the network of localizing strategies is presented, with definitions and examples.

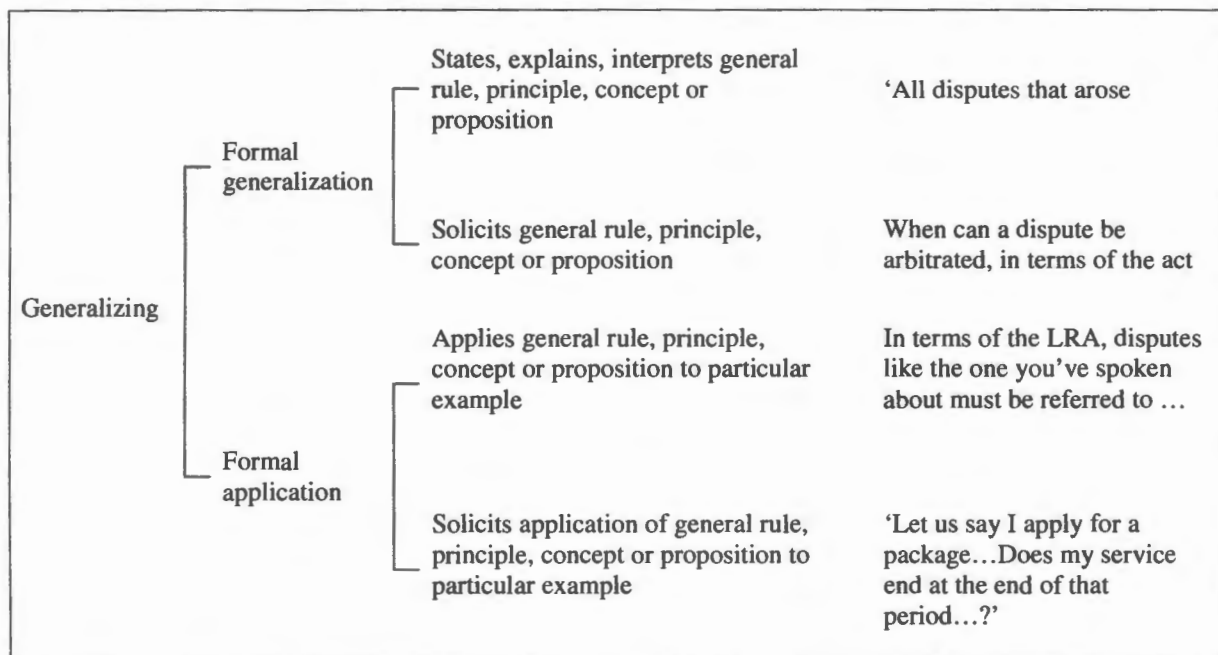
**Figure 9: The network of localizing strategies, with examples from Course A lectures**



### 4.6.3 Overview of generalizing strategies

It will be noted in Figure 10 that generalizing strategies are relatively unstratified in the network. This is because (following Halliday, 1973) I stop drawing distinctions at the point at which it is no longer useful to my project to do so. My focus on the prior informal experience means that the generalizing strategy is of limited interest. However, it does set the context in which recruitments of prior experience occur and for this reason I present Figure 10 below. Here a distinction is drawn between solicitations of general rules and statements of general rules and between applications of general rules and solicitations of their application. A further breakdown is presented in 4.7 when I discuss solicitations in the context of evaluation texts.

**Figure 10: A basic network of generalizing strategies, with elaboration and examples**



## 4.7 Localizing and generalizing strategies in evaluation

The networks presented so far were generated from the transcripts of lectures. In this section I will deal with the range of strategies used for evaluative purposes which I call 'types of solicitation'. I identified three types across the two courses: formal generalization solicitations, formal application solicitations and local particularization solicitations.

### 4.7.1 Formal generalization solicitations

Here the lecturer asks the students to state the general rule or procedure. This can be a straightforward request as in the following question on Strikes and Lockouts (Course A):

‘What are the legal consequences of a strike being protected?’

or it can be buried within a broader question, as in the brief for Assignment 1 (Course B). The brief begins with two quotations by a legal commentator and an extract from a case report (see Appendix D for the full text). The student is then asked to:

Critically evaluate the validity of these statements. Your evaluation should include a careful analysis of the courts’ jurisprudence under the old Act (that is, the cases decided by the courts), and a consideration of the relevant provisions of the Code. Reference to cases interpreting the new Code is also imperative. (See Question 1, Course B, Appendix D)

Here the student has to find out the rules contained in the code before he/she can answer the broader question.

#### **4.7.2 Formal application solicitations**

These can be divided into solicitations that require application of a rule, concept etc to a hypothetical example and those which require application to an set of actual facts, in other words ‘experience far’. The hypothetical applications can be divided further into those that are presented in the form of a narrative and those that are presented as ideas or concepts (for example, quotations by legal commentators).

The interpretations of research findings demanded in Assignment 2 of Course B are an example of application to ‘experience far’.

The following are examples of hypothetical application solicitation in narrative style

- Exam question in Course A

Will trade union A be successful in acquiring the right to elect trade union representatives in the workplace? Give reasons for your answer. What would you advise them to do? [This question follows a hypothetical scenario.]

- Case study assignment (Course B)

What arguments could be put forward by [the union] in support of its contention that the dismissals were substantively and procedurally unfair? [This question follows a hypothetical scenario]

Assignment 1 (Course B) which is referred to above and part of Question 3 (Course A) are examples of conceptual applications.

#### 4.7.3 Local particularization solicitations

Here the lecturer calls for local particularizations impersonal and personal. In the former, the student is asked to provide facts, which usually have to be found out through research. In the second, s/he is asked to give an opinion based on an etic understanding. Both forms were found only in Course B.

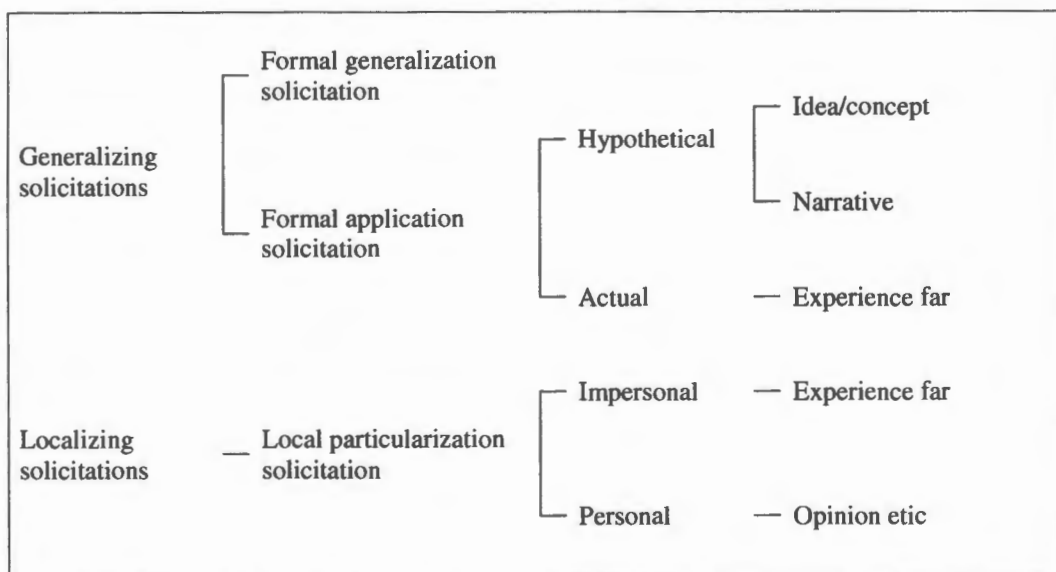
In the Course B assignment No 2 (see Appendix D) the task outlined in the first paragraph requires the student to ascertain a set of facts before conducting the analysis (this is implicit). The task outlined in the second paragraph requires the student to conduct an 'audit'. These are examples of experience far solicitations. There was only one question in Course B that amounted to an etic opinion solicitation. This was the sixth dissertation brief (5f in Appendix D).

Is South Africa ready for a 'second channel' of labour relations? ... Discuss critically, introducing your own perspectives.

#### 4.7.4 Network of solicitation strategies

The following is a network of the solicitation strategies described above.

**Figure 11: A basic network of solicitation strategies**



#### **4.8 The location of prior experience in the analytic framework**

My analysis of texts in terms of localizing and generalizing strategies showed how difficult it is to 'recognise' learning based on prior informal experience, for once it can be considered learning it is already a form of formal knowledge and its experiential origins are indistinguishable. The following kinds of questions arose:

When is a student drawing on prior personal informal experience and when not? Is it possible that the general rule which a student states was learned informally? From where did the hypothetical scenario arise? From prior informal experience, 'pure imagination', critical reflection (alone or with others), or from the formal reading of case law?

Without extensive further research, in which one tries to trace with speakers the origins of their remarks – and this was beyond the scope of my project – it is not possible to answer these questions conclusively. It is for this reason that my thesis is about the recognition of prior informal experience rather than 'learning'. Within this more modest scope, I am able to locate the recruitment and recognition of prior informal experience within the following localizing strategies:

- References to prior personal experience
- Solicitations of the prior experience of the other party in the pedagogical relationship
- Comments on the experience of the other party
- Recruitments (references to, constructions of) the prior experience of the other party.
- Local generalizations based on personal experience.

In Chapters 6 and 7 I will discuss the prevalence of these strategies in the pedagogy of the course.

#### **4.9 An application of the strategy network**

The following are examples of coding in terms of the strategy network. Both texts were referred to earlier in the chapter.

## Example of coding in terms of the strategy network, from Course A

1	LA3: Only disputes that have been referred, only disputes that came into operation after the 11 <sup>th</sup> of November 1996 can be dealt with by the CCMA. All disputes that arose prior to the 11 <sup>th</sup> of the 11 <sup>th</sup> 1996 need to be dealt with in terms of the old provisions.	Formal generalization
2	SA13: It depends why you are dealing with this.	Formal generalization
3	LA3: Okay, you tell me why, give me an example.	'Experience-near' solicitation
4	SA13: An incident that happened prior to the 11 <sup>th</sup> of November.	'Experience-past' particularization. Recruitment of prior personal experience.
5	LA3: Like what? Dismissal?	Clarification question
6	SA13: Unfair labour practice that occurred prior to that and then the institution has the recognition agreement.	'Experience-past' particularization. Recruitment of prior personal experience.
7	LA3: Yes.	Prompt
8	SA13 Right. They .... procedure within certain time frame, right, according to the recognition agreement, with the result time has lapsed, okay, right, the case is still pending, there is still a case hanging, now, after 11 <sup>th</sup> November 1996, the case landed up at the CCMA but it happened prior to the 11 <sup>th</sup> November. Those circumstances couldn't	'Experience-past' particularization. Recruitment of prior personal experience.
9	SA13: Well, it's very difficult to talk about the specifics of that in the absence of the specific circumstances.	'Experience-near' particularization. Comment on acquirer's recruitment of prior personal experience.
	The general rule is, let's just say there might be very very very particular circumstances, the general rule, and again I would like to suggest for your purposes – apply the general rule. The general rule is that any dispute that arose before the 11 <sup>th</sup> of November 1996 can't be dealt with in terms of the dispute resolution procedures in the act...	Formal generalization

## Example of coding in terms of the strategy network, from Course B

1	SB14:	[name of lecturer] just because you can't put something in a category, that doesn't exclude you from dismissing someone for incompatibility? Because you cant, because it doesn't fit a category, does it mean it doesn't exist as a ground?	Formal application solicitation
2	LB1:	Do you mean incompatibility? Because it is not listed in the Act ?	Clarification question
3	SB14:	Ja. Does it mean you can't dismiss him?	Application solicitation
4	LB1:	My understanding is that you can only dismiss on three grounds: it's misconduct, incapacity, operational [requirements]	Formal generalization*
5	SB14:	[Inaudible]	Uncoded
6	LB1:	That's what I am saying. We all understand an employer must at the end of the day be able to dismiss where the workplace has been undermined because of people who can't co-exist and you have gone to the lengths of trying to make it work and it hasn't. And that's what I am saying. What the courts will do is they will fit it back in to one of those categories or they will just fudge it and call it incompatibility and not raise the issue. The courts are very good at doing at that. They just don't raise the issue, they say incompatibility, they don't point out, oh hell you know we have had a look at the act there's no(thing) here, they just say incompatibility. And everybody is too sensible to challenge it because they know at the end of the day it's a wise decision even if it is not technically in line with what the act says. So that is how courts get around these things.	Local generalization

\* This generalization is expressed as an etic opinion and could have been coded as both.

### 4.10 Summary

In this chapter I present the framework for the analysis of the recruitment and recognition of prior informal experience in a pedagogic action which I developed through a dialogue between theory and empirical data. In Bernstein's terms it is an 'external language of description' (Bernstein, 1996:135).

The framework builds on a long tradition of distinctions between formal and informal knowledge, including Bernstein's concepts of vertical and horizontal discourse, but tries to fine-tune those distinctions by showing the complex interweaving of general and particular in pedagogic discourse. To this end Bourdieu's concept of strategy and Dowling's concepts of localizing and generalizing strategies have been important influences. My own version of localizing and generalizing transmission/acquisition strategies, with numerous sub-categories, are key concepts in the framework, providing the analytic tools for identifying and categorizing recontextualizations of informal and formal experience and learning. In this chapter I define

the concepts and provide examples from oral and written pedagogic texts and display their range and interrelationships in the form of semantic networks. In the following three chapters I present an analysis of localizing and generalizing within the pedagogy and evaluation of Courses A and B, with particular emphasis on extent and purpose of recruitments and recognition of prior informal experience.

## **CHAPTER FIVE: RESEARCH DESIGN**

In pursuing the question 'How is prior informal experience recruited and recognized in a formal education context?' two important research design decisions were made. The first was the decision to frame the empirical inquiry in the form of two case studies. The second was to conduct a network analysis of the primary data. The reasons for these decisions and their implications are the major focus of this chapter. First I discuss my motivation for choosing a case study approach, and further choices arising out of this. Secondly, I provide an introduction to the actual cases: two university courses in Labour Law, and sketch their institutional contexts. Thirdly, the data collection methods are discussed. Fourthly I show how the networks presented in the previous chapter were arrived at through the data analysis process. Finally there is a discussion of the limitations of the study, associated with the choice of design, and steps that I took to try to overcome these limitations and ensure the validity of the study.

### **5.1 Rationale for a case study approach**

Yin (1984:13) has said that case studies are the preferred strategy 'when "how" and "why" questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real life context'. Such a phenomenon might be a project or programme for evaluation, for example, or other situations involving complex interaction between the phenomenon and its (temporal) context (Yin, 1993:3). One of the implications of the contextual dimensions of case studies is that one cannot rely on a single data collection method but needs to use multiple sources of evidence. The case study is not a 'methodological choice' but a 'choice of object to be studied' (Stake, 1994:236). The bounded systems (Yin, 1984) which I chose to study were two university courses in Labour Law. This choice was based on a number of presuppositions:

- that Labour Law might offer particularly fruitful opportunities to observe the recruitment of prior informal experience in formal education, given the nature of the relationship between the everyday and the rule in law (see Chapter 3), the role of trade unionists in the design of contemporary labour legislation and of government policy on RPL (Chapter 2) and their daily experience of labour law (see Chapter 8).

- that in courses at universities the differences between formal and informal knowledge might be more stark than in other sectors, because of the level of theoretical specialization with which they are usually associated.
- that the focus on two case studies, rather than one, that were at different levels (certificate and postgraduate level) would highlight by means of contrast those features of 'rpl' which might be generalizable beyond the confines of the particular case, and those that might not.

Once I had decided to do research in the field of labour law and to focus on case studies, a number of further choices had to be made. Most importantly, I needed to decide whether to do one case study or more and, within the studies, what aspects I should focus on.

### *5.1.1 Number of case studies*

Studies involving multiple cases are regarded as more robust than single case studies and the evidence is more compelling (Yin, 1984) but they have a number of disadvantages. They require extensive resources and time, can mean the sacrifice of depth in favour of breadth and require a different rationale to single case study designs in which it can be argued that the case is unusual, critical or 'telling' (Yin, *ibid*; Ellen, 1984).

I chose to do two case studies rather than one not only because I believed that the comparative element would strengthen my findings in a general way, but also because I believed the theory demanded it. In literature on adult education and RPL, experience is often viewed in a general sense, in isolation from the demands of specific disciplines and levels of education. I felt this was problematic and that a study of two cases at different levels might illuminate this by means of contrast, each case acting as a foil to the other.<sup>60</sup> I also wanted to establish whether there would be different treatment of prior experience at the different levels, in much the same way that Dowling (1993, 1998) found different treatment of the everyday in texts designed for low ability versus high ability school pupils.

In selecting the cases I was following replication, rather than sampling logic, aiming for theoretical rather than literal replication (Yin, 1984). In other words I did not select the second case because I thought it would produce similar results (a literal replication) but because I thought it would produce contrary results, for predictable reasons (a theoretical replication).

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<sup>60</sup> An ideal choice might have been to contrast two disciplines but I did not have the resources to undertake this.

This choice placed a particular responsibility on me to develop a rich theoretical framework, which could later become the vehicle for generalizing to new cases.

### **5.1.2 Internal foci**

Within the cases, I made further selections based on purposeful or criterion based sampling, an approach supported by Maxwell (1996) and Miles and Huberman (1994).

Maxwell (1996:71) says that in qualitative research most sampling is neither probability sampling (which is highly regarded in quantitative research) nor convenience sampling (which is frowned upon), but purposeful or criterion based sampling. This is a strategy in which particular settings, persons, or events are selected deliberately in order to provide important information that can't be obtained as well from other choices. Selecting those times, settings, and individuals that can provide you with the information you need in order to answer your research questions is the most important consideration in qualitative sampling decisions. In qualitative studies with large sample sizes, in which generalizability is an important goal, random sampling is 'a poor way to draw a small sample, due to the high likelihood of chance variation. Most of the advantages of randomisation depend on a reasonably large sample size to make such variations unlikely' (ibid:71).

Maxwell says there are at least four possible goals for purposeful sampling. The first is achieving representativeness or typicality of the settings, individuals, or activities selected. It makes more sense in a small study to deliberately select cases, individuals or situations that are known to be typical. The second goal is to capture the heterogeneity in the population. 'The purpose here is to ensure that the conclusions adequately represent the entire range of variation, rather than only the typical members or some subset of this range ...' (ibid:71).

The third possible goal is to select the sample to deliberately examine cases that are critical for the theories that with which the study began, or were subsequently developed. 'Extreme cases often provide a crucial test of these theories and can illuminate what is going on in a way that representative cases cannot' (ibid:72). A fourth goal can be to establish particular comparisons to illuminate the reasons for differences between settings or individuals.

In my study, the last two goals were prominent. I wanted to study the recruitment of prior experience in the light of theories for and against its value in formal education and I wanted to

compare courses at two different levels to show points of potential generalizability and non-generalizability. Furthermore, I used purposive sampling logic in deciding:

- to focus on labour law only (excluding the social security aspect of Course B) so I would be able to compare the two courses' treatment of the same subject.
- to focus on the recruitment of trade union experience rather than adult experience more broadly because I felt this linked more closely with the origins of my research question and of RPL.
- within this focus, to explore in detail the educational histories of those students who were not only trade unionists, but trade unionists with limited formal qualifications who had been admitted on an 'RPL' basis.

## **5.2 An introduction to the case studies**

In the light of the assumptions outlined in 5.1, I chose to study two courses in Labour Law at Universities A and B. The following are brief descriptions of the courses and their institutional contexts. In the interests of preserving the anonymity of the subjects of the research I have excluded details which would identify the institutions. To the extent that this limits understanding of the context of the studies, this is regrettable. However, for ethical reasons I had no alternative but to do this.

### **5.2.1 Outline of Course A**

Course A which is the main focus of this thesis, was one of several run by a project which was set up at University A in 1993, with financial support from overseas funders, to offer training, research and resources services to trade unions, NGOs and government departments. For the purposes of this thesis I will call it the Labour Law Unit or LLU, although this was not its real name.

It consisted of nine two-hour sessions and two three-hour sessions extending over 11 weeks. Assessment was in the form of a single three hour examination. I observed the course which extended over 11 weeks from 4 March 1999 to 13 May 1999. There were nine two-hour sessions (from 18h00 to 20h15) and two, on conciliation and arbitration, lasting three hours each (from 18h00 to 21h00).

In an advertising brochure, the course was billed as a comprehensive introduction to the Labour Relations Act of 1995, with some reference to the Basic Conditions of Employment Act and the Employment Equity Act. It dealt with the following topics: Unfair Dismissals, Unfair Discrimination, Sexual harassment, Disclosure of Information and Retrenchment, Freedom of Association and Organisational Rights, Worker Participation, Dispute Resolution: Conciliation and Arbitration, Strikes and Lockouts, Recognition Agreements and Negotiation Skills.

The brochure said it was 'certificate-based' and 'the minimum academic qualification for delegates who wish to attend is Std 8'. The course fee was R1 100.<sup>61</sup>

### ***5.2.2 Procedures for admitting students with less than Grade 10 in Course A***

The co-ordinator of Course A informed me that they admitted students with less than Std 8 provided they had 'experience'. The only attempt to ascertain this experience was a question on the application form in which applicants were required to state their occupation, employment details and trade union membership. This was in addition to stating their highest academic qualification. The staff did not attempt to verify students' responses. In the course that I observed 11 students gave their highest qualification as 'Std 8' (Grade 10) or Std 9 (Grade 11). In interviews, I gained the impression that some of the students might not have actually obtained a Std 8 certificate or even gone that far. They were very vague when questioned on this.

### ***5.2.3 The institutional context: University A***

University A was established in 1959 by an Act of Parliament as an ethnic college for students of colour. The university underwent a number of changes in identity, growing from a stigmatised college, with only 170 students and 17 academic staff, into one of the strongest 'historically black universities' (HBUs) in South Africa, with a proud history of association with the political struggle, about 9 000 students and nearly 400 academic staff. In the late 1980's, when it was promoting itself as a left-orientated institution, the university extended its mission to provide access to disadvantaged students by adopting an 'open' admissions policy. Impoverished students from educationally deprived backgrounds throughout the country flocked to the university, boosting its numbers by several thousands and incurring millions of

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<sup>61</sup> One seventh the cost of Course B. In 2000 steps were taken to develop a policy and programme of action for RPL and in 2001 an RPL pilot programme was introduced.

rands of debt in unpaid student fees. This debt was not written off, as expected, by the post-apartheid government and at the time of my empirical research (1999), the university management was struggling to reduce that debt while also experiencing loss of income as a result of a drop in student numbers.

The open admissions policy not only led to debt from unpaid student fees, it also caused the university to acquire a reputation for admitting students who were minimally prepared for university study: matriculants with D and E passes, as opposed to matriculants with Cs and above at University B. While the university produced some outstanding graduates, it also had poor throughput rates, a problem shared with most of the other HBUs. In the late 1990's the university began to enforce the payment of student fees and to project a new, more conservative image as a university of 'excellence' and 'quality'. It continued to commit itself to assisting educationally disadvantaged students gain access to higher education but the emphasis now was on 'access with success' and on attracting mature (fee-paying) students through part-time programmes and opportunities for 'lifelong learning'.

Although it had no policy on RPL at the time of my study nor any plans to implement the practice, there were several procedures in place whereby an adult without matric exemption could be admitted to degree programmes. In terms of mature age exemption procedures a student with a Senior Certificate but no exemption, could be admitted to a degree programme if over the age of 23. A student over 45 could be admitted without a senior certificate. In exceptional cases the permission of the university Senate could be sought (the 'Senate discretionary procedure'), usually in relation to access to a postgraduate programme.

Certificate courses, of which Course A is an example, provided opportunities to study at the university to adults who did not qualify for either forms of mature age exemption. These courses, in the departments of management, adult education and law, could not be counted as credits towards a degree or diploma. However, students who successfully completed the programmes would graduate at a university graduation ceremony, an important symbolic achievement for some.

#### **5.2.4 *Outline of Course B***

Course B was a postgraduate diploma, offered by an institute in the Faculty of Law of University B which I shall call the Labour Law Institute (LLI). The first course was run in

1998. I observed the second, in 1999 which consisted of two intensive teaching blocks of two weeks each, February 1 to 12 and October 18 to 29.

The course consisted of a primary course on Individual Employment and Labour Relations Law and a second course on Social Security. To complete the course satisfactorily, students were required to attend the classes and complete four assignments and a dissertation by the end of the year. My focus was on the primary course, in particular those themes which were also covered by Course A – mostly to do with the Labour Relations Act of 1995.

This section of the course was described in the faculty handbook as being designed to

give legal practitioners, human resource and industrial relations practitioners, trade unionists and para-legals a ‘working knowledge of applied labour law’. The course sought to examine legal rules and institutions in context and emphasised its practical application.

In a newspaper advertisement about the course, the faculty said applicants needed to possess a Bachelors degree or ‘be otherwise appropriately skilled’.<sup>62</sup> Topics would include:

- ❑ Employment law in the changing world of work
- ❑ Labour law under the new Constitution
- ❑ Recruiting, training and promoting under an employment equity regime
- ❑ Equality and discrimination at the workplace
- ❑ Fair labour practices
- ❑ Collective bargaining
- ❑ Strikes and lock-outs
- ❑ Workplace co-operation and transformation
- ❑ Dismissals
- ❑ Conciliating and arbitrating at the CCMA
- ❑ Litigating in the Labour Court

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<sup>62</sup> In placing emphasis on skill rather than other formal qualifications, the institute departed slightly from the Faculty rules for admission to postgraduate diplomas which stipulated that students who did not have a degree could be admitted to a postgraduate diploma on the approval of Senate if they held any other academic or professional qualification which Senate had approved as a ground for admission or had satisfied Senate by means of a test, that their qualifications were equivalent to those normally required for admission.

- Alternative forms of dispute resolution
- Social security
- Health and safety.

The fees for the course were R7 800 –approximately seven times the cost of Course A.

The advertisement also listed the convenors of the course and said the Institute drew on more than 12 years teaching and research experience in the employment law field. The full complement of presenters, ‘all experts in their fields’, would include academics, legal and industrial relations/human resource practitioners and members of the judiciary.

### ***5.2.5 Procedures for admitting students without degrees to Course B***

Course B was a postgraduate diploma which means that students would usually be required to have at least a degree to qualify for admission. In this case, the university had decided to admit students without degrees if they had extensive relevant work experience. By increasing access to non-traditional students in this way, the university was not only conforming to government policy, it was also bringing in extra revenue for the university.<sup>63</sup> In the course that I observed, 10 students without degrees were admitted on the grounds that they had relevant experience. The procedure for admitting these students was the following:

The applicants were invited to interviews in which they were asked questions relating to the nature of their work and exposure to law or labour law or related fields, from a pre-prepared list of questions. They were asked what written work they had done in the past and why they thought they should be admitted to the course. They were warned that the deadlines were going to be strictly enforced and asked how they would fit in the work given the demands of their jobs. Finally they were asked questions relating to the Employment Equity and Basic Conditions of Employment Act: what they knew about these acts and how much they had thought about their implications.

The memo provided for the interviewers noted that they should consider in relation to the last questions the student’s ability to think analytically and structure an answer. Each answer had to be rated on a scale of 1 (very poor) to 5 (outstanding).

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<sup>63</sup> Interview with head of the LLI.

The list of questions indicated the importance attached to:

- Knowledge of the content of employment legislation
- Consideration of issues surrounding this legislation
- Social factors likely to impinge on or facilitate completion of the course
- Academic literacies, including the ability to analyse and organize an argument. There seemed to be a presumption that if one's job required one to produce written work, such as reports, one would be competent in this regard. Students' competence in this regard was not put to the test. They were not required to produce evidence of written work beyond their *Curricula Vitae*.

This interview process was far more demanding than the access requirements of Course A where students simply had to state their highest qualification and occupation. However, a formal 'recognition of prior learning' process would probably have required much greater evidence of relevant experience and how that related to formal competencies.

#### **5.2.6 Institutional context: University B**

University B, in the terms popularly used to characterise higher education institutions under apartheid, is a 'historically white (English) university'. Unlike most of the 'historically black universities' and historically white (Afrikaans) universities, however, it was not a creation of the Nationalist Government. Its origins date back to 1829. Today it has more than 15 000 students and 4 500 members of staff and boasts being a leading research university', a position which is confirmed, it says, by 'independent peer review'.

While University A has sought, increasingly, to position itself as an adult-friendly institution, University B continues to be geared primarily for school-leavers and 'young' postgraduates. It is not surprising therefore that its mission is to be an outstanding teaching and research university educating for life (rather than throughout life, as is the case at University B). It is ironical that its geographical location, near the centre of a major South African city and with access to safe public transport, makes it far more suitable for part-time study than University A which is located, like all HBUs to a greater and lesser extent, outside of any metropolitan area. Every year University B offers a range of courses for adults in its continuing education programmes including some with a 'community-orientated' focus but it is otherwise not known for programmes geared specifically for adults and it has a reputation for stringent admission requirements over and above the minimum requirement of matriculation exemption.

At the time of my fieldwork (1999/2000) there were only four programmes that accommodated adults without matric exemption<sup>64</sup> at University B. They were a management programme, a certificate and a diploma programme for educators of adults, a Certificate in Social Reconstruction and Development and the postgraduate diploma which I observed.

The university also provided access to underqualified adult students on an ad hoc basis, using mature age exemption procedures. This has usually been at postgraduate level. On the odd occasion where a student has sought admission to an undergraduate programme, an alternative admissions test was administered.

### 5.3 Data collection and analysis

I have said that my decision to study cases was a choice of site rather than method and that case studies usually lend themselves to multiple methods. My case studies were no exception and I employed a diverse range of methods to gather data, including non-participant observations, interviews and the collection of documents and student results. The diversity provided the triangulation (Denzin and Lincoln, 1994) necessary to limit bias and led to a number of different data analysis methods, including quantitative analysis of results, qualitative coding of the lecture transcripts and written texts and the generation of a coding scheme.

This was in addition to an extensive review of literature relating to perspectives on informal knowledge in RPL and experiential learning discourses (Chapter 2), in dualist and monist social and educational theories, and in Law and Labour Law (Chapter 3). The issues relating to the implementation of RPL in higher education (Chapter 2) emerged from a review of RPL research locally and internationally which drew on international data bases.<sup>65</sup>

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<sup>64</sup> A 'matric exemption' is the standard minimum entry requirement for degree programmes at university. To achieve this a student needs to pass certain subjects at a particular level in the final Grade 12 examination.

<sup>65</sup> The databases were:

- *Biblioline Select Database* (1987 – 2001) Maryland, US: NISC International Inc.  
<http://www.hisc.com>
- *Dissertation Abstracts on Disc* (1989-2000) US: UMI Company.
- *Ebsco Academic Full Text Database* (2002) Ipswich, MA: Ebsco Publishing. [epnet@epnet.com](mailto:epnet@epnet.com)
- Educational Resources Information Centre (1966- 2000) *The Educational Research Abstracts Online Database*. UK: Carfax Publishing Ltd. <http://www.tandf.co.uk/era>
- Hyam M (1998-1999) *Index to Theses Accepted for higher degrees by the universities of Great Britain and Ireland*. Vols 47-49. London: Aslib Expert Information Ltd.
- Schilling C, ed. *Sociology of Education Abstracts* (1998-2001). UK: Carfax Publishing Ltd.  
<http://www.tandf.co.uk/era>

The following is an account of the empirical data collected, with outlines of the modes of analysis.

### **5.3.1 *The lectures***

In Course A I observed 25 hours of lectures (9 sessions of two hours each, two of three hours each) of which 21 hours were tape-recorded and transcribed.<sup>66</sup> This generated approximately 83 000 words of transcript for sessions 3 to 11, and field notes for lectures 1 and 2. In Course B I observed approximately 140 hours of lectures, of which about 30 hours were tape-recorded and transcribed. For the remainder of the course I took detailed notes. Here I limited the amount of audio recording for logistical reasons. The lectures took place in a very large, raked lecture hall and the students spread themselves throughout the hall. I did not want to disturb the 'naturalistic' nature of my study by introducing powerful sound recording or video systems. I used a conventional tape recorder and recorded only those lectures which were of particular relevance to my comparison: those on conciliation and arbitration. I did not attempt to capture student responses in the audio recordings, but concentrated on the lecturer's input. For the students' interventions, I relied on my written notes.

Because the lectures provided the main opportunities for the recruitment and recognition of prior experience in the pedagogy of the course (it was not a feature of the course notes, assignments and exam questions) the analysis of the lecture transcripts is of great importance to the overall study. My methods will be discussed in detail in 5.4.

### **5.3.2 *The written texts***

All pedagogic texts, including course notes and exercises, exam questions and assignment briefs, were collated and analysed.

#### *The course notes and exercises*

The course notes and exercises in Course A amounted to 168 pages and in Course B to over 400 pages.

I scrutinized these texts for recruitments or solicitations of personal experience of either lecturer or student and found none bar the reference to the range of different student

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<sup>66</sup> In each case the transcriptions were checked against tape recordings before analysis.

backgrounds which is discussed in 6.3.3. Thereafter I noted types of strategies used (using the coding system generated in my analysis of the lectures) and differences between the notes for Course A and B and drew the conclusions which are stated in 6.4.

### *The evaluation texts*

The assignments from Course B and the exam questions from Course A are presented in Appendices D and E respectively. They were analysed initially according to the coding frame generated by the analysis of the lectures. This was found to be insufficient to account for the range of solicitation strategies and so a further frame was developed to code the evaluation texts and they were categorized accordingly. This is reported in Chapters 4 and 7.

### *Student exam scripts, assignments and results*

In Course A I was fortunate to be granted permission by the university to peruse the students' exam scripts and was given all of them – 165 in total. I collated the marks for individual questions, as well as overall marks, and analysed these in relation to biographical factors and type of question (see 7.1). In addition to this, I analysed particularly closely the scripts of the five<sup>67</sup> trade unionists who fell into the category that receives particular attention in this thesis: progressive trade unionists with limited formal qualifications. I compared these scripts with those of seven other students: three further students without matric who had written the exam, chosen because of their relevance to the RPL dimension of my study, and four students chosen to represent the range of qualification categories beyond this: matric, matric plus diploma or certificate, degree and postgraduate. The latter group included the student who achieved the highest marks in the class.

To gain an understanding of the realization rules of this course, I developed my own marking schedule which explored the relationship between academic literacies, content knowledge and the lecturer's marks, and I marked the scripts of the 11 students accordingly. (See Chapter 7 for a detailed discussion of this process.)

In Course B, students were evaluated through assignments rather than an exam. These were spread out throughout the year. I collected the marks of all assignments for all students and analysed these in relation to biographical factors and type of assignment, as identified in terms

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<sup>67</sup> Only four of these were interviewed. The other student could not be traced after the course.

of the coding frame mentioned above and in 7.3. I asked all four trade unionists who I focused on in this course to allow me to see their assignments. Three said they had their assignments and would subsequently make them available to me. None of them did so. The fourth wrote only one assignment and did not collect it. I found it at the LLI and perused it there, along with an assignment left by one of the other three. Because of this limited access to assignments, I did not repeat the marking process which I conducted for Course A. However, I did evaluate the assignments of the student who achieved the highest marks, in order to gain a sense of the realization rules.

### **5.3.3 *Biographical details***

Biographical details of the students in both courses were obtained primarily from application forms. They included details about highest formal qualification, occupation, race, gender, age, short courses attended and further formal study.

In Course A I distributed a brief questionnaire (Appendix F) to students in the third lecture with the intention of obtaining such information. Although everyone attending that particular class (32 out of 38 students) completed a questionnaire, the information they provided was too vague in some cases to be useful, particularly in response to questions concerning formal educational qualifications. Two students who stated on their application forms that they only had matric,<sup>68</sup> informed me on their questionnaire forms that they were graduates. One participant, who I knew to be a practising attorney, gave as his qualification as 'university'. The trend was towards a flattening of the educational profile when in fact the class covered a wide educational spectrum from students with Grade 10 only (possibly less) to the attorney with his LLB and others with Masters degrees. In this way, the attorney who also happened to be a white male and top performer in the class downplayed his educational advantage while others sought to enhance their status, in my eyes at least. I found the students gave far more specific information in their application forms. The home address details which they were all required to state on these forms, which I had not requested in my questionnaire, also helped me

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<sup>68</sup> In this thesis I will use the terms matric and Grade 12 interchangeably. In most cases, the students were of an age where the final school leaving examination or certificate would have been described as 'matric', regardless of whether matriculation exemption (to permit entrance to university study) was attained or not. The qualification, without matric exemption, would also have been called the Senior Certificate or Standard 10. The term Grade 12 was introduced along with other policy changes about 1995.

to make deductions about 'race'.<sup>69</sup> In Course B, students provided quite extensive details in their application forms and, in some cases, also CVs. For this reason, and because of the inadequacy of the information obtained from the Course A questionnaire, I did not distribute a questionnaire in Course B.

#### **5.3.4 Interviews**

The focus of my study was on the experience of those students for whom RPL was originally designed: trade unionists with limited formal education. In Course A five students fell into this category and four in Course B. With the exception of one student from Course A who was unemployed and could not be traced after the course, all were interviewed in depth.

In Course A, which was originally to be the only case study, I also interviewed seven more students – three more from the group with less than matric, and four representing the range of qualification types: matric only, matric plus diploma or certificate, degree and postgraduate degree. Time constraints and resources did not permit similar interviews in Course B, nor did I deem it necessary once I had decided to narrow the focus to the experience of progressive trade unionists, with limited qualifications.

To gain background information about the nature of law, I interviewed the co-ordinator of Course A, a lecturer who taught on both Course A and B and a legal practitioner (an acting judge in the Labour Court). These interviews were unstructured.

All the student interviews were semi-structured (Bernard, 1990). I took a list of guide questions (see Appendix G) to the interviews and attempted in each case to cover all the questions. They covered, broadly, questions designed to elicit information about the

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<sup>69</sup> I decided to employ the concepts of race and gender because of their important associations in this country with educational advantage and disadvantage. For Course B I was able to rely on students own descriptions of their 'race' because applicants were requested to provide this information on their application forms (this is standard procedure at this university) and most did so. Applicants for Course A were not required to do this and I did not request information about race or gender in my survey. Later, when I decided that I needed to explore this category, I had to deduce 'race' primarily from information supplied on their application forms. I presumed that a student with an address in an area that until recently was designated for 'coloured' persons only was a person who had been and probably was still being regarded as 'coloured', or if the address was that of an African township, I presumed that he or she was African. (This is because there has been practically no migration of other racial groups into these areas, although there has been some limited migration of middle class and elite Africans and Coloureds into white areas.) I used names (Xhosa names and common names among Coloured families) to confirm or refute my initial assumptions. I assumed that a student with a feminine first name and title was female, and a masculine first name and title was male.

interviewees educational background and questions designed to get the student to speak about the recruitment or recognition of his/her prior experience on the course. However, interviews were not framed or classified according to these questions. The interviews were allowed to flow naturally out of the initial opening conversation which sometimes indicated that a question buried deep down in my list would be more relevant to start with than one at the top. Interviewees were permitted to introduce new topics and I asked further questions as their relevance emerged.

All the interviews were tape recorded and transcribed in full. In my analysis, I identified key biographical categories and marked the transcripts accordingly: race and gender, highest formal qualification, age at time of course, occupation at time of course, previous occupation (from earliest to most recent), trade union involvement, personal experience of labour law, exposure to written texts at work/in the union, non formal courses attended and further formal study. This information was tabulated with the following further details: marks achieved in exam or assignments, mode of participation in lectures, recruitment of prior informal experience or knowledge in oral interventions, mode of participation in exam script (Course A only), best mark question or assignment. These educational biographies are presented in Appendices H, I and J and contributed to the profile of the group presented in 8.1.

The transcripts were analysed further to identify dispositional factors that might have contributed to achievement or failure on the course: these related to pedagogic hierarchy, identity and willingness to expend symbolic labour (in other words, make the ideological submission necessary to succeed) and, finally, social and personal factors.

#### **5.4 Analysis of the lectures: a network approach**

In the previous chapter I presented a network of transmission/acquisition strategies, distinguishing at the crudest level between generalizing and localizing strategies and thereafter making finer and finer distinctions within the category of localizing strategies. In this section I will present an account of how those networks were reached, as well as a brief discussion of the origins of systemic network analysis, from which this form of textual analysis is derived.

#### *5.4.1 The origins of systemic network analysis*

Systemic network analysis stems primarily from the systemic school of linguistics, the work of Halliday in particular. Bliss, Monk and Ogborn (1983) trace it even further back to the idea, propagated by linguists De Saussure and Firth and anthropologist Malonowski, that meaning in language has essentially to do with choice in context.

That is, a word or phrase does not ‘contain’ its meaning as a bucket contains water, but has the meaning it does by being the choice, in a given context, that it is and by so excluding the choices that it might have been (ibid:28).

From this, the notions of semantic systems and networks was developed.

Halliday argued that the social uses of language could be related to situation types or social contexts. For any one particular situation type, one could identify a ‘meaning potential’, in other words, ‘the range of semantic options available to the speaker in the context of the particular situation type’ (Turner, 1973: 144). These could be represented as a network, which shows how the options are systematically related to each other.

A semantic network, said Halliday (1973:76), is a hypothesis about patterns of meaning, and in order to be valid it must satisfy three requirements:

It has to account for the range of alternatives at the semantic stratum itself; and it has to relate these both ‘upwards’, in this instance to categories of some general social theory or theory of behaviour, and ‘downwards’, to the categories of linguistic form at the stratum of the grammar.

The network is both closed and open-ended. Halliday said:

From the network, we can derive a paradigm of all the meaning selections. This is the set of ‘well-formed selection expressions’ from the network in question, and the network asserts that these and no others are possible.

The network is however open-ended in delicacy. We take as the starting point the total set of possible meaning selections, and proceed by progressive

differentiation on the basis of systematic contrasts in meaning. It is always possible to add further specification; but it is never necessary to do so, so we can stop at the point where any further move in delicacy is of no interest (ibid:76)

There are major differences, however, between the way in which networks have been used in qualitative research (for example, Holland, 1983; Brown, 1999) and in this study too, and the way in which they have been used in linguistics. Bliss et al (1983:28-29) have summarized the distinction:

The essential difference in approach is that the linguist is interested in what instances of language in use reveal about the structure of the language itself... while the educational researcher is interested in what data, which may just happen to be spoken or written, can reveal or suggest about questions of a different kind, such as what people believe or how they learned something ...

Thus a systemic linguist's network will attempt to account for language structures. By contrast, the analyst of qualitative data is not using networks for this purpose, but is instead manufacturing a language for his or her own purposes.

#### ***5.4.2 The generation of a network of transmission/acquisition strategies***

The networks which I present in Chapter 4 were derived from analysis of the lectures in Course A and B. These form the primary data of the study because they provided the context (in Halliday's terms 'situation type') in which there were the greatest opportunities for the recruitment of prior informal experience. The case study exercises also provided opportunities but I did not analyse them systematically for several reasons. Firstly, they were conducted in groups which meant that I could not observe all the students. Secondly, they were conducted without the lecturer present so I could not observe the interaction between transmitter and acquirer which was central to the nature of my inquiry. Thirdly, they were haphazard. In Course A they were held at the end of the lectures, which often ran late. The exercises were condensed into the short time available and much of that time was taken up by the lecturer running through the answers. In Course B, there was the additional factor that many of the students used the opportunity to go home early or attend to professional duties on their cellphones.

The networks which I developed emanated, mainly, from the transcripts of the lectures, but my analysis of the lectures began when I first started observing classes. Throughout the lectures I not only made notes of what was said but also made notes of my impressions of what was happening, in relation to my research question. These impressions were initially influenced, primarily, by concepts relating to Bernstein's theory of pedagogic discourse – concepts such as classification, framing, hierarchy, criteria, recognition and realization rules. These were 'background or sensitising concepts' (Layder, 1993) that provided an initial, provisional means of ordering data. Bourdieu's concept of strategy was not within my initial interpretative frame. My need for such a concept to describe the moves of some of the students and lecturers arose directly from the data. Dowling's concepts of localizing and generalizing strategies were a logical progression as I noticed the differences between recruitments and solicitations of the local, the particular and the concrete and recruitments and solicitations of the general, the distant and the abstract.

In addition to making notes, I also made audio recordings of 25 hours of Course A lectures and 30 hours of Course B lectures. These recordings were transcribed and checked and then analysed in the following manner.<sup>70</sup> Firstly, I went through my notes and transcripts and made initial rough notes in margins to indicate emerging categories of localizing and generalizing strategies. These were then used to code transcripts that had been selected to represent types of lectures which I had already identified impressionistically from my observations. Initially I identified six types, with the type of localizing strategy and extent of recruitment of transmitter and/or acquirer experience as major features of variation. This was later narrowed to three: formal generalizing, formal localizing and informal localizing (see Chapter 6).

The qualitative data analysis programme NVIVO was used to code the data and, with its branching tree structure, helped to generate the network of strategies (see Bazeley and Richards, 2000 and Richards, 1999). NVIVO allows one to code data as tree nodes (which permit hierarchical, tree structures) and free nodes (which do not). The system was ideally suited to my need to identify and sub-categorise transmission/acquisition strategies and identify, but not sub-categorise, other pedagogic strategies which were beyond the focus of my study.

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<sup>70</sup> My method is similar to that advocated by Tesch (1990:143-145) except that I make use of a computer program where she has suggested manual coding.

The tree structure was developed through a process of coding and recoding the transcripts, until the network in Figure 8 was reached. Thereafter each node (the lowest branches of the tree) was labelled alphabetically to indicate whether it was a transmitter or acquirer strategy and the exact nature of the strategy. The labels and descriptions were recorded so one could easily be reminded that a segment of text assigned to the node TN, for example, was a transmitter statement of a rule, principle etc, in other words a formal generalization.

#### **5.4.3 Reliability test**

Towards the end of the coding/recoding process, I felt I had reached a sufficient level of delicacy to warrant a reliability test. I distributed the coding structure, as it was then, with explanations, to four colleagues, all researchers in the field of education, and asked them to code three sample transcript extracts using my coding system. I also coded the texts myself. I then compared their codings with my own categorization of the same texts. Their responses were a major influence on the final network. Where they provided different options for the categorization of a particular utterance, I was alerted to the need to refine and sometimes redefine my categories. I included for analysis an exam question from Course A and segments from two lectures in Course A.

The exam question on unfair dismissals generated the most consensus, with only two minor deviations from my categorization.

In the extract from the lecture on conciliation, the researchers often presented a number of different coding options for certain strategies (indicating the ambiguity of spoken text) but at least one of their options coincided with my own choice(s) in all strategies identified.

The extract from the lecture on sexual harassment, generated the most divergence. On only one utterance, did my coding correspond with that of all four researchers. The extract illustrated the complexities of interpreting spoken text. One of the difficulties was that I had not provided contextual information and information about non-verbal communication that would have facilitated understanding of the often-cryptic remarks of students or lecturers. For example, when students gave responses like 'suggestions' or 'jokes' to the lecturer's question: 'What behaviour constitutes sexual harassment?', one researcher felt their responses should be categorised as the respondent's own ideas or knowledge, which could be the product of

experience but could also be the product of their own thought. (There was no category for this.) I knew, but had failed to mention it, that later in the lecture, the lecturer chided the students for giving answers straight from the notes she had given them, in which words like 'suggestions', 'jokes' etc were listed. I had coded these as 'class examples of abstract concepts' and the lecturer's question as 'solicitation of class examples'.

The researcher's response was important in another sense too, for it reminded me of the complexity of human experience and its relation to knowledge. When can one say that knowledge is not the result of experience, of some kind or another? This was one of the reasons why I did not attempt to identify 'learning' from prior informal experience. Only recruitments of raw experience (usually in the form of narratives and, sometimes, generalizations) could be unambiguously attributed to prior experience.

The greatest divergence was around utterances for which I had clearly not developed appropriate categories. These included utterances that amounted to confirmations of the student's remarks, prompting remarks, phatic communication and utterances that sought to 'classify' the interaction, in other words to close off a particular line of conversation. As a result of the exercise, I developed further categories of non-acquisition/transmission strategies.

In the end the exercise helped me to refine and better define the categories I had developed and to develop a more coherent list of non-transmission/acquisition strategies that were obviously important but fell outside the focus of my inquiry. When I had reached the network set out as Figure 8 I recoded all the selected texts and quantified the strategies to show proportions (see below).

#### **5.4.4 *Quantification of strategies***

As I have said, I formed strong initial impressions of the types of lectures. One of the major variables was the extent of localizing by the lecturer, in particular the personalization of that localizing, and the corresponding localizations of the students. Initially I identified six types. To confirm the accuracy of my impressions, I selected lectures which I felt to be representative of these three types, coded them in terms of the network presented as Figure 8 and quantified the coding. To do this I made use of NVIVO's capacity to generate character counts, after checking, by timing segments of texts and relating these to character counts, that they were a

reasonable indicator of proportions.<sup>71</sup> Tables of character counts generated by particular strategies were developed for each of these lectures and percentages were calculated. As a result of this analysis I narrowed the number of types to three. Examples of each these types are presented in Chapter 4.

## **5.5 Limitations of the study**

The research design which I chose to follow brought with it a range of potential limitations. In this section I will discuss those limitations and also my attempts to overcome them and to ensure the validity of the study. I will discuss firstly those limitations associated with case study research and secondly those associated with network analysis, finally issues associated with maintaining the anonymity of subjects.

### ***5.5.1 Limitations of case studies***

The limitations of case studies are well-described in the literature on research methods (Yin, 1984; Stake, 1994; Miles and Huberman, 1994). The primary concern is about the limits of generalizability. In my research I chose to do two case studies rather than one, primarily because my theoretical concerns indicated that I should study two levels of courses rather than one. The second study strengthened my findings somewhat (where I found commonalities) and illuminated points of difference but the generalizability of the studies rests, ultimately, with their theoretical and methodological implications. As Yin (1984:21) has said:

Case studies, like experiments, are generalizable to theoretical propositions and not to populations or universes. In this sense, the case study, like the experiment, does not represent a "sample" and the investigator's goal is to expand and generalize theories (analytic generalization) and not to enumerate frequencies (statistical generalization).

My research shows how prior informal experience was recognized and recruited in these two courses alone, but its analytic framework, with its systemic networks, provides a method and

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<sup>71</sup> I could also have counted the number of strategies, but this would not have given me a sense of the proportion of time taken up by certain strategies.

language for the analysis and theoretically-informed description of any other type of instructional programme.

### **5.5.2 *Validity issues***

A second concern in the literature is that case study research has tended to lack rigour, and that equivocal evidence or biased views have been allowed to influence the direction of findings and conclusions (Yin, 1984). Maxwell (1996) has discussed three main sources of invalidity: inaccuracy or incompleteness of data (a threat to the validity of the description); the imposition of the researcher's own framework of meaning, rather than understanding the perspective of the people studied and the meanings they attach to their words and actions (a threat to interpretative validity); and not collecting or paying attention to discrepant data, or not considering alternative explanations or understandings of the phenomena studied (a threat to theoretical validity).

Maxwell suggests audio or video recording wherever possible to prevent inaccuracy. In this study, I took detailed notes of what was said in lectures and interviews as well as my impressions of what was happening in the lectures and supplemented these with audio recordings of the lectures and interviews which were transcribed and checked. To avoid an invalid interpretation, Maxwell suggests the researcher should 'seriously and systematically attempt to learn how the participants in your study make sense of what's going on, rather than pigeonholing their words and actions in your own framework'. To this end I asked the students who are quoted at length in this thesis, how they interpreted what was happening at the time and why they said what they did.

On the issue of theoretical validity, I take a similar view to Bernstein (see quotation at the start of Chapter 4) and Brown and Dowling (1998:166) that a researcher can never be theory-neutral. For this reason I have been as explicit as possible about my theoretical framework and the 'sensitising concepts' with which I entered the field. However, I have not just looked for examples of favoured theoretical concepts but have scoured the data as thoroughly as possible so that I may become aware of other, possibly competing, concepts, so the examples can be seen in context. To this end, I coded entire lectures and identified all pedagogic strategies even though I was going to concentrate only on transmission/acquisition strategies. Furthermore, I tested the reliability of my coding scheme (as described in 5.5.1), thereby not only improving its reliability but also improving the validity of some of the categories I had developed.

### ***5.5.3 Limitations of network analysis***

My use of network analysis has brought both limitations and advantages. Like all network analysis (see Brown, 1999) mine was very time-consuming, demanded a great deal of space in the writing up and the level of detail at which I had to work, as I made more and more delicate distinctions, made it difficult, at times, to keep sight of the overall purpose and context of the project. Coding frames associated with networks have been accused of furnishing too powerful a conceptual grid (Silverman, 1993) which can deflect away from uncategorized activities. I believe this criticism only applies to coding frames borrowed from other studies and then applied uncritically to a new context. In such a case the researcher would have to be extremely sensitive to data that falls beyond the frame. In my case, the frame was developed out of a thorough analysis of entire transcripts. I made use of initial 'sensitising' concepts, but the final frame extends far beyond them and includes pedagogic strategies which were beyond the focus of my study. I felt it important to identify them – to contextualize my study – even though I could not explore them in depth.

Ultimately I believe the network analysis enabled me to make a fine-grained, theoretically informed analysis of the data that would not otherwise have been possible and the network developed could be used by other researchers for further research.

### ***5.5.4 Limitations of coding methods***

Another concern might be the method which I used to quantify the coding – quantification of character counts generated by NVIVO. These were found to be reliable indicators of proportions of time spent on particular utterances – more particularly, strategies – but did not provide a count of frequencies. So a very large sequence of text containing several formal generalizations would have been coded as a single formal generalization, rather than  $x$  number of formal generalizations. Frequency counts also have their limitations, having been accused of failing to provide a qualitative sense of difference (Bernstein, 1990:120). My method was designed with this in mind and was an attempt to provide at least one qualitative dimension of difference, in terms of time. However, the method does not reflect adequately the power of the single, short, but pertinent intervention which can have more force than a longer one. The quantification of the coding was important because it supported the conclusions that I gained impressionistically. Where it didn't I was forced to re-examine my impressions and the analysis benefited as a result.

### **5.5.6 Ensuring anonymity**

It will be noted that in this thesis I have kept anonymous the identities of the individuals and institutions involved. This is not an ideal situation.<sup>72</sup> I have done this because this was a condition of my access to the courses and to students' application forms and exam scripts. A major dilemma was how to distinguish between the individual students in this dissertation. Initially I wanted to use false names that would provide a sense of the students' and lecturers' backgrounds (home language and race, for example) without their actual names. I decided, however, that these would provide too many clues to actual identity. Some of the students who I depict in this study are prominent members of trade unions who have been featured in the mass media. They were exceptionally candid in their interviews and I felt I must do everything possible to protect that trust. In the end I opted for the use of letters and numbers instead. Unfortunately, there has been an inevitable – but unavoidable – impact on the readability of the study.

## **5.6 Summary**

In pursuing the question 'How is prior informal experience recruited and recognized in a formal education context?' I chose to study two cases and to analyse the primary data in terms of networks of strategies. These decisions had major implications for the choice of research methods and for the analytical framework which developed out of a dialogue between theory and the empirical data. Multiple research methods were used including non-participant observation, interviewing and the collection of documents relating to the case studies. The data gathered was analysed through a process of progressive focusing (from 'sensitising concepts' to clear analytic categories) and coding, facilitated by the use of a qualitative data analysis computer program, NVIVO. Through a process of repeated coding and recoding, the networks described in Chapter 4 were arrived at and the sets of findings presented in Chapters 6 to 8 could be reached. The first set, concerning the recruitment and recognition of prior informal experience in the pedagogic discourse of the courses, will be presented in the following chapter.

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<sup>72</sup> Yin (1984) notes that the most desirable option is to disclose identities but recognizes there are occasions when anonymity is necessary and admits that some classic case studies concealed identities.

## **CHAPTER SIX: THE RECRUITMENT AND RECOGNITION OF PRIOR INFORMAL EXPERIENCE IN THE TRANSMISSION TEXTS AND ACQUIRERS' RESPONSES: COURSE A AND B**

'The general rule ... is that no dispute can go to arbitration or adjudication unless it's first been conciliated. There are one or two specific disputes that can go directly to the Labour Court for adjudication, such as urgent interdicts, etc. etc., but ... the vast majority of disputes go through conciliation first ... For your purpose I think, at this point, the general rule is all disputes must go through conciliation first' (Lecturer, Course A)

'It is more important for you to go away knowing how to find the law on any subject rather than knowing the answer to any particular problem' (Lecturer, Course B)

The following three chapters present the empirical findings of the case studies, which were introduced in 5.2. This chapter is concerned with the recruitment and recognition of prior informal experience in the pedagogy of the courses (including the lecturer's input in the lectures and course notes, and acquirers' responses in the lectures). Chapter 7 is concerned with evaluation (exam and assignment questions and students' results). Chapter 8 focuses on the recruitment and recognition of progressive trade union experience, in particular.

Underlying my analysis in this chapter, is a conceptualisation of pedagogic transmission in terms of a continuum of styles, from formal generalizing through formal localizing to informal localizing, depending on the configuration of localizing and generalizing strategies, and the extent and type of recruitments of prior informal experience. The notes and lectures are described in relation to these styles. Three lectures, exemplifying the three styles, are analysed in depth and the range and interrelationships of transmission/ acquisition strategies in each is presented as a network. The chapter ends with a summary of the differences between styles of pedagogy in Course A and Course B and a consideration of the role of prior informal experience, overall.

Please note that I have assigned 'code' names to lecturers and students to maintain anonymity. The first letter 'L' or 'S' stands for 'lecturer' or 'student'. The second 'A' or 'B' indicates the

course. The third digit, a number, designates a particular lecturer. For example, the course coordinator of Course A is LA1 and students range from SA1 to SA16. For a list of lecturers' and students' codes, with brief biographical details, please see Appendices A and B.

## **6.1 Localizing and generalizing strategies in the written pedagogic texts of course A**

In Course A, students were provided with 169 pages of photocopied notes and exercises on nine topics (the conciliation and arbitration sessions were accorded one set of notes on 'dispute resolution' and there were no notes on the final session, which was on negotiation skills). Each week the students were handed a chapter dealing with the topic of the next week's lecture, to be read in advance.

### ***6.1.1 Styles of pedagogic transmission in the course notes of Course A***

The course notes followed roughly the same format: a long section (between seven and 26 pages) summarizing and interpreting the law, followed by one or more brief case studies or other practical exercises.

Although the chapters had been written by different authors, they were similar in that they were all concerned mainly with stating general rules, principles, procedures or concepts (generalizing strategies). The major point of variation had to do with the recruitment of localizing strategies. I distinguished three types of recruitment, which are defined below.

- **Formal generalizing style**

In this style, formal generalizations, mainly simple statements of the content of the legislation, were foregrounded to a great extent and localizing strategies were mainly impersonal particularisations, for example, background information. The notes on Sexual Harassment, Worker Participation, Organizational Rights and Strikes and Lockouts were in this style.

- **Formal localizing style (hypothetical)**

Here formal generalizations were foregrounded, but to a lesser extent than (a) and localizing strategies were mainly hypothetical particularizations. The notes on Dismissals and Unfair Discrimination were in this style.

- Formal localizing style (local generalizations)

Formal generalizations were foregrounded, but to a lesser extent compared with (a) or (b) and localizing strategies were primarily local generalizations (statements about general practice in the labour law field). There was some attention to practical procedures and considerable emphasis on practical exercises. The notes on Dispute Resolution and Recognition Agreements were in this style. The former included details of procedures at conciliation and arbitration hearings and lengthy instructions for role plays. The latter included a sample recognition agreement and newspaper reports which students were required to comment on, as well as a case study exercise.

Notes for the final lecture consisted of a 1½ page scenario for a role play on negotiation skills. This was the only lecture of its kind across either of the two courses and for this reason, will not be included for analysis. It could be regarded as a form of generic skill training.

The styles identified above reflected closely the lecturing styles of the authors, which will be analysed in 6.5.

### ***6.1.2 Solicitations of application: The case studies and other practical exercises***

All but two of the chapters included case study exercises (see Appendix K for an example). The number of case study exercises per chapter ranged from one to five and the format was similar: a hypothetical scenario followed by questions which necessitated an application of the general rule to the scenario, with the answer expressed in the narrative of the scenario. By this I mean that the question did not merely ask for a restatement of the relevant rules or of the relevant considerations but invited the study to enter into the hypothetical 'case', play the role of lawyer or advisor, using the names of the hypothetical characters and referring to the details of the hypothetical scenario. For example: 'Assume that Mrs Higgins ... was pregnant. Would there be a duty on her to inform her prospective employer at the interview...?' The student would be expected to reply along the lines: 'Mrs Higgins should have ...'

Exceptions were the role play exercises in the two sessions on conciliation and arbitration, the exercise on negotiation skills which required the students to read instructions that set the scenarios and the exercise in the session on recognition agreements which required students to read and answer questions on newspaper reports.

I categorised all the case study exercises and the newspaper exercise as formal application solicitations, with the case studies requiring applications of general rules to hypothetical examples and the newspaper exercise, requiring applications to actual events. The roleplays, which amounted to constructions of hypothetical examples, were local particularizing strategies.

### ***6.1.3 Recruitment and recognition of prior informal experience in the course notes***

I found no recruitments of lecturers' prior personal experience. It is possible, however, that some of the generalizations about general practice and procedure with regard to conciliation and arbitration were based on the authors' personal experience of these processes. However, they did not attempt to legitimize these generalizations with reference to personal experience.

The 'local' was introduced in the form of impersonal generalizations and particularizations:

- generalizations based on secondary sources
- class examples to illustrate definitions of concepts
- hypothetical examples, constructed for the purposes of application of general rules or concepts.
- background information and references to specific events.

## **6.2 Localizing and generalizing strategies in the written pedagogic texts of Course B**

The written texts supplied to students on Course B included the following:

- A four-page course outline for Block One and a two page outline for Block Two
- One hundred pages of notes covering the following topics:
  - Objectives of the programme
  - 'Scene setting'
  - 'Frameworking the law'
  - Sources of labour law
  - An overview of key employment law statutes
  - Overview of institutions and processes
  - Entering the employment relationship
  - Terminating the employment relationship

(Two further areas were signalled for presentations: the making of the LRA policies and process and the Labour Market.)

- Fifteen pages summarising recent cases relating to various topics covered in the course
- Fourteen pages of exercises on conflict resolution
- Forty pages on 'Preparing for Arbitration' with an additional 10 pages on preliminary issues relating to arbitration and relevant CCMA cases
- Numerous case study exercises
- Photocopies of various journal articles and other readings on topics relating to employment law
- Numerous texts designed to assist students with the literacies of the course and to access the law. These included:
  - A four page list of Labour Law materials in University B law library.
  - A two page list of key texts in employment law.
  - A library tutorial exercise (for use during a special tutorial on how to use the law library).
  - Details of the Writing Centre (students were instructed to consult this centre if they needed help with writing their assignments).
  - A glossary of Latin and foreign terms.
  - Guidelines to the writing of the dissertation.

These notes were in addition to extensive notes on Social Security (which I have excluded from the focus of my study).

### ***6.2.1 Styles of pedagogic transmission in the course notes in Course B***

Considering the wide range of topics covered and the length of the course, the notes were not extensive. The core notes contained three main types:

- Lists of headings indicating topics to be covered in the lectures (mainly on the history or background to the law), interspersed with quotations from legal commentaries and references to actual cases.
- Discussion of the major labour law acts, in terms of their underlying philosophies and themes.
- Lists of rules from the legislation, mostly in large type (they were obviously copies of overhead transparencies), usually with reference to the actual section of the act.

Significantly, I could find no hypothetical examples. Localizing was in the form of local particularizations (references to actual cases or to the history of the law). The notes on recent case law contained summaries of various cases organised under headings relating to aspects of the course, for example, 'Identifying the contract of employment'.

The exercises on Conflict Resolution were designed to support a form of experiential learning.

### **6.2.2 *Solicitations of application: case study exercises***

The case study exercises presented hypothetical scenarios not unlike those in Course A. They differed however in the manner in which students were required to respond. They required students not only to apply general rules per se, but also to consider the ways in which those rules had been applied in actual, relevant cases. Students were also expected to refer to legal commentaries.

For example, a case study on atypical employment relationships (see Appendix L) required students to argue for and against the case of a worker alleging unfair dismissal. The suggested response, distributed later, first identified the nature of the employment relationship, then considered the court rulings in two relevant cases. The response also listed three commentaries which students could refer to in responding to this case study exercise.

### **6.2.3 *The recruitment and recognition of prior informal experience in the course notes, Course B***

The core notes for the labour law section of Course B made specific reference to the prior experience of some students saying they fell into groups defined in terms of occupations, English competence and experience in the field of labour law.

The second paragraph of the introduction read:

The course is geared for principally two target groups:

HR and IR<sup>73</sup> practitioners (including those whose regular work involves HR and IR, such as unionists engaged in bargaining and individual representation work).

Lawyers wishing to equip themselves to practice in the field of law.

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<sup>73</sup> Human resources (HR) and industrial relations (IR).

Students were then warned of the side-effects of such diversity:

Observation: Participants in the programme are drawn from diverse backgrounds. Some are qualified lawyers, some are accomplished IR practitioners. Others are still finding their feet in relatively new terrain. Many have English as a second language. All have something to offer (or they would not have been selected for the programme).

Entreaty: Students should appreciate that diversity is part of the strength of the class, and that it is inherently difficult to pitch a programme to meet all needs all of the time. Some ground which will be covered will be basic, other quite advanced. Some students may feel patronised at times, others over-extended. Humour and resolution should see us all through. A sharing of talent is vital to the success of the whole endeavour. By the end of the programme, all who worked should have found it worthwhile.

Anchor lecturer LB1 warned the class on the first day that the range of academic and work experiences would present challenges to students as well as lecturers. Some might find it pitched too low, others too high, LB1 said. 'That is where the reading comes in. For those who want to feel a bit stretched, who want deeper learning objectives satisfied.'

In introducing the case studies, at the start of the course, the anchor lecturer, LB1, said they were to be worked through in pairs or 'syndicates' (groups) and were designed to draw on students' experiences. On the contrary (as the above example shows) students' experiences could only have had significance in these exercises if seen through the light of the relevant legislation and case law. This was one example of a lecturer's misunderstanding – or misrepresentation – of the nature of the 'learning' required in the course.

In fact, the exercises did provide students with opportunities to draw on their experiences but not in the circumstances which LB1 had envisaged. Mostly they were assigned to the end of the day or of a particular session. Some students worked diligently through the exercises, some used the opportunity to go home early and others spent the time sharing their experiences. One trade unionist told me that this was one of the most useful aspects of the course because he could learn here from fellow students. Others said the process was chaotic largely because there was no facilitation by staff.

In addition, the exercises were meant to be discussed later, or the next day, in plenary but often this was not done. The handing out of typed responses was also inconsistent.

### **6.3 Differences between Course A and B: the written texts**

The notes provided for Course B differed from those for Course A in many different ways. At a very superficial level they were far less organized, distributed to students on a fairly ad hoc basis and without clear indications of the order in which they were to be read. Sample answers to the case study exercises were sometimes provided and sometimes not.

At the level of content, the primary differences were:

- Generalizing strategies went beyond the provision of the details of laws and procedures to discussions of principles, concepts and their application to particular cases.
- Localizing strategies were primarily concerned with the 'actual', with the hypothetical limited to case study exercises. They consisted mainly of 'experience far' references to actual cases and historical or current events.
- There was considerable attention to 'information literacy'.

Briefly, the notes were about contextualizing and principling rather than proceduralizing, provided actual rather than hypothetical examples and were concerned with providing knowledge on how to access labour law sources to search for answers to legal questions as well as knowledge on the law and related issues.

In my opinion there was a misconception that the case study exercises would give students the opportunity to draw on their prior experience in a pedagogically useful way. They might have provided a physical opportunity to share experiences, but this was not necessarily useful in the completion of the task at hand. The exercises required students to apply rules and concepts etc to particular, hypothetical situations which were not their own, even to research actual cases to back up their answers. They could not simply extrapolate from their own experience.

### **6.4 Localizing and generalizing strategies in the oral pedagogic texts: Course A and B**

This analysis concerns both lecturer' s input and students' responses.

#### **6.4.1 *Brief overview of the lectures: Course A***

Seven of the sessions followed roughly the same format: a lecture lasting 40 minutes to one hour, a break for tea, students dividing into small groups to discuss case study exercises and then discussion of the case studies in plenary session (a total of two and a quarter hours). The two sessions on Dispute Resolution each contained a somewhat longer lecture and an extensive role play exercise (a total of three hours each). The two sessions on Recognition Agreements also followed a different format: the first focused primarily on three newspaper articles and questions relating to them which students were required to discuss in groups. These questions were dealt with in plenary session in the following lecture, which consisted primarily of an extensive role play exercise on negotiation skills.

The co-ordinator of the course was LA1, who worked at the Labour Law Unit (LLU), and undertook the lectures on Unfair Dismissals and Sexual Harassment. LA7, also of the LLU, lectured on Unfair Discrimination, and LA2, a professor in the law faculty, lectured on worker participation.

The head of the LLU, legal graduate LA5, lectured on strikes and lockouts and organizational rights. The 'outside' lecturers were LA3, a labour lawyer and part-time Commissioner of the CCMA who lectured on conciliation and arbitration at the CCMA; LA4 who worked for a legal NGO and lectured on Disclosure of Information and Retrenchments and LA6 who worked for NEDLAC and lectured on Recognition Agreements.

#### **6.4.2 *Brief overview of the lectures: Course B***

The lectures were given in two blocks of two weeks each. The first block was designed to provide a framework to understanding Labour Law<sup>74</sup> and dealt with the themes contained in the core notes (see 6.3). The second was more practically orientated, covering relevant case law and discussions on conciliation and arbitration practice and procedure at the CCMA, among other topics. The anchor lecturer was LB1, a labour lawyer and commissioner of the CCMA. The other lecturers included: LB3, a senior Commissioner at the CCMA; LB4, a prominent labour lawyer and professor who had been involved in the design of the LRA; LB5, a labour lawyer and former academic and LB6, a lecturer in law attached to the LLI. LB1 introduced the course and its key themes, provided links between lecturers, covered, with LB6, the section

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<sup>74</sup> According to the anchor lecturer, LB1.

on case law in the second block and the section on arbitration and also provided extensive information relating to the academic literacies of the course and how to access the law. LB3 lectured on conciliation and the CCMA. LB4 dealt with the 'bigger picture' which included the historical background to the law and a discussion of changing conditions in the workplace. LB5 handled various aspects of the employment relationship and a section on conflict resolution. Guest lecturers included: a professor of business management who lectured on the Employment Equity Act, a Labour Court judge who spoke about Labour Court judgements, a Professor of Economics who gave a lecture on the Labour Market, and LA2 (from University A) who lectured on worker participation. These were in addition to numerous guest lecturers on various topics relating to Social Security. LB2, head of the LLI, delivered the key lectures on Social Security and also provided input on the course criteria.

A cocktail party on the eve of the course was addressed by a prominent judge and the Vice-Chancellor of University B also addressed the class.

#### **6.4.3 *Styles of recruitment***

In the previous chapter, I explained how I had developed a framework for the analysis of the recruitment and recognition of prior experience in a pedagogic context. This framework was the result of ongoing interaction between theory and data and underwent numerous revisions as I coded and recoded the data, as finer and more appropriate categories emerged. The analysis discussed here makes use of the final version of the framework.

The analysis showed that all lecturers were concerned with the transmission of general rules (to a greater and lesser extent) and all used localizing strategies to support them and provide a 'portal' to the general (Dowling, 1998; Ensor, 1999). The lecturers' styles differed according to the type and extent of generalization and localization, the use of other non-transmission/acquisition pedagogic strategies and the relative strength of classification and framing. From the biographical details of the lecturers which I obtained, there were indications that variations were associated with transmitter biography. The relationship between style of pedagogy and style of acquirer response – and vice versa – is also discussed. In my observations, which were subsequently confirmed by extensive content analysis of lecture transcripts and notes.<sup>75</sup> I observed that the type and extent of localizing strategy was an

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<sup>75</sup> See Chapter 4 for an account of methods of research and analysis.

important feature of variation between different lecturing styles. On the one end of the spectrum was the formal generalizing style and the other the informal localizing, with a range of formal localizing types in between.

The formal generalizing style which I found only in Course A, was associated with painstaking emphasis on the content of general rules and procedures. This was usually reinforced with lists of information, often taken directly from the course notes, presented on overheads. Localizing strategies were mainly academic generalizations about practice, drawn from secondary sources, recruitments of 'experience far', and hypothetical examples. There was minimal recruitment or recognition of acquirers' prior personal experience and transmitters did not draw on their own experience either. They strove for strong classification and framing, even if they did not always achieve this. This form of pedagogy was associated with young lecturers on Course A who were novices to both academia and the field of labour law practice. It is exemplified in this chapter by the lecture on Sexual Harassment.

On the other end of the generalizing/localizing continuum, were lectures that occurred only in Course B. The lecturers were speaking on their own area of practice in the institutions associated with the implementation of labour law (the CCMA and Labour Court) and the topics were mainly for the benefit of students' practical experience (although there were opportunities to refer to them in the assignments). Certainly there was less concern on preparing students for evaluation and 'getting through' bodies of content than in many of the other lectures.

In this 'informal localizing' style of pedagogy the emphasis was on the application of rules and principles of the law in real life practice, rather than on the content of the laws themselves. Localizing strategies were extensive and often personal, with the lecturer quoting examples from his/her experience. There was extensive recruitment of prior informal experience by acquirers' and the lecture was marked by very weak classification and framing.

Between these two extremes lay many permutations of what I call the formal localizing style of pedagogy. This style, which is probably common to many areas of professional education, combines discussion of general rules, principles etc with extensive reference to their application. This can be done through impersonal particularizations and generalizations or through references to personal experience.

## 6.5 An example of the 'formal generalizing style': the lecture on Sexual Harassment (Course A)

In the 'formal generalizing' style of pedagogy the lecturer is concerned, primarily, with the rules and procedures laid down by the act and background to the legislation. This information is presented with little or no reference to personal experience, either own or that of the acquirer. In Course A, this style was accompanied by hypothetical or class examples or 'experience' far from local particularization.

The lecture on Sexual Harassment in Course A, which exemplifies this style, was delivered by the course co-ordinator LA1. In her twenties, she was a novice, both academically and in legal practice. She had an LLB degree and was studying for a masters but her job at the LLU was her first. The formal generalizing style was not confined to inexperienced lecturers. A senior professor (LA2) also lectured in this style.

### 6.5.1 Overview of the lecture

There was minimal student participation in this lecture, with transmitter strategies forming 86% of the total pedagogic discourse (measured in terms of character counts, as explained in 5.4.4). As Table 4 shows, the dominant transmission strategy was the formal generalization – statements, restatements and explanations of general rules and concepts (supported by overhead transparencies which listed points from the notes and ensured that the lecture did not depart from the notes in any significant way). Formal generalizing strategies formed 47% of total pedagogic discourse. Of these most were statements of general rules or definitions of concepts.

Transmitter localizing strategies amounted to 24% of total pedagogic discourse and, as Figure 13 shows, were mainly concerned with providing background to the legislation. Local generalizations were based on secondary sources and the personal was introduced in the form of etic opinion rather than experience.<sup>76</sup>

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<sup>76</sup> It was difficult at times to distinguish whether these were 'etic' or 'emic' opinions, because she presented them without reference to their sources. For example:

Now in the course of this lecture ...I'm going to be using the word 'recipient' rather than 'victim'. In the code of good practice the word 'victim' is used, and I don't actually agree with that - This is my personal opinion and you are welcome to disagree but I don't actually agree with the word 'victim' simply because 'victim' in a sense serves to disempower people further. Okay, so rather than refer to this person as a 'victim' we shall use the word 'recipient' in this course.

Acquirer localizing strategies formed 7% of total pedagogic discourse and, both as particularizations and generalizations, they were predominantly in the form of personal opinion, reflecting the lecturer's own use of personal opinion. However, their opinions were primarily emic, or presented as such. They also responded to the lecturer, who asked them to define terms such as gender, sexual harassment and discrimination and to provide class examples.

The other pedagogic strategies (15% of total pedagogic discourse) reflected the lecturer's difficulties in presenting a contentious topic to an audience of adults, mainly men. She made frequent attempts to 'prevent the discussion from becoming a debate about gender and sex' and her classificatory strategies amounted to 3% of total pedagogic discourse. She frequently positioned the topic ('now we are going to discuss ...') and topic positioning strategies amounted to another 3%. Her regulative strategies (a further 3%) were mainly concerned with dividing the class into pairs to discuss some concepts and later into groups to discuss the case studies.

The following figures, tables and charts present a breakdown of pedagogic strategies in terms of character counts and percentages of total pedagogic discourse.

**Table 4: The pedagogic strategies in the Lecture on Sexual Harassment, as percentages of total pedagogic discourse, with character counts\***

	Transmission/acquisition strategies				Other strategies		Total	
	Generalizing		Localizing		cc	%	cc	%
	cc	%	cc	%				
Transmitter	17 413	47%	8 816	24%	5 453	15%	31 682	86%
Acquirer	2 222	6%	2 581	7%	210	0,6%	5 013	14%
TOTAL	19 635	53,5% <sup>77</sup>	11 397	31%	5 663	15,4%	36 695	100%

\* Due to rounding, the percentage totals might be slightly different to the sum of percentages in each column and the final total might not be exactly 100%.

<sup>77</sup> Due to rounding, the percentage totals might be slightly different to the sum of percentages in each column and the final total might not be exactly 100%.

**Figure 12: Network of generalizing strategies in the lecture on Sexual Harassment (Course A), as percentages of total pedagogic discourse, with character counts**

		Transmitter	Acquirer
Generalizing	Formal generalization	States, explains, interprets general rule, principle, concept or proposition	34,5% (12 674)      2% (823)
		Solicits general rule, principle, concept or proposition	3,5% (1 272)      2% (816)
	Formal application	Applies general rule, principle, concept or proposition to particular example	7% (2 637)      0,5% (185)
		Solicits application of general rule, principle, concept or proposition to particular example	2% (830)      1% (398)

Table 4 (on previous page) gives an overview of all verbal pedagogic strategies, and shows the dominance of the lecturer's formal generalizations. Figure 12 above shows that her generalizing strategies were primarily in the form of statements (of general rules and definitions) rather than applications. Figure 13 on the next page shows the range of localizing strategies and, within them, the limited recruitment and recognition of prior informal experience. Table 5 on page 154 shows the various ways in which the lecturer tried to maintain control of the discussion – by topic positioning, classification and regulative strategies. In other words, she repeatedly reminded students of the topic at hand and the direction of her sequencing. She discouraged intrusions of personal experience and comments and jokes and also broke up the class into pairs to discuss concepts.

**Figure 13: Network of localizing strategies in the lecture on Sexual Harassment (Course A), as percentages of total pedagogic discourse, with character counts**

				Transmitter	Acquirer	
<b>Local generalization</b>	<b>Impersonal</b>	Academic	Generalization based on secondary (written) sources	4% (1598)		
		Local	Generalization based on local knowledge			
	<b>Personal</b>	Opinion	Generalization based on personal opinion	0,1% (48)	1,4% (521)	
		Experience	<b>Generalization based on personal experience</b>		<b>0,7% (259)</b>	
<b>Local particularization</b>	<b>Impersonal</b>	Hypothetical	Class	Class example	2,4% (888)	1,5% (571)
			Particular	Hypothetical (example, scenario, role play)	2% (775)	0,5% (180)
		Actual	Far	Facts/events in actual legal case or other secondary sources	6,5% (2 395)	
			Near	<b>Experience of other party in pedagogical relationship</b>	<b>1,2% (428)</b>	
	<b>Personal</b>	Opinion	Far	Opinion based on etic understanding	2,7% (1 001)	0,3% (99)
			Near	Opinion based on emic understanding	1,6% (575)	1,7% (634)
		Experience	Past	<b>Prior personal experience</b>	<b>0,3% (100)</b>	<b>0,2% (86)</b>
			Now	Immediate experience	2,7% (1 008)	0,6% (231)

Note that the bold type indicates recruitment, solicitation or recognition of prior informal experience of self or other.

**Table 5: Non-transmission/acquisition pedagogic strategies in the Lecture on Sexual Harassment, as percentages of total pedagogic discourse, with character counts**

	Transmitter	Acquirer
Phatic communication	0,3% (116)	
Confirmation	2,2% (822)	0,1% (44)
Prompting	0,5% (178)	0,4% (50)
Questions (rhetorical)		
Questions (clarification)	0,2% (81)	
Topic positioning	3% (1 062)	
Classification	3,3% (1 231)	
Evaluative		
Regulative	3% (1 137)	
Literacies	2% (826)	3% (116)
<b>Sub-total</b>	<b>15%</b> <b>(5 453)</b>	<b>0,6%</b> <b>(210)</b>

### 6.5.2 Recruitment and recognition of prior experience in the lecture on Sexual Harassment

Figure 13 shows that recruitments of prior informal experience formed a very small percentage of overall discourse. The transmitter's only references to her own personal experience were oblique: she said she was a 'feminist' and writing a thesis on sexual harassment. Her solicitations of acquirer experience were also limited (1,2%) and the following example indicates that she probably shared the experiences she wanted the women students to talk about.

LA1: How many females in this class have walked past a construction site and had people whistle at you? How many females have been driving to work in the morning and found men in the car next door to you?

One student made a generalization based on personal experience. She said teasing happened not only in the workplace but also among friends and family 'because you are nearly 40 and not married'. In an interview later she told me she was referring here to her own personal circumstances.

Students' recruitments of personal experience were limited (0,2% of total pedagogic discourse) and the lecturer's comments on them were not affirming, as the following extracts indicate:

- Example 1:

Student: It's difficult for the male, I'm telling you it's not easy.

Lecturer: It's not difficult for the male.

- Example 2:

Lecturer: What are the forms of sexual harassment? ...

Student: I don't know. I've never been sexually harassed.

(Laughter)

Lecturer: It doesn't matter. What behaviour constitutes sexual harassment?

### ***6.5.3 Other examples of the formal generalizing style of pedagogy***

LA1 gave another lecture (on Unfair Dismissals) in the same 'formal generalizing' style, as did LA7 in her lecture on Unfair Discrimination.

The lecture on worker participation by LA2 was also in this style. The lecture was characterized by extensive local generalizations that appeared to be based on secondary sources, although the actual sources were not mentioned. There were also frequent references to events in the labour law field and background to the legislation, with some development of the hypothetical. The only reference by the lecturer to personal experience was a half sentence to the effect that he did not know how to read a balance sheet. There were expressions of personal opinion, however, which were backed by legal argument. There was very little acquirer participation. The lecturer's solicitation of acquirers' personal experience at the start of the lecture aroused no responses from the students and the only student intervention was in the form of a direct challenge to the lecturer's authority, by a trade unionist, SA1, who disputed LA2's local generalizations. The dispute, which is discussed further in Chapter 8 highlighted the differences between 'academic' and 'worker' generalizations.

LA2's other pedagogic strategies were predominantly classificatory (bringing the topic out of the particular and back to the general) and to do with the literacies of the course. There was one classificatory strategy by an acquirer, in which a student tried to stop the argument between SA1 and LA2.

#### **6.5.4 Summary**

This style of pedagogy was associated with minimal recruitment of prior experience by both transmitter and acquirer and an overall emphasis on general rules or 'experience far'. Transmitters were either novices (from a practical as well as academic sense) or, in one case, a seasoned academic.

### **6.6 An example of the formal localizing style of pedagogy: a lecture on conciliation in Course A**

In this style of participation lecturers continued to emphasise general rules, procedures or facts (or, in Course B, to show their application in particular cases) but also demonstrated familiarity with the 'real life' practice of labour law and presented some direct accounts of their own personal experience in the field and/or generalizations based on personal experience. They were concerned about preparing students for evaluation and there was some attention to the literacies of the course.

#### **6.6.1 Overview of the lecture**

The lecture I have chosen to exemplify this style was by Adrian Tree, a labour lawyer and part-time commissioner at the CCMA. He also gave occasional lectures at the LLU and conducted training courses for unions. Several of the lectures in Course B were of this style.

Participation by acquirers in this lecture was minimal (only 10% of total pedagogic discourse). Transmitter discourse was characterized by numerous applications of general rules to hypothetical scenarios as well as statements and restatements of general rules and procedures. Local generalizations based on the transmitter's personal experience amounted to 12% of total pedagogic discourse. Direct references to his personal experience as a commissioner amounted to 5%, references to events in the labour law field another 5% and presentation of hypothetical scenarios 7%.

Non-recruiting strategies amounted to 11% of total pedagogic discourse. They included topic positioning strategies (4%), evaluative strategies (2,5%) and strategies relating to the literacies of the course (2,3%), all of which could be regarded as enforcing the general rules.

Acquirer strategies were predominantly generalizing – solicitations of the general rule or its application to particular real or hypothetical scenarios as well as statements of general rules in response to transmitter’s solicitations. Localizing strategies were largely hypothetical scenarios.

The following figures, tables and charts present a breakdown of pedagogic strategies in terms of character counts and percentages of total pedagogic discourse.

**Table 6: The pedagogic strategies in the Lecture on Conciliation (Course A), as percentages of total pedagogic discourse, with character counts**

	Transmission/acquisition strategies				Other strategies		Total	
	Generalizing		Localizing		cc	%	cc	%
	cc	%	cc	%	cc	%	cc	%
Transmitter	22 385	45%	16 840	34%	5 439	11%	44 664	90%
Acquirer	3 347	5%	1 714	3,5%	775	1,6%	4 836	10%
TOTAL	24 732	50%	18 554	37,5%	6 214	12,6%	49 500	100%

**Figure 14: Network of generalizing strategies in the lecture on Conciliation (Course A), as percentages of total pedagogic discourse, with character counts**

		Transmitter	Acquirer	
Generalizing	Formal generalization	States, explains, interprets general rule, principle, concept or proposition	19% (9 423)	2% (1 087)
		Solicits general rule, principle, concept or proposition	2,6% (1 294)	
	Formal application	Applies general rule, principle, concept or proposition to particular example	23,6% (11 668)	1,2% (616)
		Solicits application of general rule, principle, concept or proposition to particular example		1,3% (644)

**Figure 15: Network of localizing strategies in the lecture on Conciliation (Course A), as percentages of total pedagogic discourse, with character counts**

				Transmitter	Acquirer	
<b>Local generalization</b>	<b>Impersonal</b>	Academic	Generalization based on secondary (written) sources			
		Local	Generalization based on local knowledge		0% (48)	
	<b>Personal</b>	Opinion	Generalization based on personal opinion			
		<b>Experience</b>	<b>Generalization based on personal experience</b>	<b>12% (6 100)</b>	<b>2% (1 066)</b>	
<b>Local particularization</b>	<b>Impersonal</b>	Hypothetical	Class	Class example		
			Particular	Hypothetical (example, scenario, role play)	7% (3 387)	
		Actual	Far	Facts/events in actual legal case or other secondary sources	5% (2 398)	0,9% (449)
			Near	<b>Experience of other party in pedagogical relationship</b>	<b>4% (2 051)</b>	
	<b>Personal</b>	Opinion	Far	Opinion based on etic understanding		
			Near	Opinion based on emic understanding		
		<b>Experience</b>	Past	<b>Prior personal experience</b>	<b>5% (2 499)</b>	<b>0,3% (151)</b>
			Now	Immediate experience		

Note that the bold type indicates recruitment, solicitation or recognition of prior informal experience of self or other.

On the previous page, Table 6 shows the extent of the lecturer's localizing strategies and Figure 14 his application strategies. Figure 15 on this page shows the dominance of his personal experience generalizations and Table 7 on page 159 the extent of his topic positioning strategies.

**Table 7: Non-transmission/acquisition pedagogic strategies in the Lecture on Conciliation, Course A, as percentages of total pedagogic discourse, with character counts**

	Transmitter	Acquirer
Phatic communication	0,7% (335)	
Confirmation	0,2% (113)	
Prompting	0% (10)	0,5% (232)
Questions (rhetorical)		
Questions (clarification)	0% (4)	
Topic positioning	4% (1 882)	
Classification	1,2% (621)	
Evaluative	2,5% (1 257)	
Regulative		
Literacies	2,3% (1 153)	1,1% (543)
<b>Sub-total</b>	<b>11%</b> <b>(5 439)</b>	<b>1,6%</b> <b>(775)</b>

### **6.6.2 Recruitment and recognition of prior informal experience in the lecture on Conciliation, Course A**

The personal experience that was recruited in this lecture was primarily the lecturer's, as the figures above show. His attempt to position the students at the start of the lecture by asking them to show, by raising their hands, whether they were unionists, management etc could be regarded as a solicitation of acquirer experience. However, acquirer contributions were mainly in the form of challenges to the general rule and his responses were generally in defense of the general rule and did not affirm the student's intervention. For example, in the lecture on conciliation in Course A a student drew on her experience as a case officer at an independent mediation agency to state that, contrary to the rule which he presented that all cases have to go to conciliation before arbitration, sexual harassments are sent directly to arbitration. 'You are giving too much of your IMSSA<sup>78</sup> experience here', the lecturer, LA3, responded, and he emphasised she should follow the general rule. The procedure she was talking about could only occur in a private dispute resolution agency, he said. In the same lecture, another student

<sup>78</sup> The Independent Mediation Society of South Africa.

challenged another rule which LA3 had stated – that only disputes which came into operation after 11 November 1996 could be dealt with by the CCMA – on the grounds that a case in which she was involved, which began before this date, had been dealt with by the CCMA. In the interaction which followed LA3 did not manage to elicit this student's full story and so the discrepancy between her statement and his remained. (See Chapter Four, page 112, for a full transcript of the interaction and further discussion).

### **6.6.3 Other examples of the formal localizing style of pedagogy**

In Course B, several of the lecturers adopted a formal localizing style of pedagogy. They were expert labour law consultants as well as part-time lecturers (some had been former academics) and conveyed this experience in various ways. These included reference to involvement in the design of labour law legislation, or in particular legal cases, and generalizations based on personal experience. They did not lose sight of the pedagogic requirements of the course, however. They made it clear they had a particular body of knowledge (outlined in the notes) to get through and they provided students with information as to how to access case law and other legal readings and how to deal with the literacies of the course.

This was the style of LB1, for example. Described as the 'anchor lecturer', he assumed the responsibility of introducing the course and drawing threads between the sections. He also lectured on case law, arbitration and various aspects of the employment relationship. His opening lectures demonstrates the tensions, in the formal localizing style of pedagogy, between the lecturer's awareness of the academic demands of the course (the literacies as well as content) and what he<sup>79</sup> perceives to be 'pedagogically correct'. The latter perception includes notions of the recruitment and recognition of prior informal experience of students, who he knows have vast personal experience of the labour law field.

In his introductory comments, LB1 used a series of classificatory and regulative strategies as he attempted to define the parameters of the course and 'its' approach to pedagogy. He started by attempting to set the course within a constructivist model of learning, raising expectations of weak framing.

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<sup>79</sup> I will use the masculine pronoun because the lecturers who typified this style were all male.

This course is run on a constructivist basis. We construct our learning amongst us. We see ourselves as facilitators of learning rather than here to give it to you all.

Student SB13 immediately put this weak framing to the test by suggesting that each member of the class should have an opportunity to introduce him/herself. After expressing some doubt as to whether this would be possible considering the number of students and the amount of material he had to get through that day, LB1 agreed. On resuming his lecture, LB1 warned again that the emphasis of the course would not be on teaching.

It is on facilitating learning. We will provide some learning which is the container from which we hope this group will come up with some learning.

He provided some limits to the frame by warning students that they could not change the curriculum entirely.

LB1's opening remarks did not prepare the class for the solid block of lecturing, the rest of the first day and most of the second, which was to follow and this became a bone of contention between him and the class later. The same student who had insisted on time for the class to introduce themselves, now protested that the course had been very badly designed, allowing few breaks and little time for discussion. Another student, a technician lecturer (SB 20) supported SB13's demand for weaker classification, saying:

In this room is a wealth of knowledge. I am looking to you to give me some of the basics...[but] I am [also] looking to feed off their experiences. In the rushed format I have not had the opportunity to do that. Can you give us a rough idea as to how these things are being conceived?

Another student, a practising lawyer (SB14) interjected, telling LB1:

I would like to leach off your knowledge on labour law. I don't want to learn from people in small groups.

LB1's final remarks demonstrated how a lecturer can be confused by the contradictory demands of students in a course like this. His own response was also contradictory.

I will respect your request to be tighter. But if I see the group is interested in Unfair Labour Practice for example and I have planned to spend an hour on this, I will spend two hours if I want to. There are people who know nothing about unfair labour practice. If I don't do this, they will be lost. This is not a seminar, not a training workshop. At a university we have lectures.

#### **6.6.4 Summary**

The style of lecturing which I have called 'formal localizing' was associated with the lectures by expert practitioners who were also part-time academics. They drew extensively on their own personal experience and/or made generalizations about practice or procedure based on that experience. They did not lose sight of the course criteria and gave students information as to how to access the law or produce legitimate texts. There were some tensions, however, between their desire to reinforce general rules (Course A) or get through a body of 'experience far' knowledge (Course B) and the students' desires to challenge the general rules (Course A) or supplement the lecturer's input with their own expert experience (Course B).

#### **6.7 Analysis of an example of the informal localizing style of pedagogy: a lecture on conciliation in Course B**

The 'informal localizing' style was characterized by extensive recruitments of prior informal experience by the lecturers and sometimes the students as well. The lecturers were experts in their fields, speaking on their areas of expertise and relatively unconcerned about evaluation issues (although their topics might ultimately be evaluated). A lecture by a Labour Court judge fell into this category and also the series of lectures on the CCMA, by LB3, a senior commissioner. To exemplify this style I discuss below a 40 minute segment from one of LB3's sessions.

##### **6.7.1 Overview of the lecture**

This lecture was characterized by extensive recruitments of prior informal experience by both lecturer and student. General rules were backgrounded (only 10% of the entire pedagogic discourse). Other transmitter localizations included references to events in the field, generalizations based on secondary sources and limited use of hypothetical scenarios (most of the examples were 'real').

The extensive participation by students (30% of the discourse) was the result, in my opinion, of two non-recruiting strategies used by the lecturer. The first, used extensively, was the confirmatory strategy whereby the lecturer would confirm, approvingly, the student's question or answer or comment. The second was the use of the rhetorical question. In addition the extensive use of the personal provided an ambience which encouraged students to volunteer their own personal stories. Virtually the entire 40 minute segment analysed here was concerned with an issue raised by a student, SB5, which deflected the lecturer from her original theme. Within this departure, another student, SB13, diverted discussion for six minutes when he presented a personal account of a case which he had attended.

The following figures, tables and charts present a breakdown of pedagogic strategies in terms of character counts and percentages of total pedagogic discourse.

**Table 8: The pedagogic strategies in the Lecture on Conciliation, Course B, as percentages of total pedagogic discourse, with character counts**

	Transmission/acquisition strategies				Other strategies		Total	
	Generalizing		Localizing		cc	%	cc	%
	cc	%	cc	%				
Transmitter	4147	10%	21433	53%	2318	6%	27898	69%
Acquirer	1145	3%	11027	27%	649	2%	12821	31%
TOTAL	5292	13%	32460	80%	2967	8%	40719	100%

**Figure 16: Network of generalizing strategies in the lecture on Conciliation (Course B), as percentages of total pedagogic discourse, with character counts**

		Transmitter	Acquirer	
Generalizing	Formal generalization	States, explains, interprets general rule, principle, concept or proposition	7,6% (3 095)	1,6% (674)
		Solicits general rule, principle, concept or proposition	0,6% (240)	0,8% (342)
	Formal application	Applies general rule, principle, concept or proposition to particular example	1,6% (240)	0
		Solicits application of general rule, principle, concept or proposition to particular example	0,4% (167)	0,3% (129)

**Figure 17: Network of transmitter and acquirer transmission/acquisition strategies in the Lecture on Conciliation, Course B, as percentages of total pedagogic discourse, with character counts**

				Transmitter	Acquirer	
<b>Local generalization</b>	Impersonal	Academic	Generalization based on secondary (written) sources			
		Local	Generalization based on local knowledge			
	Personal	Opinion	Generalization based on personal opinion			
		<b>Experience</b>	<b>Generalization based on personal experience</b>	<b>5,7% (2 328)</b>	<b>1,1% (443) 0,7% (290) (solicits)</b>	
<b>Local particularization</b>	Impersonal	Hypothetical	Class	Class example		
			Particular	Hypothetical (example, scenario, role play)	2,7% (1 087)	1,8% (745)
		Actual	Far	Facts/events in actual legal case or other secondary sources	12% (4 919)	10% (4 043)
			<b>Near</b>	<b>Experience of other party in pedagogical relationship</b>	<b>0,7% (273)</b>	<b>1,3% (537)</b>
	Personal	Opinion	Far	Opinion based on etic understanding	12,4% (5 034)	
			Near	Opinion based on emic understanding		5,7% (2 331)
		<b>Experience</b>	<b>Past</b>	<b>Prior personal experience</b>	<b>19% (7 697)</b>	<b>6,4% (2606)</b>
			Now	Immediate experience	0,2% (95)	0,1% (32)

Note that the bold type indicates recruitment, solicitation or recognition of prior informal experience of self or other.

Table 8 shows the extent of this lecturer's localizations and Figure 16, her limited use of generalizing strategies. Figure 17 shows the extent to which she recruited her own experience and Table 9 shows the confirmatory strategies whereby she encouraged the students to do the same.

**Table 9: Non-transmission/acquisition pedagogic strategies in the Lecture on Conciliation, Course B, as percentages of total pedagogic discourse, with character counts**

	Transmitter	Acquirer
Phatic communication		
Confirmation	2,8% (1 148)	0,6% (264)
Prompting	0,5% (197)	0,3% (122)
Questions (rhetorical)	1% (420)	
Questions (clarification)		
Topic positioning	0,5% (226)	
Classification	0,7% (276)	0,3% (131)
Evaluative		
Regulative		
Literacies	0,1% (51)	0,3% (132)
Sub-total	5,7% (2 318)	1,6% (649)

### 6.7.2 *Prior experience*

The chart above shows that the acquirer's experience was the focus of only about 1% of the transmitter's localizing strategies and 0,7% of total pedagogic discourse. On the other hand, her own personal experience was the focus of 47% of her localizing strategies and 25% of total pedagogic discourse.

Acquirers' own prior experience amounted to 32% of their localizing strategies and 9% of total pedagogic discourse. Solicitations of transmitter personal experience amounted to 5% of their localizing strategies and 1% of total pedagogic discourse.

I concluded that acquirer participation was in response to the lecturer's modelling her confirmatory strategies rather than as a result of deliberate solicitations.

### 6.7.3 *Other examples of the informal localizing style of pedagogy*

In the part of the course devoted to Labour Law, the only other lecture in informal localizing style was that delivered by a Labour Court judge who spoke about various Labour Court cases

and judgements, using the pronoun 'we' to refer to the Labour Court judges. It was not always clear whether he had actually been personally involved but certainly he presented the lecture as though he had.

#### **6.7.4 Summary**

The 'informal localizing' style was associated with expert practitioners, speaking on their own area of expertise. There were limited references to general rules per se and little obvious concern with the academic demands of the course. There were extensive recruitments of prior informal experience by transmitters and, in the case of one transmitter, the students as well.

### **6.8 Overview of the three styles of pedagogy**

The following table presents a summary of the key features of the different styles of pedagogy.

**Table 10: Styles of pedagogy in Course A and B**

<b>Style</b>	<b>Formal generalizing (Course A only)</b>	<b>Formal localizing (Course A and B)</b>	<b>Informal localizing (Course B only)</b>
<b>Emphasis</b>	Generalizing strategies predominant. Emphasis on the content of rules, principles, concepts, propositions etc.	Generalizing strategies predominant Less emphasis on the content of rules etc than on their application. Discussion about their application in specific cases (Course B). Generalizations about their application or about practice and procedure (Course A)	Localizing strategies predominant. Emphasis on the application of rules in practice etc
<b>Type of localizing strategy</b>	Localizing strategies 'experience far' references to events, background, mainly examples drawn from secondary sources	Localizing strategies mainly hypothetical (Course A) or from case law and with reference to transmitter personal experience (Course B)	Localizing strategies mainly examples drawn from personal experience or local generalizations based on personal experience
<b>Recruitment of own prior informal experience by transmitter</b>	Minimal	Limited (in Course A) to moderate (Course B) depending on transmitter's experience in field of labour law practice	Extensive
<b>Solicitation, recruitment or recognition of acquirer's prior informal experience by transmitter</b>	Minimal	Limited (Course A) to Moderate (Course B)	Extensive
<b>Evaluation of topic of lecture</b>	Examination	Examination or indirect, in assignment	None or indirect, in assignment
<b>Strength of classification</b>	Strong	Moderate	Weak
<b>Strength of framing</b>	Strong	Moderate	Weak
<b>Academic/practical experience of transmitter</b>	Novice academic and practitioner and expert academic	Part-time lecturer/ labour lawyer	Expert labour law practitioner

## 6.9 Conclusions

In these conclusions I will attempt to address two key themes in relation to both the notes and lectures: the role of prior informal experience and differences between Course A and Course B.

I found no references to prior informal experience of either transmitter or acquirer in the notes of both courses (except where books or articles written by some of the lecturers were referenced). This was consistent with a formal, 'academic' style of transmission.

In other respects, the notes provided for Course B differed from those for Course A in many ways. At a very superficial level they were far less organized, distributed to students on a fairly ad hoc basis and without clear indications of the order in which they were to be read. Sample answers to the case study exercises were sometimes provided and sometimes not.

At the level of content, the primary differences were:

- The Course A notes emphasised details of laws and procedures to a greater extent than Course B which placed a greater emphasis on discussions of principles, concepts and their application to particular cases than Course A.
- Localizing strategies in the Course A notes were primarily hypothetical examples (this was beyond the case study exercises). In Course B notes, they were primarily concerned with the 'actual', with the hypothetical limited to case study exercises. They consisted mainly of references to actual cases, background material and references to actual events
- There was virtually no attention to the academic literacies of Course A in its notes while there was considerable attention to 'information literacy' in the notes of Course B.

Briefly, the notes of Course B were about contextualizing and principling rather than proceduralizing, provided actual rather than hypothetical examples and were concerned with providing knowledge on how to access labour law sources to search for answers to legal questions as well as knowledge on the law and related issues.

In my opinion there was a misconception in both courses that the case study exercises would give students the opportunity to draw on their prior experience. They might have provided a physical opportunity to share experiences, but this was not necessarily useful in the completion of the task at hand. The exercises required students to apply rules and concepts to particular, hypothetical situations which were not their own, researching actual cases to back up their answers. They could not simply extrapolate from their own experience.

The recruitment of prior informal experience, that was not disguised as 'learning' or 'knowledge,' was concentrated in the lectures in following localizing strategies:

- Local generalizations
  - generalizations or statements about general practice that are clearly based on personal experience.

- Local particularizations:
  - Recruitments (constructions) of prior personal experience
  - Solicitations of the experience of the other party in the pedagogic relationship
  - Comments on the experience solicited or referred to by the other party
  - Recruitments of the prior experience of the other.

The role and extent of prior informal experience was an important source of variation between the lectures and was associated with a number of factors: the lecturers' experience of the practice of labour law, their approach to the pedagogy of adults and the extent to which they felt compelled to prepare students for evaluation and 'get through' a body of knowledge.

The formal generalizing style of pedagogy, which I found only in Course A, was associated with minimal recruitment of prior experience by both transmitter and acquirer and an overall emphasis on general rules or 'experience far'. Transmitters were either novices (from a practical as well as academic sense) or, in one case, a seasoned academic.

The 'formal localizing' style was found in both Course A and B was associated with the lectures by expert practitioners who were also part-time academics. They drew extensively on their own personal experience and/or made generalizations about practice or procedure based on that experience. They did not lose sight of the course criteria and gave students information as to how to access the law or produce legitimate texts. There were some tensions, however, between their desire to reinforce general rules (Course A) or get through a body of 'experience far' knowledge and the students' desires to challenge the general rules (Course A) or supplement the lecturer's input with their own expert experience (Course B).

The 'informal localizing' style was found only in Course B and was associated with expert practitioners, speaking on their own area of expertise. There were limited references to general rules per se and little obvious concern with the academic demands of the course. There were extensive recruitments of prior informal experience by transmitters and, in the case of one transmitter, the students as well.

## **CHAPTER SEVEN: THE RECRUITMENT AND RECOGNITION OF PRIOR INFORMAL EXPERIENCE IN THE EVALUATION OF COURSES A AND B**

'You must know your Acts' (Lecturer, Course A)

'Read the cases, read the cases, read the cases' (Lecturer, Course B)

This chapter explores the role of localizing and generalizing strategies and within them, of prior informal experience, in the evaluation of Course A and B. For each course, the evaluation texts (the exam questions in Course A and the assignment questions in Course B) are described and categorized in relation to students' results. This is followed by a detailed analysis of results in relation to student biography, with particular attention to the 'RPL' students. Prior informal experience is found to play a very limited role – in Course B only – and even here it has to be recontextualized through research rather than presented 'as is'.

### **7.1 Evaluation in course A: the exam questions**

A total of 33 (out of 38) students undertook the three-hour examination at the end of Course A. The exam consisted of nine sets of questions, reflecting nine of the topics covered in the course. In the following sections, each question will be described briefly and categorized in terms of types of solicitation, as defined in Section 5.5. Abbreviations for codes are also given, with capitals and lower case letters indicating proportions. Please see Appendix E for the original questions.

Three of the exam questions in Course A amounted to straightforward solicitations of formal generalizations, three required applications to hypothetical narratives, three presented a combination of both these strategies. Only one involved a conceptual solicitation – the application of rules to an idea or concept.

#### **7.1.1 Question 1: Dispute Resolution**

This question, which I have categorised as a straight formal generalization solicitation (FG), was on the two sessions on Conciliation and Arbitration conducted by Adrian Tree. It consisted of five sub-questions, all of which demanded statements of general rules on procedure.

Twenty-one students responded to this question – 66% of the class, but the class average was the lowest: 6,9 out of 20 (34,5%), as opposed to the highest average of 63%. There are at least two possible reasons for this:

Unlike most of the other questions, the answers were to be found more easily in the Act, than in the notes. The marking memorandum also referred to the act. However, interviews with students indicated that they tended to study from the notes.

The apparent simplicity of the questions masked the underlying complexity of the issues involved. The answers to the second and fourth questions could not be found in the notes, or even in the copy of the Act which the students had been given. They were contained in amendments to the act, which the students were not provided, and had merely been mentioned in the lectures on conciliation and arbitration.

### **7.1.2 Question 2: Disclosure of Information and Retrenchments**

This exam question involved the construction of a hypothetical example (case study) followed by five questions. Two (for 8 marks) were expressed in the narrative of the case study, the other three were straightforward requests for a statement of a general rule. However the narrative questions also amounted to thinly disguised requests of the same kind. The answers required knowledge of three different sections of the LRA. I have categorized the question as FG/fah.

In three of sub-questions the applicable rules could have been obtained from the notes where they were presented clearly, in list form. The rules relevant to the remaining two sub-questions would have been less easy to find in that they were embedded within paragraphs dealing with wider issues.

Twenty-one students answered this question. The average mark was 11,38 out of 20 (57%) the third highest average.

### **7.1.3 Question 3: Workplace Forums**

The form of the Workplace Forums exam questions differed from the others quite substantially in that they invited essay-type responses. In the first question, for 12 marks, students were

presented with a statement that touched on a controversial issue among trade unions which have opposed the development of workplace forums. The statement read:

Workplace forums will undermine trade union organization in the workplace.

and students were asked :

Do you agree or disagree with this statement? Please motivate your answer by briefly summarizing five provisions of the LRA, which in your opinion, are most important in defining the relationship between trade unions and workplace forums.

At first glance, it might appear as if students were being asked for an emic opinion (a localizing strategy). However, the second sentence called for a 'legal' motivation – the application of rules, principles, propositions to an idea or concept. I categorized this as a formal hypothetical solicitation (FHI).

Students could answer this by drawing on a list of six points provided in the notes on the ways in which the LRA regulates the relationship between workplace forums and trade unions. This list which was also presented in the lecture on an overhead slide was signalled by the lecturer in his marking memorandum.

However, unionists could well have considered this to be an ideologically loaded question, given the opposition by unions to workplace forums, precisely because they are seen to undermine trade union organization. Neither the notes nor the act (obviously) listed points which might be argued in support of the statement and an answer of this kind would have been very much more difficult.

The second sub-question required the student to identify that the matter concerned was a subject for consultation by the employer with a workplace forum and for joint decision-making. I categorised it as a formal generalization solicitation (FG). The answers could be found in the section of the notes entitled 'Resolving a dispute between a workplace forum and the employer' or the relevant sections of the Act.

None of the 12 students who tackled this section of the exam were able to answer these questions, although four attained marks, in what I regard as marking anomalies.

Twelve students answered this section of the exam and the average mark 7,6 (38%) – the second lowest.

#### **7.1.4 Question 4: Strikes and Lockouts**

The three questions on strikes and lockouts were simple requests for the general rules which had been listed prominently in the notes. I categorised the overall question as entirely FG.

The first sub-question asked: ‘What are the key elements/characteristics of the definition of a strike?’ The four points relevant to this question were contained in a list presented in the notes after the definition of a strike. The list began with ‘The elements of a strike are as follows ...’

The second sub-question asked: ‘What are the legal consequences of a strike being protected?’ The five points relevant to this question were listed under the heading ‘The legal consequences of a strike being protected’.

The third sub-question asked: ‘What options does an employer have during a protected strike?’ The five relevant points were listed in the notes under the heading ‘Options which an employer has during a protected strike’.

A total of 22 students answered this set of questions, attaining an average mark of 10, 4 out of 20 (52%).

#### **7.1.5 Question 5: Recognition Agreements**

A hypothetical example was provided and students were required to answer four sub-questions which tested their knowledge relating to the concept of sufficient representivity, closed and agency shop agreements and negotiation skills. The marking memo suggested that answers should be presented in ‘application style’, i.e. in the narrative of the case study.

Eight students answered this set of questions, achieving an average mark of 40% or 8 out of 20 (the range was from 0 to 15).

It is possible that the low proportion of respondents and the low marks were the result of confusions which arose in the lecture between the meaning of recognition as opposed to collective agreements and agency and closed shop agreements.<sup>80</sup> In addition, the concept of 'sufficient representation' was not discussed in the notes, only the lecture. The rule had to be inferred from a series of localizing strategies (mainly hypothetical particularizations) or her discussion of an exercise involving newspaper reports. The concept was defined in the notes on Organizational Rights but this lecturer (LA6) did not refer to them.

The final sub-question required students to draft a letter. This required an understanding of negotiation processes, an ability to imagine a hypothetical set of issues and knowledge about rules concerning disclosure of information. The first might have been gleaned from the role play on negotiation skills and the last from the lecturer's discussion of the sample recognition agreement which included a section on 'Disclosure of Information'. The second ability probably depended on a combination of working experience and the ability to abstract or imagine from concrete experience.

In summary, to answer the questions on recognition agreements the students needed to have paid attention to the lectures and the discussion of the newspaper articles distributed in class and to have drawn links between this lecture and the previous notes and the lecture on organizational rights. They needed to know the definitions of terms and the rules relating to them and be able to apply them to hypothetical examples. I categorised the overall question as a formal application, hypothetical narrative style (FAH).

Eight students answered this set of questions, achieving an average of 8 out of 20 (40%).

#### **7.1.6 Question 6: Freedom of Association and Organisational Rights**

Three of the questions on Freedom of Association and Organisational Rights (for 14 marks) were in the form of direct requests for general rules. They could be obtained directly from the notes. Two of them were contained in prominently displayed lists of points. The answer to the

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<sup>80</sup> A recognition agreement establishes a union's/unions right to bargain collectively. A collective agreement is the outcome of the bargaining process, and involves the employers as well as the unions. Close shop agreements between an employer and a majority trade union require all employees covered by the agreement to be members of that union. Agency shop agreements do not require employees to join the majority union but can authorize the employer to deduct an agency fee from the wages of employees who are not members and pay it to the union which is acting as their bargaining agent (Du Toit et al, 1998).

third question would have been less easy to find but was spelled out nonetheless in a paragraph under the heading Disclosure of Information. The 'case study' question involved simple arithmetic to add up the number of staff, and knowledge of the rules concerning sufficient representation to decide whether a particular union would gain the right to elect trade union representatives. I categorized the overall question as 70% formal generalization solicitation (FG) and 30% hypothetical application solicitation, narrative style (fah).

Thirteen students answered this set of questions, achieving an average of 12,3 out of 20 (61,5%).

#### **7.1.7 Question 7: Unfair Discrimination**

The question consisted of a hypothetical scenario and six questions which required students to restate, within the narrative of the case study, points which were contained in the section of the LRA which was extracted and photocopied and distributed to the students and had also been emphasized in the lecture overheads, under clear headings that related directly to the theme of the particular question. There was no marking memo. I categorized this question as a hypothetical application solicitation (narrative style) (FAH).

Thirteen students answered this question, achieving an average of 11 out of 20 (55%).

#### **7.1.8 Question 8: Unfair Dismissals**

The exam question was phrased as a case study. Students were presented with a hypothetical scenario and were required to advise the hypothetical complainant as to the substantive considerations and the procedural steps he could take. The words 'substantive' and 'procedural' provided a cue for students to list the points which the lecturer had provided on overheads in the lecture. The concepts were also mentioned, but less clearly, in the notes.

The lecturer's marking memo listed a number of points under the headings 'Substantive Issues' and 'Procedural Issues' suggesting this was the way in which she expected the answer to be organized. I categorized the overall question as 100% hypothetical application solicitation, narrative style (FAH).

Twenty-six students answered this question, achieving an average of 9,6 out of 20 (48%).

**7.1.9 Question 9: Sexual Harassment in the Workplace**

The first question, for four marks, required students to list, from the Code of Good Practice, four forms of conduct that amounted to sexual harassment. The second question, for 12 marks, was in the form of a case study that involved all the forms of questions contained in the lecture-time case studies. Students were required to state whether certain behaviour amounted to sexual harassment, whether the employer had dealt with it appropriately and what steps the ‘recipient’ could take. The final question, for four marks, required students to state an opinion as to whether the measures provided for in the code were sufficient to achieve the code’s objective. There was no marking memo, probably because the lecturer concerned was also the marker of all the exam scripts.

I categorized this question as 40% formal generalization solicitation (fg) and 60% hypothetical application solicitation, narrative style.

Twenty-four students answered this question, achieving an average of 12,6 out of 20 (63%).

**7.1.10 Overview of the categorization of the exam questions**

The following table summarizes the categorization of the exam questions. It shows that six out of nine of the questions invited formal application, posed in hypothetical narrative style, three of them accompanied by solicitations of formal generalizations. Only one involved a conceptual solicitation.

**Table 11: The exam questions in terms of localizing and generalizing strategies**

Exam question	Type of solicitation						Coding
	Formal generalization (FG)	Formal application			Local particularization		
		Hypothetical		Actual	Impersonal	Personal	
		Narrative (FHN)	Idea/concept (FHI)	Experience far (FAR)	Experience far (LPF)	Opinion Etic (LPE)	
1	100%						FG
2	60%	40%					FG/fah
3	40%		60%				Fg/FHI
4	100%						FG
5		100%					FAH
6	70%	30%					FG/fah
7		100%					FAH
8		100%					FAH
9	40%	60%					fg/FAH

The following table compares average marks with type of question.

**Table 12: Average marks achieved for the various exam questions, Course A**

Exam Question	Topic	Type of question	Average mark (out of 20)
9	Sexual harassment	fg/FAH	12,6
6	Freedom of association and organizational rights	FG/fah	12,3
2	Disclosure of information and retrenchments	FG/fah	11,4
7	Unfair discrimination	FAH	10,9
4	Strikes	FG	10,4
8	Dismissals	FAH	9,6
5	Recognition agreements	FAH	8
3	Workplace forums	fg/FHI	7,6
1	Dispute resolution	FG	6,9

The table above shows that of the four questions which achieved averages of 50% (10 out of 20) or above, three involved a combination of hypothetical applications and formal generalization solicitations. The question which achieved the highest average was one of these. The lowest average was achieved by a formal generalisation question and the second lowest the question that called for a conceptual application.

It would appear that students got the best marks for questions that involved a type of 'scaffolding'.<sup>81</sup> In this way students were taken through the steps required to undertake a legal application: first identification of the relevant general rule, then application to a particular case. This type of question made clear the importance of the general rule even in a narrative context where the local appears to be dominant. However, the research was too limited to be conclusive about this relationship.

Significantly the lowest average was achieved for a question that was very different from the style of lecturing – formal generalization solicitation vs. formal localizing style of lecturing (with heavy emphasis on personal experience). (See previous chapter). It also concerned a topic with which many of the students were familiar: dispute resolution through conciliation or arbitration. Clearly their prior informal experience did not help them in the exam context.

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<sup>81</sup> See Daniels (1996) for a discussion of this concept and its Vygotskian origins. Basically the term implies support by an educator for learner's initial tasks so that they may later be performed without assistance.

In my interviews with students and with lecturers on Course A it became clear that an important aspect of preparing for the exam was learning the rules contained in the notes and the Act. Clearly some students did not do so – and even did not know how to do so.

In addition, both of the rules on which students were questioned in Question 1 and 8, (which achieved the lowest and third lowest marks), were not made explicit in the lectures or notes, as discussed earlier in this chapter.

### ***7.1.11 An analysis of the exam scripts of selected students***

In order to gain a fuller sense of the realization rules of this course, and the performance of the trade unionists without matric in relation to this, I analysed their scripts particularly closely. I compared these scripts with those of eight other students: four further students without matric who had written the exam (chosen because of their relevance to the RPL dimension of my study) and four students chosen to represent the range of qualification categories beyond this: matric, matric plus diploma or certificate, degree and postgraduate). The latter group included the student who achieved the highest marks in the class.

I developed my own marking schedule which explored the relationship between academic literacies, content knowledge and the lecturer's marks, and I marked the scripts of the 11 students accordingly.

The following aspects of exam participation were considered:

- Language and literacy. Here I looked at sentence construction, ordering of text, development of argument, and grammar and spelling.
- knowledge of the content. The marks given by the lecturer were a rating of content – with a tick for correct points and a cross or no mark at all for points that were inaccurate. I noted the number of points that had been specifically marked incorrect and also the length of the text, on the presumption that these would be indicators of content knowledge. Although length might not normally be considered a major achievement in an academic context, it was noted that in this course the longest responses tended to be the most substantial, while the shortest were the least informed.

**Table 13: The marking schedule developed for the analysis of exam scripts**

	-2	-1	0	+1	+2
Language and literacy*	Below 40%	40 - 50%	50 - 60%	60 - 70%	Above 70%
Average length of response to a question	Less than 100 words	100 – 200 words	200 – 300 words	300 – 400 words	Above 400 words
Accuracy: no of points marked incorrect	7 or more	5 – 7	3 - 5	3 - 1	0

\* In marking for language and literacy, equal weighting was given to: full sentences, grammar, spelling and ordering of text.

**Table 14: Rating of 12 students in Course A, in terms of the marking schedule**

Student*	My rating				Lecturer's mark
	Language and literacy	Length of response	Accuracy	Total	
The unionists without matric					
SA1	+1	+1	0	+1	59
SA2	0	+1	+1	+2	56
SA3	-2	-2	-2	-6	22
SA4	-1	-2	-2	-5	26
Other students without matric who wrote the exam					
SA5	-1	-1	-1	-3	41
SA6	0	-2	0	-2	35
SA7	0	-1	0	-1	41
SA11	-1	-2	-1	-4	28
Selected students with matric and above					
SA12	0	-1	0	-1	52
SA13	0	+2	-2	0	46
SA14	+1	+1	+1	+3	69
SA15	+2	+2	+2	+6	89

The rating above shows a fairly strong association between my rating and that of the lecturers. In only two cases was there a marked difference. SA12 gained 52 when I rated her text as -1 (this was because her responses were very short). SA13 gained 46% when I rated her script as 0 (her responses were substantial and well-written but she had many inaccuracies). In particular, the analysis suggested that a certain level of academic literacy was essential for the realization of a legitimate text.

## 7.2 Analysis of marks achieved in Course A in relation to biographical factors

In the following section I consider the marks achieved by students in Course A in relation to a number of factors that usually impact on achievement in tertiary education in South Africa: highest previous qualification, occupation, race and gender.<sup>82</sup> I also consider factors which are important considerations but I was unable to correlate with marks because of insufficient data: further formal and non-formal study and age.

### 7.2.1 Marks achieved

Of the 33 students who wrote the exam, 20 passed and 13 failed. The average mark was 50% and 42% of the students scored third rate passes – between 50% and 59%.

**Table 15: Breakdown of results, Course A**

Symbol	Mark range	No of students
1	75+	2
2+	70-75	0
2-	60-69	4
3	50-59	14
F	40-49	7
F	30-39	2
F	20-29	4
		33

### 7.2.2 Marks achieved in relation to highest qualification

Of those who did not write the exam, three were students with Grade 10 (Std 8) only. One had matric and the qualifications of the other were unknown (his application form could not be found and he did not attend the class during which the questionnaires were distributed.)

There was a close association between qualification and pass rate, with those with the lowest formal qualifications (less than Grade 12) producing the fewest passes (2 out of 9) and the group with the highest qualifications (postgraduate) achieving the highest pass rate (6 out of 8).

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<sup>82</sup> In this research I decided to employ the concepts of race and gender because of their important associations in this country with educational advantage and disadvantage. See Chapter 4 on Research Design for a discussion as to how I obtained this information.

Students with Grade 12 as their only formal qualification formed the biggest group in the class and achieved a 62% pass rate (10 out of 16).

**Table 16: Pass rate per qualification group (Course A)**

Group	Total no of students on course	No of students who wrote the exam	No who passed	% of total group	% of group that wrote exam
Less than Grade 12	11	8	2	18%	25%
Grade 12 (with or without some further credits from university or college) or university certificate Course	16	15	10	62%	67%
Degrees from Bachelors to Masters, National Technikon Diploma	8	8	6	75%	75%
Unknown	3	2	2	67%	100%
Total	38	33	20		

### **7.2.3 Marks achieved in relation to occupation**

The students' occupations covered a very wide range, from factory worker to attorney. Generally the profile was not as senior as that of Course B with a number of students identifying themselves, in my questionnaire, as 'workers'.

**Table 17: Pass rates in relation to occupation**

Occupation	No's of students	Total in each category	No who passed	Percentage of cohort who passed
<b>PROFESSIONAL</b>		8	6	75%
Attorney	1			
Other professional (ecologist, nurse, oral hygienist)	3			
School principal	1			
School teacher /trainer	3			
<b>STUDENT</b>		2	1	50%
Full-time student	2			
<b>SKILLED/SEMI-SKILLED</b>		6	2	33%
Artisan	2			
Factory worker	1			
Other semi-skilled	1			
Supervisor	2			
<b>MANAGERIAL</b>			2	40%
Manager, including NGO financial manager	5			
<b>FULL TIME UNION</b>			2	100%
Full time shop steward	1			
Full time union organiser	1			
<b>OTHER</b>			4	57%
NGO field/project worker/client liaison	3			
Clerk or other administrative work	4			
<b>UNEMPLOYED</b>			2	67%
Formerly artisan, shop assistant, teacher	3			
<b>SELF-EMPLOYED</b>			0	0%
Consultant	2			
Factory owner	1			
Unknown		2	1	50%
<b>TOTAL</b>	38		20	53%

Students who I classified as 'professional' formed the single largest group in the class (8 out of 38 students) and achieved the second highest pass rate (75%). Significantly, the two full-time unionists who attended the course, both of whom did not have matric, also passed the course. The two students who achieved the top marks were not involved in labour law per se, but both had legal degrees. The top student, had a BProc in addition to postgraduate diploma in management and had occupied very senior positions in management. At the time of the course,

however, she was unemployed. During the course of the year she gave birth to a baby. The student who came second was a qualified attorney and law lecturer, with a LL.M.

#### 7.2.4 *Marks achieved in relation to race and gender*

The class was predominantly male (76%) and 83% of these men were Coloured. Of the five students who did not write the exam, all were Coloured males. There were no white women on the course.

**Table 18: Pass rates of those who registered for Course A, by race and gender**

Race and gender	No of students	Percentage of total class	Percentage who passed
Coloured female	5	13%	60%
Coloured male	24	63%	46%
African female	4	10%	50%
African male	3	8%	67%
White female	0	N/A	N/A
White male	2	5%	100%
Total	38		

Both white males passed, with one (the attorney) achieving 89% and winning the class prize. The other scraped through with 50%. Three out of the five coloured women passed and two out of the four African women. Two out of the three African men passed. Of the 24 coloured men, five did not write the exam and 11 passed. One achieved the second highest mark (80%).

#### 7.2.5 *Other relevant factors*

The following factors, though relevant, could not be pursued in detail because of insufficient data.

##### *Age*

I did not ask for ages in my questionnaire and the information was not provided in application forms so I have been unable to make a comparison with marks. However the 11 students who I interviewed ranged in age from 29 to 62 and this seemed from my observations to be a fair reflection of the class as a whole. The oldest student, a factory owner, did not write the exam.

### *Further formal study*

I obtained information about further formal study from the 11 students who I interviewed. Six of them were studying further or had attempted to achieve a further formal qualification since leaving school. None had completed their studies (yet). I have not included in this breakdown the lawyer in the class (Student 15) who had attained a masters degree in Law after completing his LLB.

**Table 19: Number of students undertaking further formal study, Course A**

Qualification sought	No of students	Current qualification
For matric	3	Grade 10 and 11
For technikon diploma	1	Grade 12
For Bachelors degree	1	Grade 12
For LLB	1	B Iuris
Total	6	

The students listed above who passed Course A were:

- The two full time unionists who had studied towards matric. Student A1 had obtained two N3 credits from a technical college. Student A2 had attended a 'finishing' school but had not completed.
- Student A12 who had a matric and was studying for a technikon diploma in Human Resources Management.
- A student with a B Iuris who was studying for an LLB and working part time at the LLI.

Those who failed included:

- Student A7 who had Grade 11 was studying part time for a matric through a private college. He was due to write his matric exams at the end of the year.
- Student 13 was studying for a Social Science degree at University A. (She gave a number of reasons including social difficulties and her attitude towards the course. (See Chapter 8.)

### *Marks achieved in relation to non-formal education/training courses*

In my questionnaire, I asked students for details of non-formal education or training courses they had undertaken. Sixteen (42%) had attended other short courses, mainly trade union courses. Some had attended so many they could not remember the number. The analysis was

limited but there were indications that union courses alone did not prepare students for the kind of study involved in Course B.

**Table 20: Number of students in Course A who had undertaken short courses \***

Type of course	No of students
Union only	7
Work training	3
Other (computer, management etc)	3
Conflict resolution	1
Union + further schooling	1
Union + work training + other	1
Total	16

\* Information obtained from questionnaire.

The table above provides a breakdown of the type of short course attended. Unfortunately, it could not be correlated with marks because not all of these students provided their names. However, I was able to establish that five out of the nine students who had attended union courses did not pass the course. Those who did pass were: the two full time unionists (A1 and A2), student A14 who had a degree and was also studying for a diploma and a student who had a matric and some credits towards a degree. Those who failed included three unionists without matric who had not done further formal study and one student with a diploma whose qualifications were not clear. She had merely listed two certificate courses.

### **7.2.6 Course A: profile and results of participants with less than Grade 12**

The results of participants with less than Grade 12 are of particular interest to this thesis because these were students who, at the time of the research, would not normally be admitted to university study. Some, with Grade 10 or less, had been accepted on the grounds they had 'experience'. It was presumed by the course co-ordinators that their occupations or union involvement would equip them for the demands of the course. However, my research showed otherwise.

In the table below I present the results of the 11 students with less than Grade 12 along with significant biographical details. Three did not write the exam and only two passed. They were both in full time union employment.

**Table 21: Results of students with less than Grade 12, by qualification and occupation, Course A**

Student	Race and gender	Qualification	Occupation	Short courses/ Further study	Union involvement	Final mark, out of 100
1	CM	Grade 10	Full time shop steward	Union courses plus study towards technical matric	National vice president	59
2	AM	Grade 11	Union organiser	Union courses	Full time organiser	56
3	CF	Grade 10	Factory worker	Union courses	Shop steward and member of national executive	22
4	AM	Grade 10	Hospital pharmacy assistant	Union courses	Branch chairperson	26
5	CM	Grade 10	Unemployed (artisan)	Union courses	Former member of regional executive	41
6	CM	Grade 10	Chief admin clerk	Junior management course	Former shopsteward	35
7	CM	Grade 11	NGO field worker	One year of university adult education certificate course	Not a member	41
8	CM	Grade 10	Factory owner	*	N/A	Did not write
9	CM	Grade 10	Labour relations consultant	Various on health + safety	N/A	Did not write
10	CM	Grade 10	Storeman	Unknown**	Member	Did not write
11	CM	Grade 11	Operator	Unknown**	Member	28

\* This student was given the opportunity to provide information, in the questionnaire which he completed. He did not provide any details.

\*\* These students did not put their names to a questionnaire. As a result information about them was obtained from administrative records. No relevant details on further study were provided.

The table shows that trade union involvement (8 students were members, including the two full-timers and two in executive positions) and attendance of trade union courses did not necessarily lead to success.

### **7.2.7 The recruitment and recognition of prior informal experience in the evaluation of Course A**

I found no recruitments or solicitations of prior informal experience in any of the exam questions. My analysis of results in relation to style of question and my own assessment of selected exam scripts indicated that students needed knowledge of the general (usually procedural) rules of the Labour Relations legislation, the ability to apply those rules to hypothetical situations and the language and literacy skills necessary to construct a coherent,

substantial text in English. My interviews with students (in Chapter 8) show that this could not be achieved through prior informal experience alone, even that which could be considered very relevant to the subject matter – namely, trade union experience.

In the following chapter I will consider the extent to which the experience of the four trade union office-bearers was recruited and recognized in the course as a whole.

### **7.3 Evaluation in Course B: the assignments**

There were no exams in Course B but students were set four assignments (of which three dealt with labour law) and nine dissertation options (six on labour law). In this section, I summarise and categorize the labour law questions and consider students' marks in relation to type of question and biographical factors. (Please see Appendix D for the actual assignment briefs.)

#### **7.3.1 Assignment 1**

The student was presented with two comments on the Code of Good Practice relating to dismissals. The first was a commentary from one of the authors of their prescribed text book. The second is from a Labour Court judgement in a specific case. Students were required to:

Critically evaluate the validity of these statements. Your evaluation should include a careful analysis of the courts' jurisprudence under the old Act (that is, cases decided by the courts), and a consideration of the relevant provisions of the Code. Reference to cases interpreting the new Code is also imperative.

This assignment was of a similar type to the exam question on Worker Participation in Course A (the most 'academic' of all the questions). Like that question it required an essay-type response but in this case the students had to extract relevant points from actual cases, rather than finding them in a list in their notes.

To answer this assignment, students needed to locate the code and find relevant provisions (formal generalization), locate relevant cases under the old Act and locate cases since the new code (local particularization 'experience far'), interpreting the code (conceptual application) and apply it to the jurisprudence (application 'experience far'). The exercise tested the

students' ability to locate legal information and select from it, evaluate legal comment, analyse cases. They were also required to use appropriate referencing. I categorised the assignment as FG/LPF/FHI/FAR.

63 out of 64 students completed this assignment. Three failed and were told to redo the assignment. The average mark was 59%. Marks ranged from 50 to 81%.

### **7.3.2 Assignment 2**

This assignment commenced with a preamble stating that the diploma was a 'practical labour law course'.

...it is designed to deepen the understanding of the hands-on application of employment law in the workplace. It also situates employment law more broadly and deals with its implications for industrial relations and the labour market.

The course was mainly aimed at 'people who are working in a field that involves interaction with or the application of employment law, or aspects of employment law, on a day-to-day basis'. The assignment, a project-based assignment, was designed to provide students with an opportunity to apply what they had learned on the course to the 'real world of employment and work'.

...the assignment seeks to take advantage of the fact that many participants on the course are in full-time jobs and can therefore use their own workplaces as the research sites for the project.

The assignment offered varied topics to allow for different roles in the workplace.

Variations are provided for answering each topic to take account of the different roles that participants in the course have in practice, e.g. managers in firms, trade union organizers etc. We have also provided alternatives for participants in the course who are not currently in employment.

The first group of topics was related to the Basic Conditions of Employment Act, 75 of 1997, the second to the Employment Equity Act, 55 of 1998 and students were also provided an 'open-ended option' in which students could design their own project-based assignment.

Within the first two groups there were variations for those employed in the private or public sector, for trade unions (or bargaining council officials) or for those without access to a workplace or full time on the course. Students were also provided with a list of recommended readings.

Instructions for those employed in the private or public sector:

Students were asked to

- explain the previous dispensation prior to 1 December 1998.
- analyse employment conditions and practices pre-1 December 1998, and indicate how those had changed.
- discuss what the impact of these changes had been on industrial relations at the firm/department and on the performance of the firm/department.
- choose indicators or measures to make this assessment.
- conduct interviews.

Alternatively they could conduct an audit of current conditions and the likely impact of compliance with the provisions of the Act on industrial relations and performance when it the company (etc.) made the necessary changes.

Instructions for unionists.

Students were asked to:

- Choose a collective bargaining forum in which their union was engaged.
- Analyse terms and conditions in the collective agreement prior to the introduction of the new Act and indicate how they changed under the new dispensation.
- Discuss the impact these changes had had on IR at the plant/company/department/sector and on its performance.
- Choose indicators or measurements.
- Interview unionists or management representatives to the bargaining forum to support their discussion and/or supply data about the performance.

Alternatively they could audit current conditions and practices as against the Act's requirements and discuss the likely implications that the change to comply with the new Act would have on IR and performance in the plant etc.

#### For students who were not in employment

Here students were asked to examine University A's policy on fixed term contract staff and to evaluate whether it complied with sections of the LRA and the Employment Equity Act.

They were required to discuss the provisions in respect of different conditions of employment for contract and permanent staff in the light of the above statutes and to refer to relevant case law and arbitration rulings in support of their evaluation.

The second group of questions relating to the Employment Equity Act required students to:

- Analyse 3 to 5 employment policies, practices and procedures listed in the Act.
- Identify employment barriers (or absence of employment policies) which adversely affect employees from designated groups.
- Propose appropriate amendments.
- Provide a timetable over three years to introduce amendments and overcome employment barriers (plan ahead).
- Take account of training programmes and budgetary constraints.

Students were required to perform these steps in relation to their own workplace, a workplace in which their union operated, or within their own union, or they could examine the University B staff manual or any other relevant University B employment policy. In the last of these options they were asked to interview University B management and staff association/union officials 'in taking account of training programmes and budgetary constraints'. This would be arranged through the department.

Students told where to find the staff manual – on the University B website.

Finally students were given the option of designing their own assignment 'to give others with a particular area of interest a chance to work in that area'.

### *Comment on all options in Assignment 2*

In the guidelines which were provided, applicable to all the options, students were told that they did not have to be bound by their particular 'real life' role. However, they should indicate what that role was and how this enabled them to do the assignment. They were required to 'do the research as objectively and passionately as possible'.

This might require you to take off your manager or union hat at various points in order to put certain people at ease about talking to you or giving your information.

They would be allowed to take steps to protect the anonymity of companies and individuals in their research and the assignments would be confidential.

The application nature of the task was made clear in the following injunctions:

- 'Remember your first recourse is to the relevant statute' and
- 'Show a thorough knowledge of the relevant statute and "a systematic application of the statute to the circumstances of your workplace'

All the assignments solicited formal generalizations, local particularizations and applications to 'experience far', in that order. I have coded them all FG/LPF/FAR.

54 students completed the second assignment. One student failed and was told to redo. One failed outright, attaining 24%. The average mark was 63,5%. Marks ranged from 50 to 80%.

### **7.3.3 Assignment 3**

This was a case study related to the law on dismissals. A hypothetical scenario was provided and students were required to present arguments from both employer/ee sides (assume the role of employer first and then of union) and then judge which arguments were 'likely to prevail'. They were required to 'Give full reasons and cite relevant case authorities'. An understanding of general rules was necessary but this was not made explicit. The assignment involved hypothetical application in narrative style but also solicited 'experience far' and application of rules to the facts solicited. I coded it (FG)/LPF/FAR/FHN.

54 students completed the third assignment. One student attained 45% and was told to redo. Another was simply accorded a fail and another granted 20%. The average mark was 62%. The marks ranged from 20 to 82%.

#### **7.3.4 Assignment 4**

This assignment was on Social Security and therefore did not fall within the scope of my research. Forty-eight students completed this assignment and none failed. Marks ranged from 50% to 80%, with an average of 69%.

#### **7.3.5 Assignment 5**

In this final assignment, students were required to write a dissertation of not more than 5 000 words.

They were given a list of reference materials (abstracts, bibliographies, guidelines to writing dissertations) and a list of standard reference books, also a list of periodicals and law reports and advised to read a published set of guidelines for producing written assignments. The following topics were suggested:

5A presented students with a quotation from the report of the 1996 Presidential Commission to Investigate Labour Market Policy and required students to:

- refer to the LRA and BCEA (formal generalization solicitation)
- analyse these acts in relation to competing notions (imperatives) of flexibility and regulation (conceptual application).

I coded this question FG/FHI.

5B required students to

- refer to jurisprudence of the Industrial Court (solicitation of 'experience far')
- compare this with the Code of Good Practice on Dismissals (formal generalization solicitation)
- make their own interpretation of the code (etic opinion)
- consider how it had been interpreted by CCMA commissioners and labour courts (application to 'experience far').

I coded this question FG/LPF/LPE/FAR.

5C provided a quotation on the labour lawyer's contemplation of the terms 'master' and 'servant' and asked students to

Critically consider approaches adopted by our courts and more recently the CCMA [solicitation 'experience far'], in their attempt to delineate the concepts of 'employee' and 'independent contractor' [conceptual application].

In this assignment the general rule is not solicited but the student could not complete this assignment without considering the definition of 'employee' which is contained in the LRA and that of 'independent contractor' which is not. I categorised this question (FG)/LPF/FAR/FHI.

5D asked students, with reference to South African and foreign jurisprudence, to consider the meaning of the concept 'inherent requirements of a job' in Section 5 of Employment Equity Bill (as it was then). I regard this question as similar in structure to the previous one although, possibly, with the conceptual application preceding the application to 'experience far' FG/LPF/FHI/FAR.

5E presented a quote from Du Toit et al (1998) concerning the dismissal of workers during a strike. Students were asked:

Paying close attention to decided cases, critically discuss the attempts made by the courts to balance the competing principles of the right to strike on the one hand, and the employers' operational requirements on the other. You should consider the court's approach under both the old and the new LRA.

This assignment required an understanding of the rules of the two LRA's (formal generalization), the gathering of information about cases and rulings ('experience far') which would be deemed relevant in relation to the Acts (application to 'experience far'). In other words, FG/LPF/FAR.

Topic 6 posed four questions concerning the likely success or otherwise of the new labour dispensation and students were asked to discuss these critically, introducing their own perspectives. It was the only example of solicitation of opinion based on etic understanding

(LPE). It also involved the application of rules to concepts (FHI). The final three topics related to Social Security and therefore were beyond the scope of the research.

33 students completed the dissertation. One student got 46%. The average mark was 71%. The marks ranged from 46 to 78%

### 7.3.6 Overview of the categorisation of assignments in Course B

The following is an overview of the categorization of the assignments in Course A. Please note that I have omitted Assignment 4 which was on Social Security, the section of the course that is not included in this study.

**Table 22: The assignments in Course B in terms of localizing and generalizing strategies**

Assignment	Type of solicitation						Coding
	Formal generalization	Formal application			Local particularization		
		Hypothetical		Actual	Impersonal	Personal	
		Narrative (FHN)	Idea/concept (FHI)	Experience far (FAR)	Experience far (LPF)	Opinion Etic (LPE)	
1	*		*	*	*		FG/LPF/FHI/FAR
2	*			*	*		FG/LPF/FAR
3	(*)	*		*	*		(FG)/LPF/FAR/FHN
4	Not applicable						
5a	*		*				FG/FAI
5b	*		*	*	*		FG/LPF/FAR
5c	(*)		*	*	*		(FG)/LPF/FAR/FHI
5d	*		*	*	*		FG/LPF/FHI/FAR
5e	*			*	*		FG/LPF/FAR
5f			*		(*)	*	(LPF)/LPE/FHI
5g	Not applicable						
5h	Not applicable						
5i	Not applicable						

The categorization of the assignment briefs indicated the following generalities:

- All but one assignment required an understanding of the general rules contained in relevant legislation. The exception was 5f. Of those that required formal generalization, all but two (3 and 5c) stated this explicitly.

- All the assignments required research: finding the relevant rules, cases, rulings or facts and all except 5f made this explicit.
- All but 5f required the students to justify their answers in terms of case law or jurisprudence. This included the case study.
- Students were given an opportunity to work with their own experience in the various options of assignment 2. Indeed, the lecturers were so keen to provide students with such opportunities they could even design their own assignment. However, students were not to be allowed to recruit experience 'raw'. Instead they had to research their workplaces or unions, and interpret events there in the light of the legislation.

### 7.3.7 Marks in relation to type of assignment

I had insufficient data to make a full comparison between marks and type of assignment (I could not get a breakdown of the specific topics which each student tackled in Assignment 2 and 5). However, my limited comparison (shown in Table 23 below) did reveal an interesting trend: the number of students who completed assignments dropped steadily as the course progressed while the average marks increased.

**Table 23: Marks in relation to type of assignment, Course B**

Assignment	Type	No of students who completed the assignment	Failures	Range	Average
1	FG/LPF/FHI/FAR	63	3 (redo)	50-81%	59%
2	FG/LPF/FAR	54	2 (one outright, one with 45%)	50 – 80%	63,5%
3	(FG)/LPF/FAR/FHN	54	2 fail (1 redo, one 20%, one 45%)	20 – 82%	69%
4*	N/A	48	None	50 – 80%	69%
5**	Various	33	One (46%)	46 – 78%	71%

\* This assignment on Social Security fell beyond the scope of my study. However, I have included its results to show the way average marks increased.

\*\* This included the Social Security assignment.

The table above shows the completion rate dropped steadily over the course. Whether this was because of academic competency or social issues is debatable, as my interviews, discussed in the next chapter, will show.

## 7.4 Analysis of Course B results in relation to biographical factors

A total of 64 students registered for this course which was held in 1999. Because the final assignment was a dissertation, students were permitted to extend the period of study beyond one year provided they had completed all four assignments by the end of December 1999.

A total of 31 students completed the course in the allotted time, submitting and passing all five assignments by the end of the year. This constituted 48% of the class. Eleven students completed four assignments by the end of the year, but not the final one which was a dissertation. They would still be able to complete the course on submission of a dissertation. Eighteen students had not completed four assignments by the end of the year and were not entitled to continue with the course. Two students completed all five but failed two.

### 7.4.1 Analysis of results by highest qualification

As the following table shows, 10 students (16% of the class) did not have the formal qualifications normally required for postgraduate study (they had been admitted on an 'RPL' basis). Students with three year degrees formed just over one third of the class (36%) and students who already had postgraduate qualifications formed another third (37%). Of these eight (12%) had LLB degrees or above (two had LLM). The qualifications of seven students (11%) could not be ascertained.

**Table 24: Completion rate of students on Course B by highest qualification**

Highest formal qualification	No of students	No who completed	Percentage of cohort who completed
Postgraduate qualification including Honours, Masters Degree, LLB	24	11	46%
Three year degree including BProc + National Technikon Diploma	23	13	56%
Matric	10	5	50%
Unknown	7	1	14%
Total	64	30	47%

Students with three year degrees or technikon diplomas achieved the highest completion rate, with 56% of them completing the course. Significantly, those with matric only were not far behind with a completion rate of exactly 50%. Of the group with postgraduate qualifications, 46% completed the course.

#### 7.4.2 Completion rate by occupation

Students on Course B generally presented a more senior profile than those on Course A with at least 16 in senior managerial positions (this excludes two in senior government positions), five attorneys and six senior trade unionists (regional and national organisers). Seven were full time students for the duration of the course (six had been in their third year of study for a bachelors degree at time of application, one was in senior employment with a company.) It was unclear whether some of those who described themselves as consultants – mostly white women – were studying full time during the course or not. They have not been included within the ‘full time student’ category.

**Table 25: Profile of students on Course B, by occupation**

Occupation	No of students	Total + percentage of class	No who completed	Percentage of cohort who passed
<b>PROFESSIONAL</b>				
Attorney	5			
Academic	5			
Teacher	1	11 (17%)	5	45%
<b>FULL TIME STUDENT</b>				
In 3 <sup>rd</sup> year at time of application	6			
In employment at time of application	1	7 (11%)	3	43%
<b>MANAGERIAL</b>				
Human resource manager	5			
Human resources officer	5			
Company director	1			
Other managerial	5	16 (25%)	7	44%
<b>FULL TIME UNION</b>				
Senior organisers	6	6 (9%)	2	33%
<b>LABOUR-RELATED</b>				
CCMA functionary	1			
Bargaining council designated agent	2	3 (5%)	2	67%
<b>GOVERNMENT</b>				
Senior officials in a Labour ministry/ department	2			
Local govt councillor	1			
Parliamentary officer	1	4 (6%)	3	75%
<b>CONSULTANT</b>				
In field of labour relations	3			
Management	1			
Other (former school principal)	1	5 (8%)	3	60%
<b>OTHER</b>				
Marketing	1			
Administration	1	2 (3%)	2	100%
<b>UNKNOWN</b>	10	10 (16%)	4	40%
<b>TOTAL</b>	<b>64</b>	<b>64 (100%)</b>	<b>31</b>	<b>48%</b>

It is difficult to draw trends here because of the wide disparity in numbers. However, it is significant that the group of professionals, which included five attorneys, did not achieve a high completion rate – only 45%. This was much the same as the rate achieved by the biggest group in the class: the managerial group, which had a completion rate of 44%. The unionists did not do well with only two completing the course. Both of these were women who already had degrees. The other four unionists were men with matric as highest qualification.

### 7.4.3 Analysis of results by race and gender

About one third of the students on Course B were African (34%) another third coloured (30%), about a quarter were white (26%). The race of the remaining 9% could not be ascertained. Nearly two thirds of the class (66%) were male.

Coloured men formed the largest group (25%) following by African men (22%), white women (14%) and white men (12%), African women (12%) and Coloured women (5%). Race and gender information could not be obtained about the remaining 9%.

As a group, white women had the highest completion rate, with eight out of nine completing the course. The remaining woman in this group completed four assignments and was still eligible to complete the course at a later stage.

**Table 26: Completion rate on Course B, by race and gender**

Race and gender	No of students in this category	No who completed the course	% of cohort
White female	9	8	89%
Coloured female	4	2	50%
White male	8	5	62%
Black male	14	7	50%
Black female	8	4	50%
Coloured male	16	5	31%
Indian male	2	0	0%
Unknown	3	0	0%
Total	64	31	48%

As a group, white women not only had the highest completion rate (see table above) they also achieved the highest marks (see table below). Two white women achieved firsts for all five

assignments. No men achieved similar results. The top student was one of these women (who also gave birth to a baby during the year).

**Table 27: Analysis of results in Course B, by race and gender**

Race and gender	No who completed the course	Completed four assignments, may still complete	Completed too few assignments to complete the course	Failed some assignments	Total
White female	8	1	0	0	9
Coloured female	2	1	1	0	4
White male	5	2	1	0	8
Black male	7	0	5	C 5, f 2 C 5, f 2	14
Black female	4	3	1	0	8
Coloured male	5	4	5	C4, f 1 + C4, f 2	16
Indian male	0	0	2	0	2
Unknown	0	0	3	0	3
Total	31	11	18	4	64

#### **7.4.4 Further relevant factors**

The following factors, although relevant, could not be pursued for analysis because of the limited information available which gave information about too few students.

##### *Age*

For this course I was able to obtain the ages of 28 of the students where they had provided birth dates on their application forms. Their ages ranged from 21 to 55 years. This meant there were some students on this course who were younger than the youngest on Course A.

##### *Short courses and further study*

About one third of the class mentioned on their application forms or in their CV's that they had completed short courses of various kinds. One student listed 12 short courses in the field of industrial relations. Another had done 11 short courses on various subjects that ranged in duration from one day to three hours a week for four months. Six students had completed short diploma courses, the status of which could not be ascertained.

**Table 28: Number of students in Course B who had undertaken short courses or further study**

Union courses	5
Industrial relations/ conflict resolution	2
University certificate courses	3
Other (e.g. computer)	2
Some university credits	4
Diplomas (status unknown)	6
	22

Of the five students who had attended union courses, only three completed the course. One worked for SASBO, the financial union, the other had been a union organiser but was currently in a management (human resource officer) position. Both had degrees. The students who did not complete were unionists with matric only.

Four students were studying for further degrees. One, who already had an honours degree, was studying for a distance masters degree through a British university. He had been in a senior managerial position but was a full time student for the duration of the course. The teacher on the course was studying for a National Diploma in Company Administration through UNISA. One of the academics who already had an LLB was studying for a LLM and one of the union organisers who had a BA was in her final year LLB with UNISA. Out of the four, she was the only one who completed the course.

**7.4.5 Analysis of results of students with Grade 12 as highest qualification**

The following is a detailed profile of the students who were admitted on the grounds of their experience because they did not have the qualifications normally required for postgraduate study. Their results for each of the assignments are also supplied. The figures show that where the students did complete assignments, their marks were above average. Four completed the course, one with exceptionally good marks. None of the trade unionists completed the course.<sup>83</sup>

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<sup>83</sup> However, very shortly before completing this thesis, I was informed by Student B2 that he completed his dissertation, and hence the course, in 2002.

**Table 29: The students on Course B with matric only: details from their educational biographies and results**

Name	R	G	Highest qualification	Short courses	Occupation	1	2	3	4	5
B1	C	M	Matric	Union courses	Trade union general secretary	2+				
B2	C	M	Matric	Union courses	Trade union regional co-ordinator	2-	2+	2-	3	
B3	C	M	Matric	Union courses	Trade union regional organiser/educator	2-	3	3	2-	
B4	C	M	Senior Certificate from a trade school	Union courses	Trade union general secretary	3		2-	2-	
B5	W	M	Seven credits towards BA degree + two diplomas on human resource management and Industrial relations.		Regional human resource manager, manufacturing company	2-	2+	2-	2+	2+
B6	W	M	Senior Certificate plus two credits in Communication, by correspondence.	Two short courses and several seminars	Bargaining council official	2-	2-	1	1	1
B7	B	M	Senior Certificate plus Diploma in Industrial Relations and Personnel Management + two courses toward BProc	Course in IR Negotiation skills with independent conflict resolution centre	Local government councillor, former trade union national administrator and legal officer	3	3	3	3	2-
B8	C	M	Matric	Courses with independent and statutory conflict resolution bodies	Bargaining council official	3	2-	2-	2-	3
B9	B	M	Matric + two diplomas from short courses offered by international organisations	Short IR courses in Nairobi, Harare, Turin, and Japan	Senior government official, SADC country	3	3	3	2+	2-
B10	C	M	Matric + 4 first year credits for BA Law		Case management officer, dispute resolution centre	2+		2+		

The table above shows three important features of the group of students with matric only:

- Five out of the 10 students had attempted further formal study after matric, attaining four diplomas between them and several credits towards degrees.
- All but two had attended short courses.
- They all occupied high level positions in their organizations, ranging from national general secretary of a union to senior government official of a SADC country.

The following table summarises the results of these students. It shows that five out of 10 students passed. This pass rate was higher than that achieved by the group of students with postgraduate qualifications.

**Table 30: Completion of Course B by students with matric as highest qualification, by occupation**

	Completed	Still to be completed	Not completed
CCMA functionary			1
Government official	2		
HR manager	1		
Unionist		2	2
Bargaining council agent	2		
Total	5	2	3

#### **7.4.6 Recruitment and recognition of prior experience in Course B**

Assignment 2 appeared, at first glance to be offering students a change to recruit their work experience and have it recognized. However, this was not entirely so. They had to research their workplaces – find facts through interviews and audits and read those facts in the light of relevant legislation.

Analysis of students' results in terms of occupation shows one did not need to have experience of labour law per se to succeed on the course. It was legal experience and legal degrees in general and management expertise that was more closely associated with achievement. In particular, none of the progressive trade unionists completed the course in the allotted time.<sup>84</sup> Of the two unionists who did succeed one worked for a non-aligned staff association, the other for a historically white financial union.

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<sup>84</sup> See Footnote 4.

## 7.5 Conclusion

The quotation at the start of this chapter captures the essence of the recognition and realization rules for Courses A and B. For the first, one needed to know the content of aspects of the legislation, primarily relating to procedure, and apply to hypothetical examples. For the second, one needed to know how to find rules or principles and then how to find relevant cases, jurisprudence or facts, and read them in the light of the general. One also needed to know how to apply general rules, principles etc to concepts or ideas. Only one of the questions in Course A involved an element of the latter and none involved research or required reference to actual cases.

Although all questions across both courses required knowledge of general rules and procedures, this was not made explicit in a number of questions in the Course A exam. Significantly, the students did best in those questions that scaffolded from formal generalization solicitation to formal application solicitation.

There were no opportunities to recruit prior informal experience in Course A but students were provided with an opportunity in Course B. However, here they had to 'research' their local contexts and re-interpret them through the gaze of the law. Any prior experience recruited for the purposes of this assignment could not be presented 'raw'. The assignment instructions made it clear that students were being given an opportunity to 'apply what they had learned on the course to the 'real world' of employment and work. Students were to use their workplaces as research sites and although they could conduct research that was relevant to the actual roles, they had to conduct the research 'as objectively and dispassionately' as possible and put aside their management or union 'hats' temporarily when conducting interviews. In Dowling's terms they had to cast the academic gaze upon their experience and recontextualize it in academic terms.

In Course A there was a direct relationship between highest formal qualification and success on the course. The student who passed top of the course was a qualified lawyer, with a masters in law from Oxford University. Of the 11 students without matric, only 2 passed. In course B, the top students also had law degrees and extensive legal or management experience. However, the students with matric only, who had been admitted on the basis of their prior experience, performed better than the 'RPL' students in Course A. Five out of 10 of them

completed the course, with one obtaining several firsts. Of the five who did not complete, four were progressive trade unionists. The assignments they did complete gained good results, including upper second passes. In interviews which I discuss in the following chapter they told me that social factors (including work overload and union pressures) prevented them from completing. These and other factors relating to the recruitment and recognition of trade union experience are discussed in the following chapter.

## CHAPTER EIGHT: THE RECRUITMENT AND RECOGNITION OF PROGRESSIVE TRADE UNION EXPERIENCE IN COURSES A AND B

'... trade union education discourse emphasizes respect for the knowledge and expertise which workers have built through their own experience ... In some cases it also translates into an 'anti-academic' and 'anti-intellectual' stance ...' (Cooper and Qotole, 1996).

'What I'd like you to do is ... identify a conflict situation that has occurred at your workplace ... track it, cost it and assess your satisfaction with the process. Then we will go through it tomorrow' (Lecturer LB3, Course B).

Lecturer (LA3, Course A): 'There has to be a conciliation hearing before you can refer a dispute to arbitration.'

Student (case officer at IMSSA<sup>85</sup>): 'If you are dismissed for sexual harassment, then your case is referred straight to arbitration, it doesn't go to conciliation.'

Lecturer: 'You're giving too much of your IMSSA experience there. One might be able to establish a private arrangement in terms of which disputes are dealt with in that fashion. In terms of the LRA, disputes like the dispute you've spoken about must be referred to conciliation first.'

In adult and trade union education and RPL discourse, there is an expectation that labour studies is a field of education where the experience of workers is particularly relevant. As Michelson (1990:139) has said:

The very subject matter of labour studies – the meaning and role of work in human life, the power relationships that arise within the workplace setting, the technical skills of labour relations, the social and economic environment in which industrial structures and technological change evolve – brings the experience of workers into academic focus.

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<sup>85</sup> Independent Mediation Service of South Africa, a private dispute resolution agency.

My research presented a more complex picture in relation to labour law. Consideration of the nature and structure of labour law (Chapter 3) showed that worker experience was indeed a crucial element of that field of education – but only if read in the light of the rules, principles and concepts of the law, and most important, case law, and recontextualized accordingly.

In Chapter 6 I showed, by means of content and network analysis that the role of acquirer prior experience in the pedagogic discourse of the lectures varied according to pedagogic style, which varied in turn in relation to the purpose and circumstances of the lecture and the capabilities of the lecturer. Mostly it played a limited role. It was only in Course B, towards the end of the course when the topic of discussion was not for evaluation, or could be covered at a fairly leisurely pace, that it assumed a significant proportion of time. In Chapter 7 I showed that there were no solicitations of prior personal experience in the exam questions of Course A but that there was an invitation to draw on prior experience in one Course B assignment. However, it could not be presented ‘unprocessed’ but had to be reinterpreted through the academic gaze (via ‘research’).

In this chapter I revisit the pedagogy and evaluation of the two courses and consider the recruitment and recognition of trade union experience, in particular, focusing on the experience of those students for whom RPL was originally designed: progressive trade unionists with limited formal education but years of experience as workers and worker leaders.

The chapter begins with an introduction to the eight students in this category, four in each course, with reference to their educational biographies. This is followed by a consideration of the role, in the pedagogy and evaluation, of trade union experience in general and that of this group in particular. Finally there is consideration of the association between prior union experience and achievement on the course and conclusions are drawn as to a number of other factors which were necessary for success. In this regard, I draw on interviews with the two students who achieved the top marks in each of the courses.

Please note that throughout the chapter I refer to extracts from lecture and interview transcripts, using the abbreviation TE followed by the relevant number. The full extracts are provided in Appendix Q. The students and lecturers ‘code’ names are listed in Appendix A and B, with brief biographical details. Fuller biographical details of the 8 unionists and 2 top students are presented in Appendices H to J.

## 8.1 Union membership in Courses A and B

Twenty-one out of 38 students in Course A were members of a trade union.<sup>86</sup> One was a full time shop steward and another a full time regional organiser. There were no national organisers but two students were members of the national executive of their unions. The extent of union membership confirmed the overall trend towards middle to lower level employment.

**Table 31: Union membership of Course A**

Membership of a union	No of students
Not a member of a union	14
Member only	12
Shop steward	3
Shop steward plus member of regional executive	1
Chair of union branch	2
Chair of union branch and member of regional executive	1
Member of national executive (also full time shop steward)	1
Full time union organiser	1
Unknown	3
	38

In contrast to Course A students, Course B students were predominantly professional, self-employed or in managerial positions. Out of 64 students, six were currently in senior, full time union positions.<sup>87</sup> Three of these were working for progressive<sup>88</sup> trade unions (two as national organisers, one as a regional organiser) and one was a regional organiser for a trade union federation. Of the remainder, one was the organiser of a staff association and the other an organiser of a historically white financial trade union. There were two additional students who, while no longer working for unions, had nonetheless held senior office previously. One, a local government councillor, had been a legal officer for two major unions and the other, a human resources officer, had been the national administrator of a union. Furthermore, the one student on the course who was a teacher was also branch secretary and media convenor of his teachers' union.

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<sup>86</sup> Source: questionnaire.

<sup>87</sup> Source: application forms, CVs and interviews.

<sup>88</sup> I am distinguishing here between unions that played an important role in the struggle for liberation in this country and those that were historically white and conservative. I have not identified unions or federations to preserve the anonymity of the students.

**Table 32: Union membership of Course B**

Union involvement	No of students
National organiser, progressive trade union	2
Regional organiser, progressive trade union	2
Regional organiser, progressive trade union federation	1
Organiser of a staff association	1
Organiser of a historically white financial trade union	1
Branch chair and media convenor of a teachers' union*	1
Former national legal officer	1
Former national administrator	1
Total	10

\* A voluntary, unpaid position.

Of the students mentioned in the table above, five did not have matric and had been admitted on the basis of their experience. They were the four progressive unionists and the former legal officer who, at the time of the course, was a local government councillor.

## **8.2 The 'RPL' trade unionists**

In this chapter I focus on four trade unionists from Course A who did not have matric<sup>89</sup> and four from Course B who did not have degrees. I regard them as examples of the type of student for whom RPL was originally put on the education policy agenda.

In interviews common biographical themes emerged. (See Appendix H and I for their biographical details.) They ranged in age from 'early 30s' to 'over 50', with most concentrated around 40. All had experienced social and educational deprivation under apartheid as a result of their classification as either coloured or African. (Two were African men, there was one Coloured woman and the rest were Coloured men.) They had grown up in homes that at best could be described as working class, at worst poverty stricken. Two of the students from Course A (SA2 and SA4), who were also the only Africans in the group, had left school early to become breadwinners for their parents and siblings. Participation in the student action and boycotts that characterized the early 1980s led to SA2's expulsion from school in his 11<sup>th</sup> year and disrupted SB2's matric year. SB2 returned to finish the next year but SA2's family needed

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<sup>89</sup> Five students in Course A fell into this category. I was able to interview only four, however. Student B5, who was unemployed at the time of the course, changed address shortly afterwards and I was unable to locate him.

his earnings and he did not go back. The early jobs of most of these students were menial but, with the exception of the one female unionist in the group (SA3), they all progressed into other employment. In three cases (SB2, 3 and 4) this had been into community development work where they gained opportunities to work extensively with written texts.

For all of these students, trade union involvement was their major source of development, advancement and status. Through the unions they had attended numerous trade union education courses, had learned to debate complex socio-economic issues and had been exposed, to a greater or lesser extent depending on their positions, to written texts (including labour legislation) and literacies. Some came from unions that specifically encouraged their members to further their formal education.

In the courses that I observed, their trade union experience was recruited and recognized unevenly. This will be discussed in the following sections of the chapter, in relation to the role of prior union experience more broadly.

### **8.3 The recruitment of trade union experience in the lectures: circumstances and effects**

From my observations and analysis of lectures, I noted that students recruited their prior informal experience as transmission as well as acquisition strategies. They not only responded to lecturers' solicitations, and solicited formal generalizations or applications (sometimes this was to gain legal advice on a personal or union or company issue), they also challenged or confirmed assertions by the lecturers and made assertions of their own (thereby challenging the hierarchical relationship of the pedagogic context). These attempts to achieve 'exchange relations' (Dowling, 1998)<sup>90</sup> are common in classes of adults and as one lecturer in Course B told me, make the lecturing in a course like this 'so much harder than lecturing to a bunch of undergrads'. The unionists were no exception, adopting all of these strategies at times, but with variations across the two courses. In this section I will discuss their strategies – in the context of student participation more broadly and in relation to lecturers' strategies and styles of pedagogy.

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<sup>90</sup> Pedagogy, usually, takes place within a relationship that is necessarily hierarchical and the evaluative criteria reside with the provider. An exchange relationship, in contrast, is horizontal and involves the exchange or swapping of knowledge, where the evaluative criteria are distributed across participants in the relationship. (Ensor, 2002, drawing on Bernstein, 2000, and Dowling, 1998).

### **8.3.1 Lecturers' solicitations**

Literature on the education of adults (including trade union education), usually suggests that the lecturer should specifically solicit the experience of the adult students and build upon it. (See Chapter 2.) A few of the lecturers in Course A and B attempted such solicitations – with varying effects.

Lecturer A2 made a fruitless attempt to recruit the experience of the students in his class at the start of his lecture on worker participation (see TE1). He wanted to illustrate the changing nature of the workplace and the point that 'today of course even a so-called unskilled worker is actually pretty skilled compared with many years ago'. Almost all workers nowadays were having to take decisions on the job, he said. 'Are there any examples you can think of here, from your own work situation, the kind of things, situations where the workers themselves must decide on the job how they do things?' His solicitation met with no response and he proceeded to give his own example – of a secretary in an office working with a computer. This only proved the unsuitability of his assumptions: a secretary could not be regarded as an unskilled worker and, as the class knew, there were many workers in South Africa today who had no opportunities to take their own decisions.

Lecturer LB4 met with a similar response when he tried to get one of the unionists (SB1) to express his opinion on globalization. SB1 said later in an interview that he had suppressed his own viewpoint, which was the opposite of the LB4's, to avoid a long debate with the lecturer (see TE2).

Lecturer A3 started his lecture on conciliation by asking students to raise their hands if they were involved in the trade union movement, had been involved in conciliation proceedings, were law students etc. Despite this, LA3 was not always affirming of students' (including unionists') experience (as the extract in 4.2.2 and the third quotation at the start of this chapter show). On the other hand, he was particularly receptive to the comments of the lawyer (SA15). Generally the student experience was expressed in narrative form and relating to a particular incident either real or hypothetical. SA15 couched his responses and questions in legal terms (see TE3).

On another occasion, LA3 appointed the lawyer to play the part of 'arbitrator' in the role play on arbitration. Unionist SA4 told me later that LA3 should not have done this. He himself had extensive experience of arbitration, having represented his union three times, each time winning the dispute. He said he would have known how people should be positioned and what they should have said and he would not have made the mistake, as LA3 did, of giving roles to two inexperienced woman (in the fact the one was SA12, a client services officer at IMSSA). In the end, SA15 dominated the role-play. Although he had no practical experience of arbitrations he had acquired a knowledge of procedure through the course and applied it in this situation. His command of the English language and sense of humour made him a glib actor and he aroused laughter from the class. However, participation by the rest of the class was very limited. From my observations and knowledge of SA4, it would have taken some time to involve more fully students like him, who had a limited command of English and who lacked confidence in their pedagogic content, even though they had extensive relevant experience.<sup>91</sup>

Lecturer A4 on Course A made a concerted effort to recruit student experience which I believe might have been a response to a conversation which I had with her before the class, in which I told her that I was researching RPL. In her opening remarks (see TE4), she called on students to speak of their experience. However, her lecture was predominantly of formal generalizing mode and students' participation, although substantial, was more often in the form of solicitations of general rules.

In Course B, anchor lecturer B1 launched straight into his opening lecture only to be interrupted by a student who insisted that the class be allowed to introduce themselves. After expressing some doubt as to whether this would be possible given the number of students (64) and the amount of material he had to 'get through' that day, he reluctantly agreed. By the end of the course, he was much more relaxed about intrusions of student experience.

In the end it was the lectures by Lecturer B3 that offered the greatest opportunities for recruitment of student prior experience across both courses. Here she not only specifically solicited it (see quotation at the start of this chapter) but also encouraged it through many positive affirmations and through her own example (recruitment of her own prior experience amounted to 25% of total pedagogic discourse). Significantly, LB3 was an expert in the field

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<sup>91</sup> SA15 told me in my interview with him that he had no experience of labour law before the course.

of practice, lecturing on a topic that was not to be directly evaluated (as were the lectures in Course A). This, and a generally informal approach, led to relaxed framing and classification.

It is significant, however, that the voices she encouraged to speak were not those of unionists. In the lecture which I analysed in Chapter 6, discussion was dominated by an academic researcher (SB13) and a human resources manager (SB5), who intervened constantly with questions and comments and frequently regaled the class with narratives based on personal experience. Other students who participated frequently included: an industrial relations manager (SB18), two lawyers (SB 14 and SB19) and the woman who was organizer of the financial union (SB11). This is not to say that it was only in her lectures that these students participated. They were generally the most vociferous of all the students through the course. Significantly, all were in professional/managerial positions and all but the IR manager were white. According to my impressions, there were no Africans who spoke frequently. Their interventions when they did occur were mainly questions – often about the literacies of the course – or brief comments.) The unionists' participation was limited and, among them, SB1 was the dominant voice. Generally, their interventions were 'experience far' localizing strategies. In interviews they told me they 'hung back' from the discussions. They had resolved beforehand to accept the ideological orientation of the course, and not get involved in debates about it, but rather get as much as information as they could.

### **8.3.2 *Students' solicitations***

In the pedagogic process it can be as important for students to know the rules for realizing a legitimate question, as it is for them to know the rules governing legitimate assignment texts or exam responses. As Bernstein (1996) has pointed out, anything – even a small physical gesture – may attract evaluation.

In the lectures of Courses A and B, the 'legitimate' question – that is, the question that attracted the most positive lecturer response – was phrased in relation to the formal general, ideally in legal terminology. Contrary to theory on the pedagogy of adults, it specifically did not include recruitments of prior personal experience. This is because there was an unwritten rule that students should not seek legal advice. 'You know the rules – R500 deposit' LB4, a prominent labour lawyer, said jokingly to a student when he presented a case in which he was personally involved. LA1, co-ordinator of Course A, told her students: 'I'm prepared to give you

information. Advice you have to pay for'. (She told me she was often plagued by students who would come to her office for help on particular personal issues.)

This rule presented obstacles to students who had come to the course to get legal advice (factory owner SA8, for example, and two retrenched teachers, also on Course A),<sup>92</sup> but had pedagogic advantages in that it forced students to express their questions in relation to the general rule – a competence which they needed to master in order to pass the exam or assignments.

Students in both courses soon acquired a 'feel for the game', as Bourdieu (1990b) might have put it. In Course A they presented their personal narratives in the form of hypothetical examples, in this way emulating one of the main localizing strategies of the lecturers. In Course B they presented the significance of their experiences as 'experience far' (particularly, legal cases) rather than personal narratives. If the cases had been reported, they emphasized this. For example, in LB1's lecture on arbitration, SB11 presented a long account of a case in which a worker charged with theft was acquitted and re-instated. Halfway through, when the lecturer was showing signs of impatience, she added emphatically: 'The case was reported' and then continued.

Requests for legal advice were not confined to unionists. SB5, a human resources manager, created the diversion analysed in Chapter 6, Section 6.8, when he asked the lecturer for an opinion on a matter which disturbed him personally: employees were no longer allowed to be represented in arbitration hearings by a fellow employee. At first he expressed the matter as a legal point of interest. Much later he admitted that, as a middle manager who did not belong to a union, he had a personal interest. Another student who presented long accounts of personal experience was the researcher, SB13, whose account of a case he had attended led to a six-minute diversion in the same lecture. He started his account, however, as an affirmation of a point the lecturer had made.

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<sup>92</sup> The practice was part of a sub-strata of activity in the courses in which both parties in the pedagogic relationship attempted to use the opportunity of the class to advance personal interests in their working environment. In this vein, lecturers who were also labour lawyers tried to 'keep in touch' and gain information that would benefit their private practice, managers tried to get to know unionist strategies and vice versa, commissioners tried to promote and explain the CCMA and some students only attended the course to have personal questions answered (SA 8, for example).

In Course A I noticed, among students with limited formal education, two who had not mastered the use of the hypothetical. One was unionist SA3. She posed a detailed question about employee rights in the case of the liquidation of a company and its subsequent purchase by a member of the employer's family. Initially she phrased the question in such a way that it appeared she was the employer concerned. Only much later, when the lecturer seemed unable to address the question in the terms she had presented it, did she make it clear that she was not an employer and was asking the question on behalf of an employee at the factory concerned. She told me later that she had expressed her narrative in a personal way, originally, because she thought the lecturer would not understand it if she expressed it impersonally. (These were not her actual words.) I noticed a similar confusion about the role of the hypothetical in her written texts.

The other student was SA8, a factory owner, who did not write the exam and told me in an interview that he was dissatisfied with the course because of its bias towards workers. He presented a scenario in personal terms, as though it had actually happened and asked the lecturer's opinion. Later he told me in an interview that the incident had not actually happened:

No I haven't got a situation like that. I wanted to find out the employer's rights and the employee's rights.

SA8 did not write the exam so I was not able to establish how he might have dealt with the hypothetical in that context. However, SA3 did write, drawing inappropriately on her personal experience in responding to a hypothetical application question, suggesting that this kind of confusion might be more generally associated with very limited exposure to formal literacies. This is discussed in 8.3.

### ***8.3.3 Challenging the general rules***

In Course A where the emphasis of the lectures was on the content of general rules and procedures, prior informal experience was often produced by the student to challenge the general rule, and show its inconsistency with the particular. In Course B, where there was no attempt to hide the messiness of the law in practice and localizations were primarily in relation to actual cases, this kind of recruitment was not prevalent. The recruitments in Course A took two forms: references to a particular matter in which the student was personally involved, or generalizations based (at least apparently) on the student's experience.

### *The particular vs. the general*

The transcript which was presented in 4.2.2 (page 94) is an example of a challenge to a rule on the grounds of personal, contrary experience. The interaction was between LA3, a part-time commissioner of the CCMA and student SA13 who was formerly a secretary for a department at the organisation concerned and at the time of the interaction a full-time university student. She had extensive informal experience of labour law, having been a shop steward for a union at her organization and had also been involved in a protracted case against the organization's administration in which she alleged that she had been victimised for her union involvement.

In the exchange, SA13 challenged a point made by the lecturer – that only disputes which came into operation after 11 November 1996 could be dealt with by the CCMA – on the grounds that her personal dispute, which began long before this date, had been dealt with by the CCMA. The lecturer deflected the issue by saying it could not be addressed without recourse to the specific circumstances involved and confirmed that the point he had made earlier was the general rule. In doing so he recruited his own personal experience (he said he had had occasion to dismiss a dispute on this basis) and also drew on generalisations from practice (there were a host of other disputes, he said, which had been dealt with in this way).

In an interview later, SA13 revealed that her case had in fact not been dealt with by the CCMA, as she suggested in class. It had only been put on the roll and allowed a brief hearing. The commissioner, after considering the issue concerning the dates and telling her and her representatives that he was not allowed to hear such a case, told the parties to pursue the recognition agreement which existed between them. In terms of this agreement they were required to settle a dispute by mediation or arbitration. And so, in the end the dispute was heard and resolved by an independent arbitrator. SA13 said Lecturer A3 should have given her a 'hearing' but conceded 'there was no time'.

Confusingly, both lecturer and student used localizing strategies in this interchange. The student recruited prior informal experience to challenge the general rule. The lecturer also recruited personal experience – this time in support of the general rule. This was also a localizing strategy, but with a generalizing trajectory – the kind of localizing strategy associated with the transmitter role in pedagogy. Whereas the student's localizing strategy was focused on the particularity and exceptionality of her experience in relation to the general rule, the lecturer's faced towards the abstractions and commonalities associated with the general.

Furthermore the lecturer backed his localizing strategy with an academic-type local generalization – a generalization based on a number of cases, usually reported.

Was the student's prior experience 'recognised' in this context? The answer can only be no. Anecdotes recruited as localizing strategies (without being related to a general rule or principle) are difficult to relate to unless both communicants have had the same or similar experiences or the experience is described in vivid and comprehensive visual terms (which takes time). Lecturers need a great deal of time and patience or a great deal of experience 'on the ground' to 'recognize' and 'hear' the accounts presented by their students. Muller (2000) and Breier (2001a) have made similar point in terms of horizontal and vertical discourses.<sup>93</sup>

From the perspective of the acquirer, the general rules, generalizations or other abstractions presented by a lecturer are difficult to accept if one has not already been inducted into the principles on which they are based and if one has not acquired the appropriate 'gaze' (Bernstein, 1999:165). This is the dilemma of RPL. In law this 'gaze' means seeing experience through the framework of the law, in relation to what ought to be, as well as what has been, in the light of numerous reported cases and judgements.

Sometimes the lecturer will use a localizing strategy – a reference to a particular case or event in the field – to illustrate a general point and provide a bridge between the informal and the formal, between vertical and horizontal. When the lecturer recruits his/her own prior informal experience for this purpose then the potential for resentment arises. The student needs to have a particular orientation to pedagogy to accept the bona fides of such a strategy and not to conclude that the lecturer is simply privileging the experience of the powerful. (This is the kind of conclusion that SA13 reached in relation to LA3. She said he presented a positive image of the CCMA because, as a commissioner, he was 'biased' and out of touch with 'real experience'.)

The dilemma for the adult student with extensive informal experience is addressed in the quotations from Bourdieu and Dostoevsky on page 74, all of which concern the relation

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<sup>93</sup> I subsequently rejected these terms as a language of description, because of my difficulties in identifying their empirical indicators.

between the general and the particular in law. Lecturer A2 made a similar point in an interview.

... without theoretical education, people tend to see the practical, the concrete or whatever up real close and your academic quote unquote tends to see it in the framework of the rule, what ought to be versus what is ... Your legal academic bases him or herself on the study of hundreds of cases. What happens in your one workplace or ten workplaces.. is almost irrelevant.

The disappointment that SA13 felt as a result of this exchange with LA3 was exacerbated by her expectations that her experience would be valued in the course. SA13 said the only reason she attended the course was to get her experience 'on paper'.

... because I have all this experience and I don't have anything on paper about my experience. That was the major reason, I think the only reason [for attending], to just get it on paper what I've done for years.

The interaction analyzed above, and other like this, made it clear that experience had to be recontextualized into terms 'recognizable' to the lecturer before it could be understood, let alone valued. (See section 8.5.2 for further discussion of this.)

#### *Worker vs. academic generalizations*

In the lecture on Workplace Forums, a discussion arose out of the rule that a workplace forum could be established in any workplace which had more than 100 employees. The registered trade union merely had to apply for its establishment. This would happen even if the employer did not want such a forum.

SA1 asked the lecturer, LA2, what kinds of reasons employers might put forward if they did not want a workplace forum in the company. He suggested, to the amusement of other students, that a clever employer would retrench any workers over and above the 100 which is the minimum number which a company must have before a workplace forum may be established. LA2 said this was unlikely to happen, and if it did the court would intervene to reinstate the workers. There had to be a sound economic reason for retrenchments.

SA1 countered his point with a number of generalizations. He said companies would present economic factors as a rationale but:

- '...whatever the employers want at the end of the day they get away with it'
- '... we know they have very creative accountants'
- 'they ensure, at the end of the day, if they want to retrench, they do so'.

SA13 supported him: 'At the end of the day workers don't have rights.'

LA2 insisted that if they consulted the CCMA and Labour Court reports, they would find that orders often went against employers. In doing so he was asserting the kind of generalization which is at the core of legal work and is based on the reading of 'hundreds of cases' (see his interview comments above).

In the end, SA1 tried to support his generalizations by recruiting personal experience. 'We've also had a case and we lost it'. LA2 replied (to the amusement of the class):

Then you didn't win your case. It's like any case, you know – buy a used car and sue the garage.

In this exchange both lecturer and student were making local generalisations but there were substantial differences. Some unionists argued in my interviews with them that it was all a question of power and privilege and the privileging of different forms of experience. It was clear that both lecturer and student were seeking to legitimize their generalizations in relation to different sources of authority: local 'worker' knowledge on the one hand, and written legal reports, on the other. In terms of my classification, the generalizations also had different trajectories: the student's was localizing, using horizontal discourse to 'pull' the general rule down to the local and reveal its inequity, the lecturer's was generalizing, elevating the particular beyond its singularity into the realm of the general.

To complicate this analysis, SA1 admitted later, in an interview, that some of the points which he had made in class, including those quoted above, were inaccurate or at least exaggerations. Lecturers told me that this kind of action in class was fairly untypical of senior unionists but common among the less senior unionists who attend certificate courses.

SA1 said he associated the lecturer's remarks with management and found it difficult to assume a 'management perspective'. For unionists the only thing that mattered was 'getting the worker off the hook', even if s/he was guilty. Also, in the work context he was able to get away with generalizations like this and with the use of legal terms which he did not fully understand<sup>94</sup> because management themselves did not understand them.<sup>95</sup> He said he would benefit from what he had learned in the course – now there would be 'no way I will allow management to conquer me on issues like this'. However, he also admitted that the company management was already very cautious about dismissing a worker or instituting disciplinary action. He said they felt they had 'shortcomings' when confronting worker representatives who were 'more knowledgeable about the law' (see TE5).

#### **8.3.4 Relationship between participation in class and success in Course B**

I found no clear association between participation in class and success in either course. This trend was despite the fact that in the opening section to the Course B notes, it was stated:

In the nature of things, student contributions during the contact sessions will influence the assessment of written material (Course B notes, 1999:4).

I heard the student who came top of this course (SB 15) make only one comment throughout the course and SB 16, a law lecturer at a technikon, who came second, made none. SB15 told me in an interview that she often felt intimidated by the discussion in class because she had no practical experience of Labour Law. Two young women, aged 21 and 25, who entered the course straight after completing BA degrees, had similar complaints. But, while other students were engaging in debates, they copied points off the overheads, and in the end both of them passed, with the former achieving marks ranging from 51% to 71% and the second, 50 to 73%. Of the vociferous students mentioned above, all passed, attaining marks ranging from 50% to 80%, but one (attorney SB14) did not complete, although the assignments he completed achieved firsts and seconds.

In Course A, unionists SA1, SA3, SA13, SA14 and SA16 were very vocal and often confrontational. This group included two women, SA3 and SA13, who failed the course, and

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<sup>94</sup> He gave as an example his use of the terms 'substantively and procedurally unfair' which, prior to the course, he had used without understanding fully what they meant.

<sup>95</sup> The human resources manager of SA1's company was on Course B. He is identified in this thesis as SB17.

one African man, SA14, who did not write the examination. Their challenges to the lecturers were almost entirely localizations. They were seldom supported by the lecturer and their comments were often deemed illegitimate. In contrast, the lawyer (SA15) who came top of the class generally expressed his responses and questions in legal terms, as solicitations of formal generalizations or formal applications, and his interventions were often affirmed with comments such as 'good question' or 'that's right' (see TE 3).

#### **8.4 Recruitment of prior trade union experience in the evaluation of the course**

I have mentioned (in Chapter 6) that there were no solicitations of students' prior experience in the exam questions of Course A, but that students on Course B were presented with an opportunity to draw on their own experience in one of the assignments. There were indications that this could have been to the benefit of unionists. SB2 gained his best marks (2+) for this assignment and SB3 achieved 50% but would have attained a higher mark, judging from the marker's comments, had he handed it in on time. An overdue assignment that was deemed a pass, or even a first, was marked a flat 50%. SB1 and SB4 did not do this assignment.

SB3 found he was able to use his experience in the project assignment (Assignment 2). He focused on the port of Cape Town where he had worked with some unionists. This facilitated access and also provided him with his own experience. He was surprised by his findings.

The assignment helped me to assess whether employers are actually doing what is required by law. I found in doing research I was actually surprised that they actually did that.

SB3 said he drew on his experience for the other two labour law assignments and it helped here too.

In contrast, SB17, who achieved the highest marks in the class and 80% for this assignment, did not make use of her personal experience for this assignment. She had extensive experience in senior company positions relating to pension funds, but was pregnant (and then a new mother) at the time of the course and doing only part-time legal work from home. She told me that even if she had been in company employment at the time of the course, she would still not have chosen to write about her own workplace. She said this would have made the project too

vast and unmanageable. Instead she chose the option relating to the Employment Equity Act (of which she did not have direct personal experience) and conducted her research at a friend's factory. Her bibliography for this assignment (see Appendix L) shows her extensive use of secondary sources.

In Course A, where recruitment of prior experience in the exam was not appropriate, factory worker SA3 attempted to relate the hypothetical example in one question to her own experience as a unionist. In the scenario presented in the Question 8 (see Appendix E) a worker called Joe is informed by his manager that he is to be transferred from his current job as storeman to a position as a security guard because of ill health. Joe responds angrily by pointing his finger at the manager, shouting and storming out the office. The following day the manager gives him a letter saying that threatening violence is a dismissable offence. A friend advises Joe to lodge an unfair dismissal dispute. The correct procedure is not followed and there are insufficient grounds for dismissal but this is not stated as such in the scenario. The student is required to 'explain to Joe in detail, what the substantive considerations are and set out the procedural steps which should have been followed before a decision was taken to dismiss him'.

In my interview with her, SA3 took issue with the 'facts' of the case study (see TE6). She said that in her opinion Joe could not have been dismissed because there had been no investigation, no hearing, formal or informal, and no notification of what the company was going to do. She presented this as an argument against the authenticity of the scenario, without realising that what she was saying would have been a good answer to part of the exam question. She did not have the recognition rules (Bernstein, 1996) or the academic literacies to realise this.

She then went on to explain that in a real-life case like this she, as a unionist, would have to deal with the emotions of both worker and employer and would have to 'sell' courses of action to both parties. She would encourage the worker to accept that he needed a security job because of fewer hours, less stress etc. But to management she would argue that he did not want a job like that at all, but would reluctantly accept it, on certain conditions. In this way she would obtain benefits for the worker.

Our conversation indicated the depth of personal experience which SA3 brought to the classroom, but also her inability to recognise what was expected of her in the exam. Here she was required to suspend her own experience, enter into the spirit of the scenario and apply the

general rules. Her reply indicated that she could not get beyond the particularity of her own experience and opinions and did not have the academic literacies to express even this. Her full exam script read:

Joe should HAVE Be Interviewed  
Before he WAS TOLD THAT  
THEY WILL SHIFT him And  
if he WANTED Light Duty  
WORK

Yes Joe can make a CASE  
AT THE CCMA. For Unfair  
DISMISSAL.

With in 30 day AFTER. DISMISSALS.  
THE Will go to Conciliation.  
And note SOLue for ARBITRATION.

(2)

For this response, SA3 scored two points out of 20, for her second sentence. Having interviewed her, I could see that the first sentence referred to the various strategic steps which a unionist would take before even attempting to challenge management's decision. The lecturer, with her formal knowledge of the law, including her readings of 'real-life' cases in legal journals and law reports, did not have the recognition rules<sup>96</sup> (Bernstein, 1996) associated with 'real-life' union experience to read this as a potentially legitimate text (nor did she need to have them, within the framework of the performance style of pedagogy which characterised the course) and the student did not have the recognition rules associated with the course to warn her that in the context of this exam, this prior knowledge was not relevant. Furthermore SA3 did not have the realization rules (Bernstein, 1996) to construct a legitimate text. Even the one

<sup>96</sup> Bernstein (1996:32) defines recognition and realization rules as follows: 'Simply, recognition rules regulate what meanings are relevant and realization rules regulate how the meanings are to be put together to create the legitimate text'. See also Footnote 18.

aspect of her answer for which she gained marks was presented out of sequence (in terms of the ordering of the exam questions).

It is possible that SA3 could have taken issue with the facts of the scenario had she had the literacies necessary to phrase this and had she also been able to respond on the terms set by the case study. One student who achieved this was a practising attorney, SA15, who came top of the class overall and achieved 18 out of 20 marks for a reply to this question which was prefaced by the following comment on the content (in this case, lack of content) of the case study:

‘I am assuming that the letter handed to Joe in fact confirmed that he had been dismissed’.

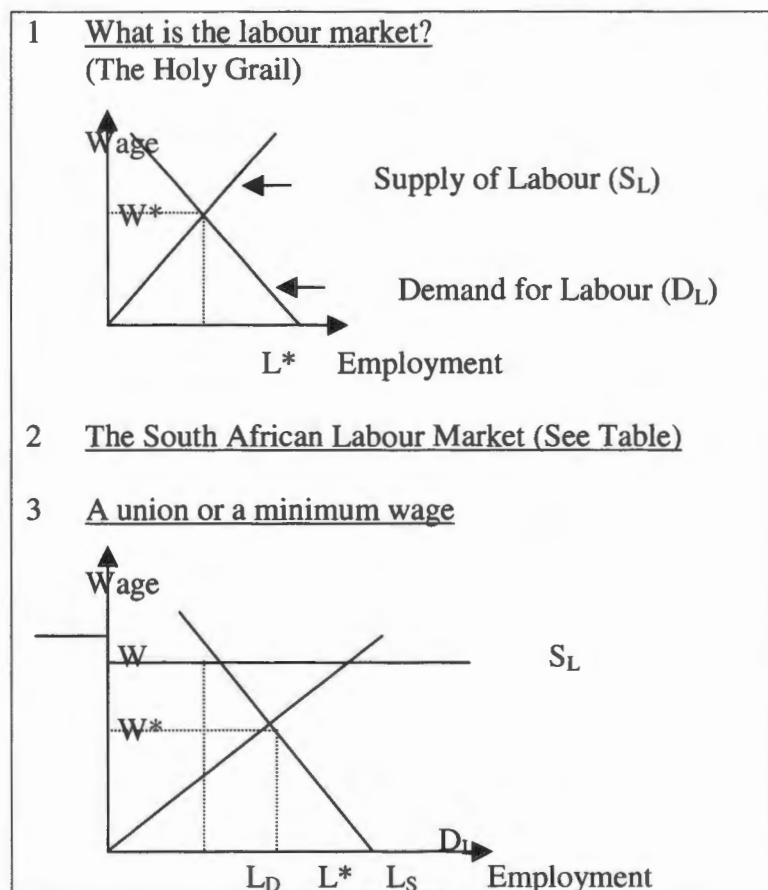
He then went on to provide a 400-word response to the question in which he entered into the narrative of the case study, while still applying the general rules of the Labour Relations Act. (See Appendix Q for his full response.) Clearly, there was no place in the evaluation of either course for experience that was not accompanied by in-depth knowledge of the law to which it was applied.

## **8.5 Informal vs. formal ‘learning’**

The importance of recognizing ‘learning’ from experience, rather than experience per se, is underscored in adult education and RPL texts on good practice, as I discussed in Chapter 2. It is presumed that this learning (via reflection) will lead to the kind of knowledge that will be found acceptable in an academic environment. My research showed that it was almost impossible, from observations of lectures and perusal of written tasks, to identify academically appropriate ‘learning’ that had been acquired informally from that that had been acquired in a formal context. That some students with limited formal educational experiences had ‘learned’ was obvious from the ways in which they participated in debates and in the written tasks. How they had achieved this learning was another question. What was also obvious is that some of the learning that had occurred, which had also led to abstract, decontextualized forms of knowledge, was not necessarily acceptable in an academic context.

In Course B I observed an argument between lecturer LB7 and student SB1 that exposed this. (See TE7 for a full account of the interchange). In a lecture on 'The Labour Market', a professor of economics at University B, who I shall call SB7, presented a graphic model of the labour market (see below) and made the point that the higher the wage the more likely one was to offer one's labour on the labour market and the less employers would want to employ.

**Figure 18: Lecturer LB7's model of the labour market**



When LB7 presented the graph above, SB1 challenged him on the grounds that prices did not necessarily have to go up if wages rose – other measures could be put in place to prevent this. LB1, who attended the lecture, urged SB1 to accept the graph as a heuristic device.

It is an ideal type, a heuristic device. It is not meant to represent reality ...

LB7 suggested SB1 should treat the exercise as a 'commercial break' if he found it 'ridiculous'.

Later, in an interview, SB1 explained his views. He said that the form of liberal or classical economics which LB7 was conveying presumes a state of equilibrium and harmony from which supply and demand is then calculated. This ignored factors such as the state of political organization or 'struggle' in a particular country, levels of unemployment, access to services etc. All these factors impacted on how the graph would ultimately unfold. So it was 'problematic' to state that if wages rose, so jobs would decline etc.

Secondly, even if wages were kept at the same level for any number of years, the system would not be able to provide jobs for everyone because one of the structural features of the system was its need to keep a pool of unemployed people so the wage rate could be kept as low as possible. The larger the pool, the lower the wage rate. 'Conventional' economics misled people as to what was possible and achievable. An alternative would be to say: there is a problem with the system. It is incapable of addressing the most basic needs of everybody even when there are boundless resources. One could then look at other systems and come to different graphs as a result. SB1 said he was also querying whether things actually happened in the way LB7 had described. For example, government could provide support to companies to allow them to meet increased wages without a corresponding drop in employment.

SB1 said LB7 had explained that this was just a 'technical' exercise. I asked him whether that had satisfied him. SB1 replied:

I accepted it because... it wasn't my intention to want to engage. I wanted to make a point but then it is fine the point had been made.

However, he later made it clear that he thought that this type of approach to economics had major negative implications for unions in that it could make workers think that certain things were inevitable under certain conditions, without thinking of the possibility of change.

SB1: So therefore [economic theories like this] could very well influence people in how they then deal with particular issues because they will say that this is what happens, if you do this then this is what the outcome is going to be.

MB: Then from the union perspective it has tremendous implications?

SB1: For collective bargaining and everything for us.

The interaction between SB1 and LB7 and LB1 raises interesting issues. The lecturers seemed to suggest that SB1's refusal to treat the labour market model as purely a heuristic device was associated with an inability or unwillingness to theorise (abstract, de-contextualize) in this way. On the other hand, one could argue that the issue between him and LB7 was really a question of opposing ideologies and intentions. (Certainly, this was SB1's interpretation.)

The interaction between SB1 and LB7 showed the ideological implications of formal education, including particular forms of abstraction, and the extent to which some students have to surrender their own ideological positions, if only temporarily, to succeed. This is what is involved in the expense of what I have called 'symbolic labour' (see section 8.5.2 of this chapter). At the same time the interaction also has implications for research that tries to put aside ideological differences, if only temporarily, and identify cognitive differences associated with academic and non-academic knowledge.

When I asked SB1 how he had gained the knowledge that he displayed in the course, he referred me to a COSATU publication: *Our Political Economy: understanding the problems*. This booklet, published in 1987, makes no mention of the term 'labour market' although there is a section on employment trends. It states that its aim is to 'guide workers through the major issues relating to the economy' and it explains some concepts such as 'constant prices' and how to read bar and pie graph concepts. Thereafter it presents the COSATU position on economic issues and sets up a stark polarity between unions/workers and capital/bosses. It is written in very simple language, presumably so it can be accessible to workers with limited education. I read it as being as much an attempt to 'conscientise' workers about their disadvantage as an introduction to some of the major concepts of economics. But more importantly from the point of view of my thesis, it failed to present the complexities of economic theory which SB1 needed at his fingertips to challenge the theory of LB7 on academic grounds. Nor did it introduce students to the level of abstraction needed to master such theories.

To counter the lecturer's model in the academic context, SB1 needed an alternative model, another heuristic device. Disregarding the ideologies and intentions surrounding the theory that LB7 was presenting, SB1's argument was pitched at a higher level of abstraction – of verticality, one could say – than SB1's. SB1's argument was pitched at the level of the horizontal – segmental, sociological information about trends and consequences associated with particular theories. He was countering a generalizing strategy with a localizing strategy

and, as shown elsewhere in this thesis, this was insufficient to dent the authority of the lecturer's text.

### *Case law*

LB1 emphasised throughout Course B that students needed to read case law in order to succeed, both in the course but also in labour law practice. SB3 confirmed this in an interview:

What that course did was to suggest that your success lies in reading case law, more than reading the LRA.

He said he realized from the course that while the LRA was important, its implementation had to do with the way that case law emerged from the labour courts and set new trends. Since the course, he had become involved in setting up a labour support service through which regular seminars on case law would be held for those unionists who had completed advanced union training programmes. SB1 had reached similar conclusions and was taking similar action within his union (see TE8).

## **8.6 Association between prior union experience and success on the course.**

From all the preceding discussion, it is clear that union experience per se was not necessarily a preparation for either course. This was despite the fact that one of their reasons for attending was to have their experience 'credentialed'. It had to be experience of a certain kind, that led to the development of certain formal literacies and study skills and it had to be accompanied dispositional and social factors. I will discuss each of these in turn.

### **8.6.1 Formal literacies and study skills**

My own assessment of the work of selected students in Course A showed the importance of academic literacy skills in the realization of a 'legitimate' text (Bernstein, 1996:32). In my analysis of student texts in Course A, I found a close association between marks achieved and language and literacy competences. Students like SA3 and SA4 who achieved very low marks appeared not to be able to construct a full English sentence. In interviews both said they were happy to write in English and appeared unaware that they had problems expressing themselves. Certainly there was very little relation between what they put on paper and what they were able to tell me in an interview. Significantly, these students were not full-time unionists but elected

office-bearers. Both claimed they worked with labour legislation on a daily basis and were familiar with the actual texts – SA3 said she carried the LRA in her handbag wherever she went, and SA4 said he had won several arbitration cases, representing workers on his own, without the help of lawyers. To what extent either of these activities meant actual engagement with the written word, I did not establish. The difficulties which these students had in constructing appropriate responses to the exam questions are illustrated in SA3's response to Question 8 presented in 8.4 and SA4's response to the same question in Appendix O. The two students who did pass the course – SA1 and SA2 – both occupied full-time and more senior positions in their unions. From interviews it appeared that they had gained their literacy skills in part from attempts to further their formal qualifications (SA1 had achieved two N3 credits at a technical college and SA2 had attempted matric at a 'finishing' school). Secondly, as full time union organizers, they had gained experience in preparing for negotiations, writing reports, reading legislation and other documents, among other tasks. SA2 also believed he had attended a good school<sup>97</sup> and the study techniques he learned at the extra 'spring school' which it offered each year had stood him in good stead.

SA1's union had a history of academic study, with a senior regional official having set the example by completing his matric and then a bachelors and postgraduate degrees in his spare time. The union had even held poetry readings at work during breaks. In SA2's case, the general secretary of the union, SB4, was studying on Course B at the same time as SA1 was doing Course A.

Students who succeeded in Course A recognized that it involved 'swotting', in other words memorization of certain rules from either the notes or the act. Furthermore, they had learned techniques to help them to 'swot'. SA15, with an LLB from Stellenbosch University and a masters degree in law from Oxford University<sup>98</sup> passed top of the class, with an overall average of 89%, and, according to him, expended a great deal of effort to achieve this. He told me he wanted to do well because that was his way of 'going about it' so he studied for 'a number of weeks before the exams'. This studying involved 'going over and over' the notes and the acts and testing himself to see whether he could recall the content. It was in addition to going over

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<sup>97</sup> Despite the fact that it was a school designated for African students only and disadvantaged in many ways, as were all such schools under apartheid.

the course notes before and after each lecture (see TE9). SA1 gained particularly high marks for the exam question (Question 8) on unfair dismissals. This was not only the subject of another course which he was attending at the LLU at the time, but also presented him with an opportunity to list points that had been memorised. His full response is presented in Appendix N.

Other students who admitted to using 'swotting' techniques included SA1, SA2 and SA 12, all of whom passed. All drew on study techniques which they had learned previously in formal education contexts (technical college, school and technikon respectively). All passed the course. But SA3 who achieved the lowest marks told me she had done little studying for the course. She said she read through her notes several times after classes, discussing them and 'countering' them with her friends at work, but did not attempt to learn (remember) the notes nor did she go through them before the exam.

The assignments which the unionists on Course B did complete gained good marks, gaining upper and lower seconds and thirds that were mainly the result of handing in late, rather than third-grade work. (If a student missed the deadline, and the work was deemed a pass, s/he was given an automatic 50%). None of the students made their assignments available for me to scrutinize, although I requested this. The few assignments that I did manage to see, that had not been collected and were left in their application files, appeared to be of high quality, in presentation and language as well as content.

Yet a note from one of these students, written to the lecturer to request absence from one of the sessions, contained grammar and spelling errors. I wondered if editors had been used, but all denied receiving assistance with their assignments. The policy of the teaching staff was that editing was not allowed, but no attempts were made to enforce it.

SB3 did say, however, that unionists had problems with the academic criteria to do with acknowledging and referencing work. In union culture they were involved in many debates and discussions in which they 'internalized' information, which they would later write about,

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<sup>98</sup> He attended the course because his field of practice -- motor vehicle assurance -- was being threatened by the possibility of new legislation that would limit the involvement of lawyers. He needed to diversify his interests.

without acknowledgement. In Course B they had to 'unlearn' that practice and acknowledge the origins of their knowledge.

The student who achieved the highest marks in Course B, SB15, attributed her success mainly to the fact that she spent 'a great deal of time' researching and writing the assignments. The bibliographies to two of her assignments, included in this thesis as Appendix P, are evidence of the extent of her research. She said her legal background (obtained through a B Proc degree and her work as manager of corporate pension funds) helped 'a bit'. She also regarded the support of a 'syndicate' group which she formed with four other students as a great help. They met in her home and discussed assignments before completing them and shared out tasks such as finding case reports and journal articles from the library. One of them was an attorney, one a law lecturer with a LLM, one had a BA and higher education diploma and the other had recently completed a UNISA degree in English and Industrial Psychology. This was not the syndicate group to which they had been assigned by the lecturers. One of its distinguishing features was that the group was entirely white and mainly professional, whereas the syndicates set up by the lecturers were composed of a range of race, language and occupational backgrounds.

### **8.6.2 *Dispositional factors***

In addition to literacy and study skills, there were also dispositional factors relating to success on the course. They included acceptance of hierarchical relations, preparedness to assume an individual rather than collective identity, and willingness to expend 'symbolic labour'. I will discuss each of these in turn.

#### *Acceptance of hierarchical pedagogical relations*

One of the expectations created by certain adult education discourses, is that there will be relations of equality between transmitter and acquirer in the classroom situation. In courses involving assessment, any appearances to this effect can only be a mirage and any claims to relations of equality are misleading – for the rules of evaluation and, ultimately, the power, lie with the transmitter alone.

In trade union education, the transmitter/acquirer relationship is complex and authority shifts from one party to another (Newman, 1993, quoted in Cooper and Qotole, 1996:49). Union trainers are very aware that they are employed by the union and paid from the union dues of

participants, and participants expect training to be relevant to the roles they need to perform. At first the trainer designs the course but 'once the course is underway, then session by session, the participants exercise an increasing say in the way the course progresses' (ibid.)

Students such as SA1, SA3 and SA16 challenged the lecturers repeatedly in a manner that suggested they were not only taking issue with the content of the lectures but also challenging the pedagogic hierarchy. In the end it was only SA1 who passed the course, in large measure because his willingness to submit himself, if only in private, to the impositions of the course. In class SA1 presented himself as a militant unionist. At home he was a compliant student as evident from his account of his study habits (see TE10). SA16 did not write the exam and SA3 failed.

Closely related to the issue of authority are expectations around the value of student experience. If students believe they should have equal status with a lecturer, it is on the grounds that their experience is as valuable.

SA13's expectation that she could exchange her experience for a qualification might have been reinforced in her degree studies where it appeared she had been given opportunities to express her personal opinion, based on personal experience. In an interview she said she gained 90% in an exam for a case study question on abortion in which students were required to make an 'ethical' decision. She said she not only followed an accepted procedure in ethics in her answer but was also able to 'get things out' and provide her own view, based on her own personal experience of abortion. She said she enjoyed questions that did not require her just to say 'how things normally happen according to the law' but also gave her the opportunity to 'bring my own understanding, how I would like that as a person and as a student, how I would like to see things being done and what I would ... want'.

In Course A, SA13 did not achieve the qualification she was after, attaining only 46%. She told me she was not well 'prepared' for the exam because of other family and study commitments. The examination provided no opportunities to recruit unprocessed (anecdotal) personal experience unless this had led to an accurate understanding of legal procedures and rules. There were only two opportunities to express opinion and one of these required legal substantiation.

In contrast, the lawyer who achieved the highest marks in the class, SA15, had no experience of labour law but extensive experience of formal study and legal work (see TE11). He had a LLB from Stellenbosch University and a masters degree in Law from Oxford. The student who achieved the highest marks in Course B, SB15, also had no experience of labour law but extensive legal experience as a manager of corporate pension funds. She had a B Proc degree from Randse Afrikaanse Universiteit (RAU) and a Management Advancement Diploma (MAD) from University of the Witwatersrand.

*Assuming an individual rather than collective identity*

One of the most important dispositional factors taken for granted in formal education, which was thrown into relief by the presence of trade unionists in Course A, is the assumption that the student has an individual rather than collective identity. With a collective identity the focus of motivation is change within a collective or group, and with individual identities the focus of motivation is change within the individual.

This is in direct opposition to the approaches assumed in most trade union education courses which, in addition to having no formal assessment (certificates are issued on the basis of attendance) and being characterized by exchange rather than hierarchical relations, also presume a collective rather than individual orientation. This places the interests of the union above that of the individual unionist and locates any educational interventions as strategies towards the furtherance of the union and its political or ideological ideals.

Unions have not encouraged formal assessment in their own education programmes because it is thought to have the potential to divide rather than unify union ranks and jeopardise union goals.<sup>99</sup> For those unionists who are successful it provides a springboard to other positions – including positions outside of the union. However, with the introduction of the National Qualifications Framework and of RPL and the growing popularity of (and, with retrenchments and unemployment, the need for) ‘qualifications’, some unionists are asking for formal assessment.<sup>100</sup>

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<sup>99</sup> See Cooper and Qotole (1996) and Cooper (1998).

<sup>100</sup> Last year (2001) the Labour Research Service (LRS) in Cape Town introduced formal assessment for the first time, as an experiment, in a course on macro-economics. This was because unionists were disappointed that their attendance of other courses did not count towards entry to other more formal courses. However, the director of LRS was sceptical as to whether formal assessment could ever play a major role in union education because union education was ultimately about equipping workers to deal with work and social issues, not about individual assessment. SB1 said the purpose of trade union education was primarily to strengthen the role of the organization – it was an ‘overtly political event’. (See TE12).

Significantly, all the unionists who I interviewed (with the exception of SA3 and SA4) said that one of their reasons for doing the course was that they felt they needed a qualification in case they lost their union job. This, they emphasized, was in addition to purposes relating their unions. SB3, for example, said he wanted to help improve union success rate in the CCMA where they lost 80% of their cases.

Three out of the four unionists on Course B changed jobs in the course of the year but this was not necessarily for purposes of advancement. SB4 left the union for a corporate job but SB2 joined the CCMA and a dispute resolution consultancy after experiencing political violence that forced him to leave his union job. SB1 stepped down from his national position to assume a less stressful role (he was re-elected the following year).<sup>101</sup>

SA3 was one of the students who showed an unwillingness (or inability) to assume an individual identity, if only temporarily. She said she attended Course A because she wanted to be able to go back to the union education officer and say: 'This is the working material, the way they did it. Let's see how you're going to do it'. She said in her union 'we will talk about our experience but we won't use it as a credential' and she was not interested in her personal achievements on the course. She attended because she wanted to see whether she could 'accept other people's learning' and what she could bring back to the union. She was disappointed with the responses of the lecturers to her questions because they did not support her union intentions.

SA3: I wanted their views, their opinions, how can it be countered, how can it be fought and there was no response. It was like they were afraid or they haven't dealt with something like that, or they couldn't answer me.

SA3 said her queries were answered eventually by other people in the labour sector who attended the course. At the same time, she showed evidence of a deep ambivalence towards formal education. Although she did not collect her exam results, she continued an association with the school.

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<sup>101</sup> SA2 who worked in the same union as SB4, became acting general secretary when SB4 left, and later, national organizer. In 2001 he also enrolled for an LLB at University A which by then was offering an RPL route into undergraduate study.

But I've been going there quite a lot, I would go and sit on their computers and sometimes I would just sit in their classroom and they quite enjoyed like me coming in ...<sup>102</sup>

The collective culture of unions does not only have implications for achievement, but also for the individual study that is necessary to attain it.

SA2 said unionists' 'way of thinking' was influenced by the collective but in the academic context one had to sit down 'as an individual', 'grapple' with issues on one's own, 'take them to another level' and 'follow them through' (see TE13).

#### *A willingness to expend 'symbolic labour'*

The final, and probably most important dispositional factor which I observed, involved the willingness or disposition to expend what I will call 'symbolic labour'. My use of this term stems from Bourdieu's concept of symbolic violence (Bourdieu and Passeron, 1990). He regards all pedagogic action as symbolic violence in that it involves the imposition of culture in such a way that the power relations behind that imposition are obscured and the recipient of the symbolic violence perceives the process as legitimate.<sup>103</sup> I link my notion of symbolic labour to Bourdieu's notion of symbolic violence because the labour which I have in mind is one of the means whereby students become implicated in the imposition of symbolic violence upon themselves.

The extent to which a student is required to expend symbolic labour depends on the extent to which his/her 'natural' mode of participation differs from that which is expected in the instructional programme. In other words, a student with an educational history, pedagogic

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<sup>102</sup> When I asked her if furthering her formal education would help her in any way, she replied at first that she thought it would help in her work in the community in which she counsels married couples. Questioned further she said formal education wouldn't help, unless it brought payment for these services. And then she stated quite firmly:

It's not going to, because if I look at my mother, she went out Standard 1. She's got a head for business... she can do the most marvelous designs and cut it and stitch it... Like my daughter started last year – followed my mother's footsteps – sew.

She concluded that if she ever retired from union work she would go into dressmaking herself.

<sup>103</sup> This summary draws on Jenkins (1992).

ethos<sup>104</sup> and habitus that differed substantially from the class norm would be required to expend considerably more symbolic labour than his/her fellow student in order to succeed.

In this vein, SA1 with his NT3 credits and literary union background, probably needed to expend less symbolic labour to succeed on Course A than SA3, with her very limited education and a union culture that was 'anti-intellectual'.

SB3 spoke of the symbolic labour associated with Course B. He said he wrote his assignments in a way that was much more 'neutral' than he would normally have done. This was because he was required to support his arguments with case law and in the time available, he could not find enough precedents in case law to back up the arguments he wanted to make. In particular he had to struggle with the case study exercise in Assignment 3. He felt it had been written in such a way that the employer was the 'correct' party and the union was at fault. He thought there were many reasons why the union should not have been at fault, but he could not find case law to support this argument. This had not been provided by the lecturers and in class the discussion had been about how employers could deal with unions involved in mass strikes and the changing attitudes of courts in relation to this.

SB1 spoke of 'playing the game' both in relation to Course B and in relation to another educational experience which he described to me (see TE 14).

In contrast SA3 claimed to have had no aspirations to passing the course (although she wrote the exam) and SA13 admitted she had not put much effort into passing the course. I gained the impression that she also felt she shouldn't have to, seeing she had come to have her experience 'credentialled'.

### **8.6.3 Social and personal factors**

None of the four unionists in Course A mentioned any social or personal constraints on their studying. This was probably because the two who passed did not need to, and the two who did not pass did not have an understanding of what they should have done, or might have done, had circumstances not prevented them. Both were mystified by their results, believing they had

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<sup>104</sup> The disposition towards pedagogy which is a consequence of family education and a recognition of the likely market or material value of education to members of the class or group. The term was developed by Bourdieu and Passeron (1990) and this summary comes from Jenkins (1992:106).

done well. In contrast, SA13, the university student, gave a number of reasons why she did not pass: she said she did not have time to study because she was a single parent, had transport difficulties which meant she was not able to attend every class and suffered from depression. Another student without matric (SA6) complained of home conditions that prevented him from studying at night, but said he also experienced 'stage fright' which paralysed him in the exam and prevented him from remembering what he had learned (see TE15).

The four unionists from Course B advanced a number of reasons why they had not completed the course. All mentioned time constraints and union pressures which occurred even though they had taken leave to do the course. They found it difficult to swap the 'rough and ready' life of the unionist for the quiet tempo of academic study. In addition some of them had personal problems. SB4 separated from his wife and gave up his union job in August to take a corporate job in Johannesburg. Halfway through the course, Student B2 and his family were the victims of political violence which I cannot describe in detail as it will jeopardize the anonymity I am trying to preserve in this thesis. Suffice it to say that it related to his union work and as a result of it, he left his position to take up work as a part-time commissioner at the CCMA and later, also consultant for a new dispute resolution agency. He said these events, combined with the fact that his wife had a baby during that year, made it difficult for him to study and was the reason why he did not complete.

SB1 who completed only one assignment said he did not finish the course because there was 'organizational upheaval' in his union at the time, partly as a result of infighting over the direction the union should go on the issue of privatization. This led to him to step down as general secretary in July of that year and take a position as legal co-ordinator (he was elected back as general secretary the following year). At the time he was also experiencing burnout that was the result of job load and general stress. 'It was becoming too much', he said. SB3 said his failure to complete the course was entirely because of time constraints.

After my interviews with these students, I also wondered whether their inability to complete and achieve did not also have something to do with fear of failure. It has to be remembered that these were very prominent individuals, enjoying a great deal of respect in their constituencies and in one case, even receiving extensive exposure on national television. In the course, they were sitting with students who in their professional lives were their 'opposition'

(including managers, government officials). To what extent can an adult like that submit – or be seen to submit – him or herself to the hierarchies of an academic apprenticeship?

### **8.7 Conclusions: Recruitment and recognition of prior trade union experience in Courses A and B**

Student participation in the lectures of both courses took the form of transmission as well as acquisition strategies. They not only responded to lecturers' solicitations, and solicited formal generalizations or applications (sometimes this was to gain legal advice on a personal or union or company issue), they also challenged or confirmed assertions by the lecturers and made assertions of their own (thereby challenging the hierarchical relationship of the pedagogic context). Prior personal informal experience was recruited in response to lecturer's solicitations, as part of their own solicitations of formal application (sometimes disguised as a hypothetical example) and to comment on (support or challenge) assertions by the lecturer or demonstrate their own knowledge. The participation of the unionists varied in the two courses.

In Course A, where labour law was simplified into sets of rules and procedures which students had to 'learn' and then apply to hypothetical scenarios, unionists were dominant voices in the classroom discourse. Often their interventions were in the form of challenges to the general rule, on the grounds that a particular case they were involved in did not support it. In this way, they injected into the discussion the complexity of practice that was missing from the lectures.

In Course B, where there was no attempt to hide the inconsistencies and unpredictabilities of lived law and the emphasis was on actual cases rather than the terms of the legislation, this kind of challenge was not common. The four unionists who I focused on generally kept a low profile, drawing on experience 'far' rather than personal and avoiding discussions on ideological issues. In interviews they told me they had decided beforehand to accept the ideological orientation of the course, and not get involved in debates about it, but rather get as much as information as they could. One of their motivations in attending was to gain information that would help improve union performance in the CCMA and labour court.

Solicitations of student experience by lecturers varied according to pedagogic style, with Lecturer B3 in Course B offering the most opportunities for student recruitments of personal experience. She not only specifically solicited it, she also modelled it, with frequent accounts

of her own personal experience. Furthermore, student contributions, when they were made, were generally affirmed. However, it was the voices of professionals, lawyers and managers that she evoked, not those of the unionists. This was in accordance with the overall trend in the course: discussion was dominated by a few individuals, many of them white.

With the exception of LB3's lectures, both courses had an unwritten rule that students should not use the opportunity of the course to gain free legal advice. In Course A they circumvented this by expressing their requests in hypothetical form, in Course B they presented them in relation to reported cases or 'experience far'. Exceptions were some students in Course A with very limited exposure to formal education who seemed confused about the role of the hypothetical and some of the dominant students in Course B who presented their personal narratives and views dogmatically, regardless of the obvious irritation, at times, of lecturer and other students.

Where students were given an opportunity to recruit personal experience in the evaluation of the course – in Course B only – there were indications that this did benefit the unionists. They felt at an advantage then to other students, were able to gain access easily and found that they learned from the process of research – hearing new perspectives and gaining new insights into familiar issues. They came to realize, however, that they could not present their experience 'as is' but had to review it in the light of research and of case law. This limited their interpretations and, in one case, led to an assignment that was more 'neutral' than he liked. However, the student who achieved the highest marks in the course, did not make use of her own (extensive) work experience as a pension fund manager, but undertook a topic of which she had no personal experience and conducted her research in a factory.

In Course A where it was the rules that counted, at least two of the students with limited formal education drew on their personal experience in the exams and failed outright. Factory worker SA3 challenged the terms of a hypothetical scenario when she should have been concentrating on applying the general rule. Hospital worker and union branch chair SA drew on his experience for the rules – and found it wanting.

Where the esoteric dimension of union knowledge, as opposed to experience, was presented, it was also found wanting. The opposition of one student to a theoretical model presented by a lecturer, revealed the complexity of epistemological access. The model was not only a

heuristic device, requiring abilities for high level abstraction to understand,(as the lecturers pointed out) it was also ideologically loaded (as the student pointed out) and required high levels of ideological submission to accept. The student challenged this generalizing strategy with localizations whereas, ideally, he should have presented another, alternative model (generalizing strategy). Union education and theory had not prepared him for this.

Although several of the unionists had come to the courses to have their experience 'credentialled' (and to gain qualifications that they might need if they lost their union jobs), it was clear that union experience per se was not necessarily a preparation for either course. It had to be experience of a certain kind, that had led to the development of certain formal literacies and study skills. It had to be accompanied by a certain disposition which involved the acceptance of hierarchical pedagogical relations, the assumption, if only temporarily, of an individual rather than collective identity and willingness to expend 'symbolic labour'. (In other words, willingness to implicate themselves in the symbolic violence associated with the education process.) Furthermore, it had to be supported by social and personal conditions that did not impede on time and energy to study.

## CHAPTER NINE: CONCLUSIONS

This final chapter provides an overview of the thesis and reviews its limitations before reconsidering the research in the light of Bernstein's theories of horizontal and vertical discourse and elaborated and restricted codes. Difficulties associated with the recruitment and recognition of tacit knowledge are discussed and conclusions are drawn about factors affecting the achievement of 'RPL' students. Finally there is a consideration of the implications of the research for 'rpl'.

### 9.1 Overview of the thesis

This thesis explores some of the epistemological complexities associated with the long-standing principle in adult education that the experience of the adult learner should be valued, taken account of and built upon in the pedagogic process, to the extent that it can even be 'recognized' for purposes of access or credit.

It asks how prior experience is recruited and recognized in a higher education context where commitment to the adult learner is espoused but the curriculum is non-negotiable. Two case studies were researched: a certificate course and a post-graduate diploma, both in Labour Law, but at separate universities. This field of education was chosen because it has been regarded as a fruitful area for the recognition of prior learning (RPL), an area where workers with limited formal education, particularly trade unionists, have direct experience of the practical applications of formal knowledge. Furthermore, RPL was inserted into the education policy agenda in the early 1990's by the trade union movement. Two levels of education were chosen, rather than one, to explore the possibility of variation in this regard.

#### 9.1.1 *'Experience' in experiential learning and RPL*

In the first chapter I explain that the research question, with its emphasis on recognition of prior experience, post- rather than pre-entry and on fixed rather than flexible curricula, places the research at the nexus of the experiential and RPL movements. Here, informal work and life experience is constructed, variously, as potentially equivalent to formal knowledge and skills, as deficit and in need of reflection (so it can be converted into 'learning'), and/or as valuable

knowledge in itself, with a right to a place in the academic domain. The practice of RPL is located, mainly, within the first two perspectives.

In trade union education, experience is particularly highly rated and educators are expected not only to acknowledge and build on it when teaching principles and concepts but also to assist unionists to develop the confidence to voice their experiences and knowledge and thereby win back some of the respect and dignity denied them under apartheid and oppressive capitalist conditions.

In higher education in South Africa, curricula, with some exceptions, are not designed for the adult learner who enters with experience of work and life but little theoretical knowledge and would benefit, it has been argued, from curricula that are structured the other way around. There is a policy commitment to RPL but it is being implemented cautiously. Reports emanating from pilot RPL programmes at three universities provide insight into the ways in which formal and informal knowledge are being conceptualized and the difficulties associated with recognition of the latter.

In these reports I found informal knowledge being characterized by assessors as tacit, context dependent, local, practical, skills-orientated and affective. In contrast formal knowledge involved the ability to generalize from the specific, to abstract and theorize and to provide decontextualized accounts. It also encompassed generic competences, up to date disciplinary (propositional) knowledge and values and reflective meta-discourses. One assessor saw it in Bernstein's terms, as vertically structured and involving principles of classification, hierarchy and integration. Unsuccessful recruitments of prior informal experience by students in portfolio development processes were too 'contextualized', demonstrated poor English language and academic literacy skills and in one case were regarded as 'contrived and distorted'.

Reports such as these present a dilemma for the researcher on RPL in South Africa. Should one try to find ways that will make it easier for adults to make the transition from the informal to the formal as it now exists (to produce decontextualized texts, for example) and for the assessor to facilitate that transition, or should one explore the possibilities of a new order of curricula that will accommodate more easily the experience of the adult student? Two of the most important influences on the conceptualisation of RPL in South Africa currently (Harris

and Michelson) have focussed mainly on the latter (according to my interpretation of their work). My own project veers towards the first position. The aim is to do research that will benefit adults who are trying to gain access to the current order of academic knowledge, even if only because of its social and economic currency. By exploring a particular curriculum and pedagogy, in a particular field of study, the study has implications for the design of future curricula, but these implications are arrived at obliquely and the research did not set out with a transformatory purpose in relation to curricula.

### ***9.1.2 Formal and informal knowledge in other education theories, and in law***

Concerns about the role of experience in a formal education context are not exclusive to adult education but also reflected in schooling, in the long-standing concerns about what the appropriate relationship should be between schooled and everyday knowledge, and how one should accommodate children who lack formal education but are proficient in an everyday context. Dualist theories, which argue the importance of seeing a distinction, are regarded as being based on a long tradition of oppositions between abstract and concrete forms of thought and knowledge, between and within societies and individuals. The origins of these theories in the Western-centric, pejorative reports of early 20<sup>th</sup> century anthropologists have tainted the educationists' arguments and made them unpopular in some progressive education circles.

These theories are discussed in some detail in Chapter 3, along with counter theories, including social practice theories and standpoint theories that emphasize that all knowledge is socially constructed, context-dependent and situated, and feminist, critical radical and Africanization theories that assert the value of knowledges that are currently marginalized. Theories from vocational and professional education complicate the divide by drawing attention to the tacit and 'how to' dimensions of knowledge.

Within the dualist tradition, I pay particular attention to theories of educational sociologist Basil Bernstein which explore the boundaries between formal and informal knowledge in pedagogy (classification and framing), theorize their structures (horizontal and vertical discourse) and argue links between social class and context-dependent and -independent orientations (elaborated and restricted codes).

All have relevance to the findings of the empirical study which showed contestation around the extent to which informal knowledge (including prior experience) should be permitted to enter

the pedagogic frame, which complicated the notions of horizontal and vertical and indicated that context-dependent and -independent orientations might be important considerations in adult education as well as schooling.

The final section of Chapter 3, which explores the internal structuring of law and labour law as fields of practice and of education, is also influenced by Bernstein, who argued the importance in pedagogical research of examining the internal structuring of disciplines as well as the fields within which they are positioned.

In law the everyday activities of daily life are a central concern but contained within a deductive principle. The practice of law is essentially about the application of rules, principles and concepts to real-life experience or, in legal terms, particular 'cases'. In the academic context, law as a field of study is integrally bound up with the practice of law and to a greater and lesser extent, depending on its focus, reflects its structure. The difference is that legal education is concerned not only with knowledge about specific laws and their application but also with contextual and theoretical knowledge.

While the practice of law is essentially deductive, the development of laws is largely inductive, in response to social and political pressures and the changing values and conditions of society. Together, the deductive and inductive principles constitute what I have called the 'logic of law'.

Two issues arise, for the individual who comes in contact with the law. Firstly, because laws must be general (in the sense of widely applicable) they are not always felt to be equitable, in the context of a specific case. Secondly, for those whose political or social involvement has contributed to the development of law (unionists who agitated for RPL, for example) the inverted power relations of the deductive principle are not easy to accept. Tensions which reflect these issues are another feature of the empirical findings of this study.

### ***9.1.3 Framework for the analysis of formal and informal knowledge in a pedagogic context***

In the fourth chapter of this thesis, I present an analytic framework designed to facilitate my exploration of the recruitment and recognition of prior informal experience in the two case studies. The framework builds on Bernstein's concepts of horizontal and vertical discourse, Bourdieu's concept of strategy and Dowling's distributing strategies and is the result of a

dialectical engagement between these theories and the empirical data. A language of description is developed to describe those textual moves which recruit the local, particular, concrete (I call them localizing strategies) and those that recruit the distant, the general, the abstract (generalizing strategies). Numerous sub-categories are identified and defined and their range and interrelationships are shown in the form of a semantic network. This framework is seen as a major contribution of the thesis and a legacy for future research.

The generation of the semantic network and its use for coding purposes is described in the fifth chapter which deals with the research design. I first discuss the origins of such networks in the work of systemic linguists, Halliday in particular, and their very different uses in qualitative, sociological research. Here the concern is not to reveal the structure of the language but to use the structure of a network to set out a language for describing the complexities of formal and informal knowledge in a pedagogic context, and the form and role of recruitments and solicitations of prior informal experience .

The network presented in this thesis was generated, firstly, through close analysis of the transcripts of lectures, which formed the primary data of the study because they provided the greatest opportunities for the recruitment of prior informal experience. It was revised, after being tested by other educational researchers, and later augmented to reflect the range of solicitation strategies which emerged in my analysis of evaluation texts. The development of the network was facilitated through use of the qualitative data analysis programme Nvivo which was used to code and recode the data until the final network was achieved and then to quantify the final coding to show proportions. Nvivo has a branching tree structure which is similar to a network.

#### **9.1.4 Research Design**

The decision to analyse data in this way was one of two significant design choices. The other was to adopt a case study approach and, within this, to focus on two cases rather than one. The courses are introduced in this chapter. The first, a certificate course in Labour Law, admitted students with Grade 10 or less if they could show on application forms that they had 'experience'. The second, a postgraduate diploma, admitted students with matric if they passed an interview in which they were questioned about the content of labour legislation, and issues surrounding it, social factors likely to impinge on their performance, and what written work they had done in the past. Course A was located in an institution that was established as part of

the grand design of apartheid. Course A was a historically white institution which dated back to the early 19<sup>th</sup> century.

In line with case study tradition multiple research methods were used including non-participant observation, interviews and documentary collation and analysis. Extensive field notes were taken and selected lectures were taped and transcribed. Course notes and exercises (from both courses) and exam questions (Course A) and assignment briefs (Course B) were analyzed and categorized according to the coding network. All students' results were obtained and analyzed in relation to biographical details and type of question/assignment. A further eight students, all of them progressive trade unionists with limited formal qualifications, were interviewed in depth as part of a more focused enquiry into the recruitment of prior trade union experience in particular. The students who achieved the highest marks in each course were interviewed to gain a sense of the 'ideal acquirer' (Ensor, 1999). Further interviews with students, lecturers and a legal practitioner, as well as numerous informal conversations with students throughout the courses, provided background to these interviews.

Transcripts of lectures provided the primary data of this study, because it was here that I found the greatest opportunities for the recruitment and recognition of prior informal experience.

#### ***9.1.5 Prior informal experience in the written pedagogic texts of Courses A and B***

Chapters Six to Eight present the empirical findings of the research. Chapter Six explores the role of prior informal experience in the pedagogic texts, through analysis of the written transmission texts (course notes and exercises) and of the oral texts (transmitters' and acquirers') that constituted the lectures.

There were virtually no references to prior informal experience of either transmitter or acquirer in the notes of both courses (except where books or articles written by some of the lecturers were referenced). In this respect the written transmission texts were substantially different from the oral texts.

There were also substantial differences between the notes of Course A and those of Course B. Briefly, the notes of Course B emphasized context and principle rather than procedure, provided actual rather than hypothetical examples and were concerned with providing

knowledge on how to access labour law sources to search for answers to legal questions as well as knowledge on the law and related issues.

In both courses the case studies followed a similar structure: first a hypothetical example and then a request for the application of general rules to the example (hypothetical solicitations). The Course B exercises required students to support their answers with references to actual cases rather than the rules alone. This was a closer reflection of the practice of labour law, in which practitioners are expected to cite case law. In both courses, however, students could not simply extrapolate from their own experience and arrive at an appropriate answer. In this sense, the exercises were mistakenly conceived, in both courses, as opportunities to draw on prior experience. They provided an occasion in which students could (and sometimes did) tell individual narratives but without further recontextualization this was not useful for the task at hand.

#### ***9.1.6 Prior informal experience in the lectures of Courses A and B***

The recruitment of prior informal experience, that was not disguised as 'learning' or 'knowledge,' was concentrated in the lectures in following localizing strategies:

- Local personal experience generalizations (generalizations or statements about general practice that are clearly based on personal experience)
- Local personal past particularizations (recruitments of prior personal experience)
- Local impersonal near particularizations (solicitations or recruitments of, or comments on the experience of the other party in the pedagogic relationship).

The role and extent of prior informal experience was an important source of variation between the lectures and, from my observations, seemed to be associated with a number of factors: the lecturers' experience of the practice of labour law, their approach to the pedagogy of adults and the extent to which they felt compelled to prepare students for evaluation and to 'get through' a body of knowledge.

I found three styles of pedagogy: formal generalizing, formal localizing and informal localizing.

The formal generalizing style, which I found only in Course A, and was associated with minimal recruitment of prior experience by both transmitter and acquirer and an overall emphasis on general rules or the experience of the distant other, what I have called 'experience far'. Transmitters were either novices (from a practical as well as academic sense) or, in one case, a seasoned academic.

The 'formal localizing' style was found in both Course A and B and was associated with the lectures by expert practitioners who were also part-time academics. They drew extensively on their own personal experience and/or made generalizations about practice or procedure based on that experience. They did not lose sight of the course criteria and gave students information as to how to access the law or produce legitimate texts. There were some tensions, however, between their desire to reinforce general rules and procedures (Course A) or get through a body of 'experience far' knowledge (Course B) and the students' desires to challenge the general rules (Course A) or supplement the lecturer's input with information from their own expert experience (Course B). There was moderate recruitment of prior informal experience by students.

The 'informal localizing' style was found only in Course B and was associated with expert practitioners, speaking on their own area of expertise. There were limited references to general rules per se and little obvious concern with the academic demands of the course. There were extensive recruitments of prior informal experience by transmitters and, in the case of one transmitter, the students as well.

### ***9.1.7 Prior informal experience in the evaluation of the courses***

Chapter 7 explores the role of localizing and generalizing strategies and within them of prior informal experience, in the evaluation of Course A and B. The exam questions from Course A and the assignments from Course B are described and categorized according to the coding frame generated by the semantic network of transmission/acquisition strategies. The student results are analyzed in relation to these categories and biographical details including: highest formal qualifications, occupation, race and gender. There is particular attention to the results of those students with limited formal qualifications who were admitted to the courses on the basis of 'experience'.

It was found that Course A students needed to know the content of aspects of the legislation, primarily procedural content, and apply that to hypothetical examples. In Course B, they needed to know how to find the rules and principles and then how to find relevant cases, jurisprudence or facts and read them in the light of the former. They also needed to know how to apply general rules, principles etc to ideas and concepts. Only one of the questions in the Course A exam involved the latter and none involved research or required reference to actual cases.

Although all questions, across both courses, required knowledge of general rules and procedures, this was not made explicit in a number of questions in Course A. Here students achieved the best marks for questions that involved scaffolding from formal generalizing strategy to formal application.

There were no opportunities for direct recruitments of prior informal experience in Course A. Students were provided with an opportunity in Course B but their experience had to be recontextualized – researched in the light of certain legislation and relevant case law and re-presented in academic terms.

Twenty out of 33 students passed the Course A exam (a pass rate of 61%) and 31 out of 64 students completed Course B in the allotted time (48%). Eleven students had not completed but had satisfied the criteria to be allowed to continue. They had only their dissertations to complete. But a year later they had still not done so.

Students admitted on the basis of experience performed better in Course B than in Course A. Five out of 10 completed the course, with one obtaining several firsts. Of the five who did not complete, four were the unionists who I focus on in some depth. The assignments they did complete gained good marks, including upper second passes (70%-74%). In Course A only two of the 11 students without matric passed the course, achieving 59% and 56%.

### ***9.1.8 The recruitment and recognition of trade union experience***

In Chapter 8, I revisit the pedagogy and evaluation of the two courses and consider the recruitment and recognition of trade union experience in particular, focusing on the category of student for whom RPL was originally designed: trade unionists with limited formal education.

Of the eight students in this category who I interviewed, all had experienced social and educational deprivation under apartheid as a result of their classification as either coloured or African. They had grown up in homes that were poverty stricken. Two had had their schooling disrupted by involvement in student political action. All had left to become wage earners. Their early jobs were menial but, with the exception of the one female unionist in the group, they had all progressed into other employment. In three cases this had been into community development work where they gained opportunities to work extensively with written texts.

For all of these students, trade union involvement was their major source of development, advancement and status. Through the unions they had attended numerous trade union education courses, had learned to debate complex socio-economic issues and had been exposed, to a greater or lesser extent depending on their positions, to written texts and literacies. Some came from unions that specifically encouraged their members to further their formal education.

#### *Recruitment of trade union experience in the lectures*

Students of all types, in both courses, recruited their experience in the lectures in several contexts: in response to lecturer's solicitations, as part of their own solicitations of formal application (sometimes this amounted to an attempt to gain legal advice on a personal or union issue) and to comment on (support or challenge) assertions by the lecturer and demonstrate their own expertise in the area. In general there was the greatest recruitment of student experience in the informal localizing style of pedagogy, the lectures of LB3 in particular, but the recruitments there were not by the progressive trade unionists, but predominantly the managers, lawyers and other professionals, mostly white and male.

The participation of the unionists varied in the two courses. In Course A, the interventions of unionists dominated the classroom discourse and were often in the form of challenges to the general rule, on the grounds that a particular case they were involved in did not support it. In this course, Labour Law was simplified into sets of rules and procedures which students had to 'learn' and then apply to hypothetical scenarios. The unionists injected into the discussion the complexity of practice that was missing from the lectures.

In Course B, where there was no attempt to hide the messiness of lived law and the emphasis was on the application of the law in actual cases rather than the terms of the legislation, the kind of challenge which I noted in Course A was not common. The four unionists who I

focused on generally kept a low profile, drawing on experience 'far' rather than personal and avoiding discussions on ideological issues. They had decided beforehand not to get involved in ideological debates in order to get as much as information as they could.

Overall I found no clear association between participation in class and success, in either course. Unionists who were vociferous in Course A did not pass and the students who obtained the highest marks in Course B were virtually silent.

### *Vertical union discourse*

In my interviews with the unionists in Course B I was made aware of the intellectual demands of the issues which they dealt with on a daily basis and the extent to which they had debated and theorized their arguments. They had also participated in courses run by prominent lawyers and academics that were designed to strengthen their theoretical understandings of political and economic issues.

However, when this theoretical knowledge was presented in opposition to that of the lecturer, the complexity of epistemological access was revealed. In an example, discussed at length in the thesis, a unionist challenged the lecturers' model of the labour market, on the grounds that it failed to take account of action that could be taken to prevent a drop in employment if wages were increased. The argument that ensued showed that the student was challenging a heuristic device (a form of generalizing strategy) with a series of localizations when in the logic of the pedagogic process only another theoretical (vertical) model would have counted. Trade union education and literature was not an adequate preparation for this.

Although several of the unionists had come to the courses to have their experience 'credentialled' and to gain qualifications that they might need if they lost their union jobs, it was clear that union experience per se was not necessarily a preparation for either course. It had to be experience of a certain kind, that had led to the development of certain formal literacies and study skills and it had to be accompanied by a certain disposition. This involved the acceptance of hierarchical pedagogical relations; the assumption, if only temporarily, of an individual rather than collective identity; and willingness to expend 'symbolic labour'. In other words, willingness to implicate themselves in the symbolic violence associated with the education process. Furthermore, it had to be supported by social and personal conditions that did not impede on time and energy to study.

## 9.2 Limitations of the research

In Chapter 5 I discussed the limitations of the research arising out of the choice of design, also the steps that I took to try to ensure a reliable and valid account. Here I will summarise those limitations briefly, and consider their implications for the findings as a whole.

The use of case studies and purposive sampling places limits on the generalizability of the study which rests ultimately with its theoretical and methodological implications. The research shows how prior informal experience is recruited and recognized in two courses. This is not to say that it will be recruited in exactly the same way in other cases. However, the analytic framework and systemic networks generated from the empirical research, in dialogue with theory, provide a language and method which could be used to analyse further cases and provide theoretically informed descriptions.

The use of network analysis brought a range of advantages, but also some disadvantages. It enabled me to draw links between large theories about the relationship between formal and informal knowledge, on the one hand, and the micro-details of pedagogic discourse on the other. It led to the development of a coding scheme that could be tested for reliability by others and used for the quantification of strategies. This facilitated the identification of styles of pedagogy. However, it was extremely time consuming to reach the level of delicacy required (impacting on time available for other areas of research and analysis) and the concentration on micro-detail made it difficult to keep sight, at times, of the overall context.

It is often argued that coding frames constitute too restrictive a conceptual grid. In my study this criticism is unfounded because the frame arose out of the semantic network which was, in turn, the product of very comprehensive analysis of extensive texts (primarily transcripts of lectures). However, future researchers if they were to make use of this framework would have to be alert to the possibility of a 'discursive gap' between it and the range of semantic possibilities within the particular context of their research. Another concern might be the method which I used to quantify the coding – quantification of character counts generated by Nvivo. These were found to be reliable indicators of proportions of time spent on particular utterances – more particularly, strategies – but did not provide frequency counts, a method used by Bernstein and his students. Frequency counts also have their limitations and have been

accused of failing to provide a qualitative sense of difference. My method was an attempt to provide at least one qualitative dimension of difference, in terms of time.

A possible criticism of the research is that its focus on trade unionists, and within that category, on those with limited formal qualifications, is too narrow and the full range of prior informal experience should have been explored in as great a depth. Such a criticism would go to the heart of the dilemma for educators of adults which also underpins this thesis: how to accommodate experience that is as wide and variegated as the number of individuals concerned. Even within the broad category of 'trade unionist' there were multiple variations depending on the type of union, the position of the unionist, full-time employment in the union versus extramural involvement, unions with an anti-intellectual tradition versus those which encouraged formal study and so on. Studying other categories of experience would have enriched the account but would have made the project unmanageably large. I chose to focus on the experiences of trade unionists because it is directly relevant to the field of study concerned and I chose to focus further on those with limited education for this is the category of unionist for whom RPL was originally proposed. In both cases the focus was particularly pertinent for my research question.

Another criticism might be that I should have given the experience and motivations of the lecturers the same attention that I did the students'. I did not do so because, in order to address a particular principle of adult education and RPL discourses – that the experience of the adult student should be valued and built upon – I designed the research to focus on student experience. The fact that in some styles of pedagogy recruitments of personal experience emanated as much from the lecturers as from the students was not expected and is a finding of the research that points to interesting possibilities for future exploration.

In the end, the main point to be made here is that by focusing on two case studies rather than one, I had to make difficult selections: the depth and comprehensiveness that might have been achieved with one case study was sacrificed for the sake of illumination through contrast.

### 9.3 A re-consideration of the research in the light of Bernstein's theory of horizontal and vertical discourse

I have said that I found it difficult, when analyzing empirical data, to decide what might be an indicator of horizontal discourse, and what an indicator of vertical discourse, as Bernstein had not conceptualised empirical indicators of these concepts. He suggests that formal education is concerned with vertical discourse and everyday life with horizontal discourse, but that segments of horizontal discourse are sometimes 'recontextualized' and inserted in the contents of school subjects as 'part of the move to make specialized knowledges more accessible to the young' (Bernstein, 2000:169). Such recontextualization is usually confined to the 'less able' students, he said, and limited to the procedural or operational level of a subject and may also be linked improving the students' ability to function in the everyday world of work, domesticity etc. It does not necessarily lead to more effective acquisition.<sup>105</sup>

By distinguishing between generalizing and localizing strategies, I was able to disaggregate transmitter and acquirer discourse and found generalizations and localizations on both sides of the pedagogic relationship. And these generalizations included representations of everyday situations while the localizations had their own generalizations and some recruitments that could be regarded as more abstract than others. Furthermore, representations of the everyday were not confined to texts for the 'less able'. On the contrary they were more prevalent in the higher level course than the lower level course, but also recontextualized in a different way.

What distinguished the transmitter role from that of the acquirer was primarily the trajectory of the discourse. Transmitters recruited the local in the service of the general – to illustrate a general rule, principle or concept or to show its application in actual cases. Among acquirers I noted two types of recruitment. Some students recruited the local primarily to clarify or support the general rule or request its application to a particular scenario. In other words they, too, had a generalizing trajectory. Other students often, but not always, recruited the local to show its variance from the rule and the inapplicability or inequity of the general in a particular situation. In other words, theirs was a localizing trajectory. The explicit recruitment of prior

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<sup>105</sup> Bernstein's own work contained very few 'examples' and, in part as a result of this, are often regarded as singularly abstract or theoretical and 'difficult' to read. Given that he associated everyday examples with 'less able' children 'whom we have given up educating' (Bernstein,1971:215), this could be regarded as a mark of respect for the reader.

informal experience – which was more commonly by transmitters than acquirers – reflected the same trajectories. (The associations between these trajectories and success in the courses are discussed in 9.4.).

In general, the local provided a ‘portal’ to the general, as Dowling (1998) and Ensor (1999) have put it in relation to mathematics education. What was missing was the series of ‘metonymic chains’ whereby the acquirer is inducted from the public into the esoteric domain (in at least some approaches to mathematics education). The absence of clear links between local and general were of particular significance in Course A which included students with very limited schooling – 10 years or less – and at least one student whose university education had celebrated a localizing trajectory.<sup>106</sup> The potential for difference between the particularities of a personal experience and the generalities of the general rule or concept, were not explained and injunctions by the lecturer that students should just concentrate on the general rule, did not satisfy. There were repeated altercations in this course between lecturer and student on these grounds.

In Course B, where the emphasis was on the application of the legislation in real-life cases, rather than on its content alone, such conflicts were uncommon. There was no attempt to hide the inconsistencies and ambiguities of real life practice and there seemed to be greater resonance as a result between the lecturer’s transmissions and the students’ experience. At the same time the ‘logic’ of law as a field of education as well as practice was not violated.

I concluded that representations of the everyday were as much a part of the higher level course as of the lower level course, but they were presented differently. In Course A the example was almost entirely hypothetical. In Course B hypothetical examples were used but very often everyday was represented in the form of references to actual cases and events and the application of the law in these circumstances.

Both courses presented case study exercises which were essentially hypothetical scenarios to which rules and concepts had to be applied. Many of the Course A exam questions were in this form and one Course B assignment. They differed in the manner in which students were

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<sup>106</sup> This student had gained high marks in her sociology studies for essays in which she had described her own experiences.

required to undertake and present these applications. In Course A students were expected to know the general rules and apply them from memory and then usually to present them in the narrative of the scenario. For example, 'Mrs Brown should ...' In Course B, students did not necessarily have to memorize the general rules, although this facilitated their task, but they did have to know how to find them and they were also expected to find relevant case law and jurisprudence and apply both to the hypothetical scenario. In this way their task was more arduous but also more authentic. More arduous because it required further research. More authentic because it was a closer reflection of the logic of law, as a field of practice.

In the end, the research showed that the representations of the everyday can be an integral aspect of formal discourse but may also be recontextualized in various ways. In the context of these labour law courses, there was less conflict between lecturer and student – and somewhat better results among students admitted on the basis of experience – when it was presented in a way that reflected the deductive principle of what I have called the logic of law. This meant recontextualizations of the real rather than the hypothetical, through the gaze of the general not the particular, with no attempt to hide the potential for inequity. What this means in the context of other fields of education, or disciplines, might be a fruitful area for further research.

#### **9.4 Localizing and generalizing trajectories and orientations**

I have said that some students had a generalizing rather than localizing trajectory. In this section I will discuss the relationship between such trajectories and achievement.

I will start by considering the students whose interventions in lectures were almost entirely in the form of personalizations and were often deemed inappropriate by the lecturer. In Course A I observed four such students. Three were among the group with very limited qualifications. Of these, SA3 did not seem to be able to master the use of the hypothetical either orally or in her exam script. SA8 showed the same inability in the lectures and did not write the exam. SA1 showed a dual orientation: personalizations in the lectures, but generalizing strategies in the exam. The fourth student, SA13, was a third year social science student at University A. She also showed a dual orientation, but in an interview she complained about the generalizing demands of the exam. In her social science studies she had been given opportunities to recruit personal experience and had achieved high marks. In contrast, the Course A exam offered no such opportunities and she failed. Variations aside, the localizing strategies of these students

shared the following characteristic: they recontextualized from the students' personal experience to oppose the lecturers' formal generalizations.

In Course B I did not observe any students who personalized like the four described above. There were students who presented their personal experiences at length but they generally did so in support of the lecturer's generalizations, rather than in opposition to them, or as explication of a formal application solicitation. To compound the difficulty in interpreting these interventions, this group was predominantly white and male, whereas the Course A students I have referred to were all Coloured. The Course B group consisted of three white males (researcher SB13, attorney SB14 and human resource manager SB5), a white woman, who worked for a historically white financial union (SB11) and a coloured man who was an industrial relations manager (SB18). SB5 and SB13 were so dominant that they clearly irritated their lecturers and fellow students but their interventions were tolerated by the lecturers nonetheless.

In interviews with the progressive trade unionists in Course B and in informal conversations with other students, I noted that the lecturer's tolerance was interpreted by some as evidence of a bias towards management and professions, as well as a race and gender bias. My research was not extensive enough to draw conclusions about the motivations of the lecturers, subconscious or otherwise. The dominance of these students would have been inappropriate in any class, but was particularly so in a class of such racial, class, gender and occupational diversity. However, if one considers that the purpose of pedagogy in any particular formal education context is the transmission and acquisition of a particular form of conduct, knowledge, practice and criteria (Bernstein, 2000), and that the pedagogic purpose of localizing strategies is to provide an entrée to this conduct, knowledge etc, then it is not surprising that lecturers privilege interventions that support their own formal generalizations. Furthermore, if they were to relate an oppositional localization to a generalizing point, they would need to have an understanding of that localization to be able to draw the appropriate links. For this they need to have had the same or similar experience or it must be described in clear, unambiguous, visual terms. The first is unlikely and the second requires time which is not easy to find in the context of a formal education programme involving the transmission of a pre-defined body of content. Ideally students need to express their localization in relation to formal generalizations which can act as a bridge between transmitter and acquirer. The six dominant students from Course B did this. In Course A, students SA1, SA3 and SA13, who were among the dominant

voices, did not. In this course, the most dominant voice was that of the lawyer, SA15, who presented most of his queries in legal terms.

Analysis of the exam scripts of students on Course A showed that most students adopted a generalizing trajectory in this context. Basically, they were required to remember general rules and either state them directly or apply them to a hypothetical scenario or, in one case, to a concept. Above all they needed to recognize what was expected of them. Most seemed to understand this formal generalizing principle even if they could not recall, accurately, the general rule. A clear exception was SA3 who attempted to recruit her personal experience in the exam and failed outright. In one question which she discussed with me in depth, she had not only drawn on her personal experience for answers to the rule, she had also taken issue with the terms of the scenarios, saying it could not have happened like that in real life, and then failed to express even this because of her limited literacy abilities. Another exception was SA4 who appeared to know what was expected of him, but relied on his personal experience to supply him with the general rules, and found it wanting. I came to this conclusion as a result of my interview with him in which he indicated that he did not know what was required to 'learn' and remember a fact or rule. Like SA3, he merely 'read over' his notes. It is possible there were other students, who I did not interview, who adopted the same strategy.

In Course B I was not able to make a similar analysis because the four unionists did not make their assignments available to me. My analysis was confined to the texts of the top student who, needless to say, showed a generalizing trajectory. Assignment 2 offered her an opportunity to capitalise on her extensive prior experience in pension fund management, but she decided it would be too unwieldy to do this and researched a friend's clothing factory instead. Her assignments, including this one, were characterized by extensive references to case law, books and journals, as well as literary references (see Appendix P).

From both courses the indications were that students required a particular orientation to the general and the abstract in order to produce legitimate texts, both orally and in writing. This involved:

- a willingness to accept a general rule or principle even if personal experience contradicted it or revealed its inequity.
- submitting themselves to hypothetical application solicitations even if they found the hypothetical examples unrealistic.

- presenting queries about the general rule as formal generalization or application solicitations
- presenting opposition to the lecturers' formal generalizations or applications as hypothetical application solicitations rather than local generalizations or particularizations.

Earlier I presented my dilemma in interpreting the actions of the four students in Course A. From my interviews with these students and analysis of their work, I came to the conclusion that the two with the least exposure to formal literacies (SA3 and SA4) probably presented their interventions in the manner in which they did because they had not been inducted sufficiently into the practices of generalizing and abstracting associated with formal education. I concluded that the localizing orientation which SA1 presented in class was a strategy to challenge the lecturers' authority. From my interview with him and analysis of his work, it was clear that he was just as capable of generalizing when this suited his purpose. SA13's localizing orientation in class was not so much a challenge to the lecturer's authority as an assertion of entitlement. This student had come to the class with clear expectations that her long experience in the trade union movement would be recognized and 'credentialed'. Furthermore, in her university studies she had been given opportunities to write about her personal experience and had gained good marks. She was not prepared for the abrogation of personal experience which the course demanded.

Coming to these conclusions, I am reminded of Bernstein's concepts of elaborated and restricted codes and his conclusions in a number of empirical studies, that middle class children generally created relatively 'context-independent texts' while those of working class children were 'context-dependent'. In other words, that the modal orientation of middle-class children was 'elaborated' and that of the working class children 'restricted'. Bernstein emphasised that this did not mean that the middle-class child's text was necessarily more effective or that working class children were incapable of producing only context-independent texts. Instead:

...code theory ...draws attention to the relations between macro power relations and micro practices of transmission, acquisition and evaluation and the positioning and oppositioning to which these practices give rise (Bernstein, 1990:119).

Understood in this way, his theory has relevance for the education of adults as well as children. My research shows the intricate connections between the micro-instances of human utterances

in a pedagogic context and experiences of advantage and disadvantage, privilege and prejudice associated with the bizarre race and class divides generated by apartheid. I would argue that it goes beyond Bernstein's distinctions, however, by identifying and disaggregating localizing and generalizing strategies. In this way it shows the complex interweaving of the general and the particular, the abstract and the concrete in naturally occurring pedagogic communication and the subtlety of the differences between localizing and generalizing trajectories. Any consideration of Bernstein's distinctions, in the context of 'rpl', however, would also have to take into account the expectations generated by discourses of RPL that a localizing trajectory is appropriate in a formal education context. This means that students might choose to personalize in a manner which does not reflect their full strategic repertoire.

## 9.5 Recruiting and recognizing tacit knowledge

Much of the knowledge which students with extensive practical experience have acquired is process knowledge, and some of it is tacit. Both forms presented problems in courses such as Course A which seek to simplify a field of practice into a set of rules and procedures that transcend the particularities of actual practice. Here, some students' practical competences fell beyond the 'proprieties' of the formal curriculum: SA3's tactics to manipulate management and worker, (see 8.2) or SA1's deceptions (8.3.3). Others could not be articulated (SA4's success in arbitration cases, which in an interview he was unable to explain and in class was unable to project). Yet this type of knowledge is an important dimension in the practice of labour law, as lecturers on Course B made clear. LB1's account of how courts circumvent the letter of the law when dealing with dismissal on the grounds of incompatibility (see 4.1.1) is an example. Course B also provided students with a formal means to address these complexities. They were given opportunities to research actual workplaces and were required to read case reports where the machinations of 'living law' were documented.

Tacit knowledge presented difficulties in other respects too. An important element of any professional education can only be tacitly acquired. This concerns the 'ways of being' and discourses<sup>107</sup> associated with the profession. In Courses A and B, however, it was difficult to

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<sup>107</sup> In this context, Gee's (1990) definition of discourse is useful. He defines it as:

A socially accepted association among ways of using language, of thinking, feeling, believing, valuing and of acting that can be used to identify oneself as a member of a socially meaningful group or 'social network' or to signal (that one is playing) a socially meaningful role (1990:143).

discern at times what professions the students were being prepared for. LA2, founder of the LLP, told me that Course A was geared for 'paralegals', a term that covers a wide range of occupations from unionist to NGO worker to researcher or trainer. Course B was geared for legal practitioners, human resource and industrial relations practitioners, trade unionists as well as para-legals. The students included recent BA graduates, consultants, government officials and teachers, among a range of other occupations. In both courses, the lecturers varied in terms of academic and practical experience. Out of this enormous diversity, the three pedagogic styles which I describe in Chapter 6 emerged. The formal generalizer emphasized the general rule and modelled the role of lecturer; the formal localizer emphasized local generalizations or the application of the general in practice and modelled the role of the practically informed lecturer; and finally the informal localizer emphasized the application of the law in his/her own practice and modelled the role of the invited expert. Where a field of practice was projected (in the two localizing modes) it was predominantly the field of labour law, as practiced by lawyers and/or commissioners of the CCMA, in other words, the lecturers' own fields of practice. But the course was not designed to prepare students for either occupation. Firstly, there are no clearly defined requirements for the position of CCMA commissioner. Many commissioners have legal degrees but SB2 became a part time Commissioner of the CCMA with a matric only. Secondly, only the students who already had legal degrees could practice as labour lawyers after completing either course. In other words, only they would be able to make use, in future, of the worldly 'way of being' transmitted tacitly in the demeanour, jokes and asides of the formal and informal localizers whose careers required communication with all sides of the employment relationship.

For the rest of the students there was no appropriate modeling and the codified dimensions of the course presented a kind of academic common denominator. In this context, it is not surprising that it was students with extensive academic and/or legal experience, but no practical experience of labour law who achieved the highest marks.

## **9.6 Factors affecting the achievement of 'RPL' students**

The research showed clearly that some students without the qualifications normally required for entry to study at a particular level, do succeed. The question of relevance to lecturers and RPL practitioners is what is it about them that sets them apart from their counterparts who do not.

### ***9.6.1 The nature of the course***

Firstly there are considerations beyond the personal. In general the students with limited formal qualifications performed better in the higher level course than the lower. Five out of 10 in Course B completed in the allotted time, and in general their marks were much higher. Two out of 11 passed Course A. There could be two possible reasons for this: either the course was more suited to the adult student with relevant experience, or the students were better prepared. My research showed that both reasons were applicable.

Course B, with its emphasis on real life applications of the law, was closer to the 'real-life' law than Course A which simplified rule and procedure, avoided the complexities of actual applications and presented a relatively secure and ordered vista of the labour law field. From the nature of the student interventions, which were less conflictual in Course B than Course A, it appeared Course B resonated more closely with their own experience. Here the vista was one of complexity, inconsistency and unpredictability.

### ***9.6.2 The nature of students' work experience***

The students on Course B also presented a much more senior profile than those on Course A. In fact, it was so senior that it seemed ludicrous to even think of them in terms of their formal qualifications. They included: a human resources manager, two bargaining council officials, a local government councillor, a senior government official of a SADC country, a case management officer at a dispute resolution centre and the four senior full-time unionists, two in national leadership positions and two in regional leadership positions.

In Course A, the students without matric included two full time unionists – one a full time shop steward, the other a regional co-ordinator. With the exception of one factory owner and a senior administrative officer, the rest were in relatively subordinate positions.

The research showed that trade union experience was not necessarily conducive to success in a labour law course for students with limited formal qualifications. It depended on the level of experience and the extent to which it had exposed the student to written texts and formal literacies and prepared them for the ideological submissions associated with formal pedagogy. Furthermore, the union environment needed be supportive of what is essentially an individualistic endeavour. These factors will be discussed further in the following sections.

### **9.6.3 Literacy and study skills**

My research was not extensive enough to be conclusive about the levels of literacy among the students of Course B who had matric only. However, my examination of the exam scripts of the students in Course A with less than matric showed that several of them had extremely low levels of English literacy competence. This was closely associated with poor results. The format of Course B (assignments rather than exams) made it possible for students to use editors although this was not officially allowed.

In my interviews with students it became clear that they needed to know how to study. In Course A this meant memorising the terms of Acts. In Course B one did not need to have memorised the legislation but one did need to know how to find it and in particular, how to find relevant case law. One also needed to be able to find out facts through research. In the assignments one had to read particular scenarios (either presented by the lecturer or obtained through research) in the light of case law as well as the general rule.

The student who achieved the highest results in Course A – already a lawyer – was prepared to spend hours and weeks ‘learning’ the material, while the weakest student ‘went over’ her notes on her way to and from work and ‘countered them’ with friends. In Course B, the top student said she succeeded because she had the time available to research the assignments and because she was supported by a network of other students. Together they shared out tasks relating to the gathering of case law and discussed their assignments before completing them individually.

### **9.6.4 Dispositional factors**

In addition to literacy and study skills, there were also dispositional factors relating to success in both courses. At the most basic level, the student had to accept the pedagogic hierarchy. This is not easy for a student with extensive experience of trade union courses in which there is no final assessment so participants are never presented with the full force of pedagogic authority. It is even more difficult for the student who comes to the programme with expectations that his/her prior experience will be heard and valued, even credentialed. Secondly, the student needed to assume an individual rather than collective identity. This is in direct opposition to the collective rather than individual orientations fostered in trade union education. In trade union education, the interests of the union are placed above that of the individual unionist and any educational interventions are regarded as strategies towards

furtherance of the union and its political or ideological ideals. Unions have not encouraged formal assessment of their courses because it is thought that this will divide rather than unify ranks. However, with the introduction of NQF and RPL and the growing popularity and need for qualifications, some unionists are asking for formal assessment. Significantly, most of the unionists who I interviewed indicated that they had personal as well as union motivations for attending the course that they did. The exception was SA3 who said she was not interested in personal achievements but had attended to get knowledge that would be useful in the union.

The final and most important dispositional factor that I observed involves the willingness to expend symbolic labour, in other words to make the ideological submissions necessary to succeed. In this way students with strong union convictions had to put them aside, if only temporarily, and 'play the game'.

#### ***9.6.5 Social and environmental factors***

Finally, it was not sufficient for a student to have appropriate literacy and study skills, and disposition, they also needed a favourable social and personal environment. A union job does not necessarily provide this. One student said he could not complete because of organizational upheaval, another was affected by political violence. This was in addition to personal problems: marital separation, in the case of one student, the birth of new baby in the case of another, personal stress and 'burnout', for a third.

I also wondered whether their inability to complete had something to do with fear of failure. They were important individuals in their own constituencies, some with a national profile. In the classes they were sitting with their opposition. To what extent could they risk failure and submit – or be seen to submit- themselves to the hierarchies of an academic apprenticeship?

#### ***9.6.6 Achievement by RPL students: a summary***

In summary, the research shows that students with limited formal qualifications can and do succeed in a formal programme such as Courses A and B, but that this achievement is closely associated with the nature of their informal (work and life) experience and the extent to which it has exposed the student to formal literacies and study skills and nurtured a generalizing orientation and a formal disposition. The latter includes a willingness to submit to pedagogic hierarchy, to assume an individual rather than collective identity and to expend symbolic

labour. The student needs to be prepared to risk the indignities of failure and social and personal circumstances need to be supportive.

### **9.7 Implications for 'rpl'**

My research has shown the complexities associated with recruiting and recognizing prior informal experience in a formal educational programme. However, it also confirms that it could play an important role in inducting students into the esoteric dimensions of the formal discourse, provided the lecturer is able to draw appropriate links between the informal and formal. This is not easy and the research suggests that the following factors will impinge on any attempt to solicit, recruit or recognize students' prior experience:

- The variety of educational and social backgrounds in the class: this will affect the students' willingness to show trust and offer experiences and the lecturer to understand them.
- The lecturers' experience or understanding of the type of social and political circumstances of the students (so the lecturer can 'hear' the students' personalizations and relate them appropriately to formal generalizations and applications) and/or
- The students' ability to present that experience in clear, unambiguous terms and in relation to the formal generalization or application.
- The flexibility of the curriculum. It takes time to unravel the complexities of students' localizations and make connections with the formal general. This will impact on the transmission of any pre-determined body of knowledge, and require students to make up time spent on discussions by reading at home.
- The extent to which the course reflects the practice of law, in all its complexity, rather than presenting it as a set of rules and procedures. This will affect the type of intervention. Where there is resonance between the world of law experienced by the student and that presented by the lecturer, there is also less likelihood of pedagogic conflict.

A number of questions arise: Firstly, given the fact that some students (SA3 and SA4 for example) displayed oral competences that were not realized in their written texts, would it not be appropriate for a course to have oral rather than written assessments? I have no doubt that oral assessments would help students with limited formal literacies to present their knowledge, personal or otherwise, perhaps even to display their mastery of tacit dimensions of labour law practice. However these should not replace opportunities to develop and exercise legal literacies or the student will be short-changed of essential legal skills.

Secondly, would portfolio development processes or foundation courses not assist these students in making the transition from formal to informal? Research conducted at the University of the Western Cape<sup>108</sup> indicates that students with limited literacies will simply be weeded out in portfolio development courses, if they do not assist these students to develop formal English literacies. Furthermore, the research reported in this thesis shows the importance of an understanding of the symbolic structure of a discipline and the functioning of representations of everyday life within that structure, in order to induct students into its esoteric domain. These findings have major implications for the facilitators of portfolio development or foundation courses who, in addition to skills in facilitation and academic development, will also need to be specialists in the disciplines to which students are seeking entry.

A final consideration relates to the education of trade unionists in particular. My research showed that they experienced a number of difficulties. Those who were not in full time union positions and had limited exposure to formal literacies, had difficulties producing coherent written texts and their study skills were minimal. Some had difficulty expending the 'symbolic labour' necessary to succeed. Those in senior positions did not share these difficulties but were not able to find the time and quietude necessary to study. The composition of the classes, which included managers and employers as well as workers and unionists, led to issues of trust and an unwillingness, in some cases, to enter discussions lest they turn into ideological debates. Above all, union education courses and literature had not necessarily prepared students for the exigencies of formal assessment. The question arises: should there not be separate courses like this for unionists alone? The issue is complex. On the one hand, by limiting the range of informal experience, such courses would make it easier for lecturers to make the metonymic links between informal and formal which would facilitate induction into the esoteric domain. Formal literacies could be developed in a less threatening and embarrassing environment. On the other hand, the long tradition of exchange relations associated with trade union education could continue to exert pressure on transmitters and compromise their pedagogic roles. Furthermore, students would be deprived of an opportunity to master the academic 'game' by observing students with greater formal experience.

I said at the start of this thesis that the aim of my research has been to benefit students trying to gain access to the current order of academic knowledge (whereas others in the field of RPL

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<sup>108</sup> Thaver, Naidoo and Breier (2002).

have put their energies into searching for more appropriate curricula or transforming power relations). In this vein I would argue that any attempt to change assessment procedures, or offer specialized education for unionists or to solicit, recruit or recognize students' prior informal experience would not be helpful to the students if this did not happen in a manner that was going to support their induction into the 'esoteric' domain of the field of study and of practice. Ideally this means presenting experience in a manner that is consistent with the logic of law as a field of education and of practice, in other words researching experience in the light of legal rules and principles and of case law and recontextualizing it according to academic and/or legal conventions. In courses such as Course A which emphasise the content of rules for purposes of simplification, there is an obligation on the lecturer to explain why this is done and to show the connections or disjunctures between individual experience and the generalities presented.

Whether the practice or discipline of law should be changed to accommodate other ways of seeing or knowing or doing is a question for another type of inquiry.

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**APPENDIX A:  
LIST OF LECTURERS REFERRED TO IN THESIS**

**Course A**

Code	Description	Topic of lectures
LA1	Co-ordinator of course A, employee of the LLU, recent LLB graduate	Sexual harassment Unfair dismissals
LA2	Professor of the law department at University A, founder of the LLU	Worker participation
LA3	Labour lawyer, part-time commissioner of the CCMA	Dispute resolution (conciliation and arbitration)
LA4	Legal researcher, employed by legal NGO	Disclosure of information and retrenchments
LA5	Head of LLU	Strikes and lockouts Organizational rights
LA6	Trainer, worked for NEDLAC	Recognition agreements Negotiation skills
LA7	Employee of LLU, law graduate	Unfair discrimination

**Course B**

Code	Description	Topic of lectures
LB1	'Anchor' lecturer of Course B, part time commissioner of CCMA, attorney and part time lecturer	Overview of the course, case law, arbitration
LB2	Professor and head of the LLI	Social security
LB3	Senior commissioner of CCMA, part time lecturer and former academic	CCMA and conciliation
LB4	Labour lawyer, one of the designers of the LRA, now a professor	Historical context of labour law
LB5	Labour lawyer, former academic	Aspects of the employment relationship, conflict resolution
LB6	Lecturer in the LLI	Case law
LB7	Economics professor	The labour market
LB8	Professor in business management	Employment Equity Act
LB9	Judge of the Labour Court	Labour Court rulings

**APPENDIX B:  
LIST OF STUDENTS REFERRED TO IN THESIS**

**Course A**

Code	Description	Highest formal qualification
SA1	Full-time shop steward	Grade 10
SA2	Union regional organizer	Grade 10 (left school in Grade 11)
SA3	Factory worker, member of regional executive committee	Grade 10
SA4	Hospital pharmacy assistant, head of hospital branch of union	Grade 10
SA5	Unemployed artisan	Grade 10
SA6	Chief administrative clerk, hospital	Grade 10
SA7	Field worker, NGO	Grade 11
SA8	Factory owner	Grade 10
SA9	Labour relations consultant	Grade 10
SA10	Storeman	Grade 10
SA11	Operator	Grade 10
SA12	Client services officer, private dispute resolution agency	Matric
SA13	Social science student at University A, former secretary and shop steward for union	Matric plus credits towards degree
SA14	Administrator	Degree, University A
SA15	Attorney	LLB, masters in Law, Oxford University

## Course B

Code	Description	Highest formal qualification
SB1	General secretary, national trade union	Matric
SB2	Regional union co-ordinator at start of course. Became part-time commissioner of CCMA and consultant for dispute resolution agency.	Matric
SB3	Provincial educator/organizer for trade union federation	Matric
SB4	General secretary of trade union at start of the course. Became client services manager for a pension and provident fund.	Matric
SB5	Regional human resource manager, manufacturing company	Matric plus university credits plus diplomas
SB6	Bargaining council official	Matric
SB7	Local government councilor, formal trade union national administrator and legal officer	Matric plus diplomas
SB8	Bargaining council official	Matric
SB9	Senior government official, SADC country	Matric plus diplomas
SB10	Case management officer, dispute resolution agency	Matric plus four university credits
SB11	Organizer, financial union	Degree
SB12	Organizer, staff association	Degree
SB13	Academic researcher	Masters degree
SB14	Attorney	LLB
SB15	Former senior manager,	Degree plus postgraduate management diploma
SB16	Law lecturer	LLB LLM
SB17	Human resources manager at company where SA1 worked as a shop steward	BA, postgraduate diplomas in Education and Industrial Relations
SB18	Industrial relations officer	Local government authority
SB19	Attorney	LLB
SB20	Technikon lecturer	LLB

## APPENDIX C: TRANSCRIPTION CONVENTIONS

MB	Researcher
LA1 etc	Pseudonym for lecturer in Course A*
LB1 etc	Pseudonym for lecturer in Course B*
SA1 etc	Pseudonym for student in Course A**
SB1 etc	Pseudonym for student in Course B**
[ ]	Text inserted by researcher, MB, for clarification purposes or comment on the transcription
...	Talk omitted
[Inaudible]	Words that are untranscribable
( )	Uncertain transcription
{ }	Name omitted
5	Interview turn number
?	Interrogative

I have used commas, colons, semi-colons to indicate pauses and capitals to indicate the start of a new sentence.

## APPENDIX D: THE ASSIGNMENTS IN COURSE B

### ASSIGNMENT 1

Commenting on the requirements for a fair pre-dismissal procedure contained in the Code of Good Practice: Dismissal, Grogan says the following:

‘It seems clear that the intention behind this provision is to rid pre-dismissal procedures of the complex technicalities which the labour courts have evolved in their dismissal jurisprudence (at page 146 of the 4<sup>th</sup> edition of Workplace Law).

The Labour Court has endorsed this view holding that the requirement of procedural fairness under the new Act –

‘demands less stringent and formalized compliance than was the case under the unfair labour practice jurisdiction of the Industrial Court’ (*Moropane v Gilbey’s Distillers & Vintners (Pty) Ltd & another* (1998) 19 ILJ 635 (LC)]

Critically evaluate the validity of these statements. Your evaluation should include a careful analysis of the courts’ jurisprudence under the old Act (that is, the cases decided by the courts), and a consideration of the relevant provisions of the Code Reference to cases interpreting the new Code is also imperative.

## ASSIGNMENT 2 (PROJECT-BASED ASSIGNMENT) \*

The Employment Law Diploma is a practical labour law course, i.e. it is designed to deepen the understanding of the hands-on application of employment law in the workplace. It also situates employment law more broadly and deals with its implications for industrial relations and the labour market. As such, the course is mainly aimed at people who are working in a field that involves interaction with or the application of employment law, or aspects of employment law, on a day-to-day basis.

This project-based assignment is designed to provide you with an opportunity to apply what you are learning on the course to the real world of employment and work. To do this, the assignment seeks to take advantage of the fact that many of the participants on the course are in full-time jobs and can therefore use their own workplaces as the research sites for the project. Variations are provided for answering each topic to take account of the different roles that participants in the course have in practice, e.g. managers in firms, trade union organisers, etc. We have also provided alternatives for participants in the course who are not currently in employment.

### THE BASIC CONDITIONS OF EMPLOYMENT ACT, 75 OF 1997

#### For trade unionists (or bargaining council officials):

Choose one of the collective bargaining forums in which your union is engaged, either at plant level, corporate level or bargaining council level, and analyse the terms and conditions in the collective agreement as they were prior to the introduction of the new Act and indicate exactly how those conditions and practices have changed under the new dispensation. Also discuss the impact these changes have had on industrial relations at the plant/company/department or sector and the performance of the plant/company/department or sector. You should support your discussion of the likely impact with interviews of key unionists and management representatives to the bargaining forum in order to support your discussion of the impact of the Act and/or supply any data about the plant/company/department or sector's performance pre- and post-December 1998.

If the collective agreement has not yet been changed or is still in the process of being changed to bring its provisions into line with the new Act, then do an audit of the current conditions and practices as against the Act's requirements. Also discuss the likely implications that the change to comply with the new Act will have on industrial relations in the plan/company/department or sector and the performance of the plan/company/department or sector. You should support your discussion of the likely impact with interviews with key unionists and management representatives to the bargaining forum.

Note that you can attach a copy of the relevant collective agreement if you feel this is necessary.

### **Recommended readings**

Barker, F.S. 1997. 'Best conditions in the Basic Conditions of Employment Act', *Contemporary Labour Law*, Vol. 7 No. 5 (pp. 41-50). (Copies on short loan)

Employment Law. 1998. 'Workers' Charter? The new Basic Conditions of Employment Act', Vol. 14 No. 1 (pp 4-11). (Copies on short loan)

Forthcoming: Godfrey, S. with J Theron. *Labour Standards versus Job Creation? An investigation of the likely impact of the new Basic Conditions of Employment Act on small businesses.* Development and Labour Monograph Series, Institute of Development and Labour Law, University of Cape Town. (To be sent to you when published).

\* Note: This is not the full assignment. I have extracted only those options designed for trade unionists.

### ASSIGNMENT THREE

United Technical College (UTC) is a large private secondary and tertiary institution which specialises in preparation and training of potential university applicants. The weekly paid employees (mainly cleaners, gardeners, catering staff and departmental assistants) comprise 50 employees, of which 45 are members of the Education Workers Union (EWU). EWU has lost many of its best leaders to both government and the private sector and as a result its local leadership is rather weak. Relationships between the UTC and EWU have also become very strained due to the recent dismissal of three of EWU's shop-stewards for misconduct (the dismissals were upheld by the CCMA).

In August 1998 UTC management informed EWU that due to financial constraints it would be forced to retrench a number of its employees. Consultations between UTC and EWU ensued, and at the end of October UTC made known that it had decided to retrench 20 employees. At a highly charged meeting of EWU, the members resolved to go out on strike. UTC responded the following day by obtaining an urgent interdict prohibiting participation in the planned strike. A further EWU meeting was held in the staff canteen after work to discuss the interdict. During the course of the meeting, a number of windows were broken and crockery to the value of R2 000-00 was smashed.

When the employees eventually returned to work, management called a meeting of the 45 union members and requested them to come forward and state which individuals were responsible for the acts of vandalism. They were asked to do so within the next week failing which management explained that disciplinary action, commensurate with the nature of the acts, would follow against all of them. A week later management met with the workers once more, but not one would come forward either publicly or in private to identify those responsible, or to exonerate themselves.

The next step taken by management involved a written ultimatum along the same lines giving workers three more days to respond. They failed to do so. At a mass disciplinary hearing held the next week, evidence was given of both the severity of the assault on non-union members and the crippling cost to the college both in financial terms and in goodwill from users and potential users. Workers decided to maintain their silence. The entire group of 45 workers

were dismissed. Union A immediately referred a dispute citing unfair dismissal on both substantive and procedural grounds to the CCMA.

- (a) What arguments could be put forward by EWU in support of its contention that the dismissals were substantively and procedurally *unfair*?
- (b) What arguments could be put forward by UTC in support of its contention that the dismissals were substantively and procedurally *unfair*?
- (c) Which arguments are likely to prevail? Give full reasons for your answer.

*In each case (a, b and c), please cite relevant case authorities.*

## SUGGESTED DISSERTATION TOPICS

- 1 In its report entitled 'Restructuring the South African Labour Market' the Labour Market Commission stated –

*'South Africa is a society strongly committed to democracy, including industrial democracy, with an economy increasingly exposed to the disciplining effects of international product, capital and, indeed, labour markets. While the increasingly globalised economy demands high levels of adaptability and flexibility on the part of the labour market and its participants, South Africa's commitment to democracy requires that this must be compatible with labour market security ... (t)his entails protection from arbitrary loss of employment, protections against arbitrary reductions in income, protection against dangerous and unhealthy work practices, and protection against discrimination.'*

*[Report of the Presidential Commission to Investigate Labour Market Policy, 1996, 2.]*

With close reference to the institutions, processes and substantive provisions of both statutes, consider the extent to which the LRA and the BCEA succeed in reconciling the competing imperatives of flexibility and regulation.

- 2 The explanatory Memorandum accompanying the draft Bill (Labour Relations Act, 1995) stated –

*'The draft Bill requires a fair, but brief, pre-dismissal procedure ...[It] opts for this more flexible, less onerous, approach to procedural fairness for various reasons: small employers, of whom there are a very large number, are often not able to follow elaborate pre-dismissal procedures; and not all procedural defects result in substantial prejudice to the employee.'*

With reference to the jurisprudence of the industrial court in the area of pre-dismissal disciplinary procedures, consider the extent to which the Code of Good Practice: Dismissal (Schedule 8, LRA) charts a different course from that adopted by the Industrial Court. You should both place your own interpretation on the provision of the code, and consider how it has been interpreted by CCMA Commissioners and the labour courts.

- 3 *'Like the yogi contemplating his navel', says Drake, 'although without the same apparent satisfaction, the labour lawyer is necessarily drawn to the contemplation of the mystery comprised in the word "servant" or "employee".'*

[CD Drake *'Wage Slave or Enterepreneur?'* (1968) 31 *Modern Law Review*, 408. Cited by Martin Brassey *'The Nature of Employment'* (1990) 11 *ILJ* 889]

Critically consider the approaches adopted by our courts and more recently the CCMA, in their attempts to delineate the concepts of 'employee' and 'independent contractor'.

- 4 With reference to South African and foreign jurisprudence, consider the meaning of the concept 'inherent requirements of a job' in section 5 of the Employment Equity Bill.

- 5 Du Toit and others state-

*'Section 67(5) accepts that the operational requirements of an enterprise may justify dismissals during a protected strike. This provision has been seen by trade unionists as offering employers a thinly-veiled pretext to dismiss strikers. This was clearly not the intention of the legislature. Yet, given the fact that strikes are by definition intended to exert economic pressure on employers, the dividing line between genuine operational requirements and reprisals against strikers may sometimes be tenuous.'*

[*Labour Relations Act*, 1995 414-415]

Paying close attention to decided cases, critically discuss the attempts made by the courts to balance the competing principles of the right to strike on the one hand, and the employer's operational requirements on the other. You should consider the courts' approach under both the old and the new LRA.

- 6 Is South Africa ready for a 'second-channel' of labour relations? Do we have enough shared values, alternatively enough external pressures (e.g. international competition) to allow this experiment in labour-management co-operation to get off the ground? Have we adopted an appropriate model for workplace participation? Can the participation channel actually work alongside the traditional collective bargaining channel? Discuss critically, introducing your own perspectives.

**APPENDIX E:**  
**THE EXAM QUESTIONS IN COURSE A**

**QUESTION ONE: DISPUTE RESOLUTION**

- 1.1 What processes does the LRA provide for a commissioner to follow when attempting to resolve a dispute through conciliation? (3 marks)
- 1.2 Who may represent a party at conciliation? (6 marks)
- 1.3 Under what circumstances may a legal practitioner **not** be allowed to represent a client at an arbitration hearing? (2 marks)
- 1.4 What is the time frame for the referral of a dismissal dispute to arbitration? (1 mark)
- 1.5 Describe four specific powers that a commissioner has in terms of section 142 of the LRA? (8 marks)

TOTAL: 20 MARKS

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**QUESTION TWO: DISCLOSURE OF INFORMATION AND RETRENCHMENTS**

Your employer, Mondi Foods (Pty) Ltd has recently commissioned a report by independent business consultants to ascertain what steps should be taken by the company to cut costs in order to maximize profits, and to remain at the forefront of the competitive canned fruit business. A number of recommendations were made in this report. One of the recommendations was to restructure and to mechanise a particular division of the canning operation, which will inevitably mean that some of the employees working in that division will lose their employment.

The employer has notified your trade union, the Canning Workers Union (CWU), about the possibility of retrenchments, and the parties are engaged in consultations. CWU represents the majority of the workers at the fruit canning factory.

CWU have asked for access to the report which was commissioned, but the employer is refusing to impart the information, saying that it is highly confidential information, which if revealed, could get into the hands of the competitors, and therefore have a negative effect on the business.

CWU have referred the dispute over the employer's refusal to disclose the information to the Commission for Conciliation, Mediation and Arbitration (CCMA). The matter was not settled through mediation, and now it had been referred to arbitration.

- 2.1 Does the union have a right to request the consultant's report? Please give reasons for your answer. (3 marks)
- 2.2 On what grounds is an employer entitled to disclose information? (5 marks)
- 2.3 In the given case, what will the commissioner have to take into consideration in deciding whether or not to allow the union access to the information requested? (5 marks)
- 2.4 If the employer is considering retrenching employees, what topics must s/he consult on before embarking upon the retrenchments? (5 marks)
- 2.5 What is the minimum severance pay that employees are entitled to if they are retrenched? (2 marks)

TOTAL: 20 MARKS

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### QUESTION THREE: WORKPLACE FORUMS

- 3.1 "Workplace forums will undermine trade union organisation in the workplace."

Do you agree or disagree with this statement? Please motivate your answer by briefly summarising five provisions of the LRA, which in your opinion, are most important in defining the relationship between trade unions and workplace forums. (12 marks)

- 3.2 Please state whether you agree or disagree with the following statements, giving reasons for each answer.

- (a) If a workplace forum and an employer fail to reach agreement about the introduction of new work methods, the employer can refer the dispute to arbitration. (4 marks)
- (b) If a workplace forum and an employer fail to reach agreement about a new dispute procedure, the workplace forum (or trade union) may resort to industrial action after following the procedure laid down in the LRA. (4 marks)

TOTAL: 20 MARKS

#### QUESTION FOUR: STRIKES AND LOCKOUTS

- 4.1 What are the key elements/characteristics of the definition of a strike? (8 marks)
- 4.2 What are the legal consequences of a strike being protected? (6 marks)
- 4.3 What options does an employer have during a protected strike? (6 marks)

TOTAL: 20 MARKS

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#### QUESTION FIVE: RECOGNITION AGREEMENTS

##### PART A (5 marks)

In April 1998, the Fresh and Frozen Fish Processors Association (FFPPA), the Food Processing and Allied Workers Union (FPAWU) and the Fishing and Line Trawlers Employees Union (FLTEU) agreed that in order to be a recognized participant in the collective bargaining unit, the threshold of members would be 2000 members.

In February 1999, the Seagoing Workers Union (SWU), which was not part of the April 1998 agreement, requested that it be included in the bargaining unit. The union claimed membership of 1800 members, but argued that it was not a party to the earlier agreement and therefore should not be excluded.

- 5.1 Should SWU be allowed to bargain collectively with the others? Motivate your answer.

PART B (5 marks)

In March 1999, the FFFPA and FPAWU decided to amalgamate and form one superunion. Meanwhile, however, a number of their members had defected to the SWU, bringing SWU's membership to 1950. The shop stewards of the new superunion then called a meeting to discuss whether to initiate a closed shop or agency shop agreement at the companies where they had a majority membership.

5.2 Which agreement would be more appropriate in this case? Explain.

PART C (5 marks)

In April 1999, workers at the FreshPack Fish Co. went on an unprocedural go-slow. Two workers who were members of the majority superunion were subsequently dismissed for instigating the go-slow. The union then refused to meet on a monthly basis with the company, as they had collectively agreed, until such time as the workers were reinstated.

5.3 What position can the company take in this case?

PART D (5 marks)

Prior to the next round of negotiations, shop stewards from the relevant companies in the bargaining unit met to discuss which substantive issues should be renegotiated with the companies.

5.4 Draft a letter to the employers' association stating which issues will be reopened for negotiation. Make a request for disclosure of information pertaining to each of these issues.

TOTAL: 20 MARKS

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## QUESTION SIX: FREEDOM OF ASSOCIATION & ORGANISATIONAL RIGHTS

6.1 Apart from the right to elect trade union representatives, list the other organisational rights provided for in the LRA, and explain why organisational rights have been included in the LRA? (6 marks)

6.2 The following persons work at XYZ Ltd: 50 machinists; 20 sales representatives (who are paid a basic salary and 10% commission); 10 administrative staff; 5 directors; 5 drivers; 5 production managers; 5 supervisors. Trade union A has 40 members in the workplace. Trade union B has 15 members in the workplace. The organiser comes to you for advice.

6.2.1 Will trade union A be successful in acquiring the right to elect trade union representatives in the workplace? Give reasons for your answer. What would you advise them to do? (6 marks)

6.3 Which procedure must a trade union follow if it wants to exercise organisational rights in a workplace? (6 marks)

6.4 How is a dispute about whether or not information must be disclosed, resolved? (2 marks)

TOTAL: 20 MARKS

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## QUESTION SEVEN: UNFAIR DISCRIMINATION

The applicant who is 57 years old has been employed by the respondent for 24 years. During that period he was promoted from the position of Senior Inspector to Chief Inspector of Works (Structural) in the Respondent's Cape Town office. In 1979, he was promoted to Principal Inspector. He assumed office as Chief Inspector (Structural) in 1992.

In July 1996 employees of the Respondent were required to re-apply for their posts. Pursuant to his application, the Applicant was interviewed by representatives of an outside recruitment agency. According to the applicant, he was subsequently informed that he had received an 80% rating by the interview panel. This, he said, was among the highest given to employees in the East London office.

Sometime in January 1997, the applicant was shown an organogram of the personnel structure of the office, which reflected his position as "Principal Works Inspector". A Mr Y was indicated as Chief Inspector of Works (Structural). The organogram provides for a Chief, two Control Positions, three Chief Inspectors (one mechanical, one electrical and one structural). Each Chief Inspector supervises the activities of Principal and Senior Inspectors.

On 17 February 1997, the Applicant as well as other members of the Cape Town inspectorate received letters from the Respondent informing them that their applications for the various posts for which they had applied had been successful. The applicant was advised that he had been appointed "Senior Works Inspector". The letters added that there would be no reduction of remuneration or benefits, or change of seniority dates of serving officers who had been appointed on ranks lower than they had previously occupied.

The applicant is most upset and decides to take the matter further. He approaches you for advice. The applicant tells you that he had lost supervisory authority over staff, and clearly feels slighted and aggrieved at his change in title. He also contends that his chances of being promoted to a Control position (one higher than that of Chief Inspector) have been substantially reduced because the policy of the respondent precludes an officer from being promoted more than one grade at a time. Given his age, this could adversely affect the terms on which he retires. Advise the applicant in respect of the following issues:

- 7.1 Before which body will this action be brought? (2 marks)
- 7.2 What are the issues at stake? (4 marks)
- 7.3 What does the applicant have to prove? Substantiate your answer. (5 marks)
- 7.4 Which defence(s) are available to the employer? Substantiate your answer. (5 marks)

7.5 If the matter is not resolved at this forum, what other recourse(s) are available to the parties? (2 marks)

7.6 What award could be made? (2 marks)

TOTAL: 20 MARKS

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#### QUESTION EIGHT: UNFAIR DISMISSALS

Joe Bloggs was employed for five years by ABC Stores as a storeman on a fixed-term contract which was renewed annually.

On the 16<sup>th</sup> August, Joe's Manager, Mr Sithole, summoned him to his office where he told him that he was to be transferred out of the storeroom to the general store where he would work as a security guard. He was told by Mr Sithole that as a result of his ill-health, the company thought that he was too weak to lift many of the goods stored in the storeroom. In any event, Mr Sithole told him that the company had made the decision to transfer him and that if he was not happy with the decision he could look for a job elsewhere.

In response to this statement, Joe jumped up and walked quickly in the direction of Mr Sithole, pointing his finger at him and shouting that he would not be treated like a child. He then stormed out of the office and went back to the storeroom. The following day, when he arrived at work, he was stopped at the door by Mr Sithole who gave him a letter stating that threatening violence towards management is a dismissable offence.

Joe approaches you and tells you that a friend told him to refer an unfair dismissal dispute to the CCMA. However, as he has limited knowledge about labour law, he would like you to advise him on whether or not he has a claim for unfair dismissal.

In your advice, explain to Joe in detail, what the substantive considerations are and set out the procedural steps which should have been followed before a decision was taken to dismiss him.

TOTAL: 20 MARKS

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## QUESTION NINE: SEXUAL HARASSMENT IN THE WORKPLACE

- 9.1 In terms of the Code of Good Practice on the Handling of Sexual Harassment cases, list four (4) forms of conduct that could amount to sexual harassment. Give an example of each. (4 marks)
- 9.2 Precious worked as a secretary for Indaba Productions for three months when she resigned. The reason for her resignation was that her boss, Mr Jamie, had engaged in conduct that made it unbearable for her to continue working under those conditions. When she had started working at Indaba, her boss inquired about her sexual activities as he was “concerned about the moral values and ethics of the employees of Indaba”. Precious told him that he had nothing to worry about as she was a virgin and was committed to her Christian principles.

For the first month of her employment, there were no problems between Precious and her boss as he was away on business for most of the time. Upon his return, he constantly asked Precious to work late. During this time he would repeatedly brush up against her and on one occasion he “accidentally” touched her breasts. Mr Jamie also repeatedly asked Precious if she was still a virgin or whether “some skelm” had managed to relieve her of “this problem”. In relation to this, he also made suggestive remarks about how he could “show her a thing or two”.

Precious approached the Human Resources Manager for assistance. The HR manager promised to speak to Mr Jamie informally as he was of the opinion that Precious did not have any proof that these alleged incidents had actually occurred. A week later, he told Precious that the matter was resolved and that she should continue working with Mr Jamie as there would not be a repeat of any of these incidents.

Precious feels that the matter was not properly dealt with and she suffers some stress at work and at home. She therefore resigns.

- 9.1.1 Do you think that Precious is a recipient of sexual harassment? Substantiate your answer. (4 marks)
- 9.2.2 Do you think that the HR Manager dealt with Precious' complaints appropriately? If not, what else should have been done? Discuss as many options as you can. (6 marks)
- 9.2.3 The objective of the Code of Good Practice on the Handling of Sexual Harassment cases is the elimination of sexual harassment in the workplace. Do you think that the measures provided for in the Code are sufficient to achieve this objective? Substantiate your answer.  
(4 marks)

**TOTAL: 20 MARKS**

**GRAND TOTAL: 100 MARKS**

**APPENDIX F:  
RESEARCH QUESTIONNAIRE (COURSE A)**

The following questionnaire is being distributed among participants in the ....[name of course] as part of a PhD project by Mignonne Breier, a senior researcher in the Education Policy Unit, UWC. Your assistance in completing the questionnaire would be greatly appreciated. You may remain anonymous.

1. Are you employed/unemployed/self-employed?

.....

2. If you are unemployed, please state your usual line of work?

.....

3. If you are employed or self-employed, please state:

(a) the nature of your work

.....

(b) your current position

.....

4. Do you regard yourself as an employer or a worker?

.....

5. Do you belong to a union? .....

If so, do you hold any office within the union?.....

If you do, please state what it is .....

6. What is your highest formal (school, college, technikon, university) educational qualification?

.....

7. Have you had any non-formal education or training (eg trade union education, company training course, etc). If so, please specify:

.....

.....

8. Why did you decide to do this course? If you were sent by your company or union, please specify:

.....  
.....  
.....

9. Would you be willing to be interviewed for research purposes?  
(The interviews will take place at a time or venue to suit you and should last approximately one hour. In my reports on the research, I will protect the identity of interviewees by using false names).

.....

10. If you are willing to be interviewed, please complete the following:

Name:.....

Address (where you would like to be interviewed):

.....  
.....  
.....

Telephone number.....

Day of the week and time when it would be convenient for me to telephone to arrange the interview:

.....

Thank you for your assistance.  
If you have any queries in connection with this questionnaire or any other aspect of the research please do not hesitate to contact me.

Mignonne Breier  
Senior Researcher  
Education Policy Unit  
University of the Western Cape

Telephone: 021 959 3335/2580

## **APPENDIX G: GUIDE FOR INTERVIEWS WITH STUDENTS**

1. Work experience
  - Line of work
  - Current employment status
  - Brief employment history since leaving school
2. Union experience
  - Which union?
  - Position in the union
  - Training through union
3. Educational history
  - Schooling
  - Post school
  - Non-formal
  - Informal
4. Personal details: age, marital status, children?
5. Why did you decide to do this course?
6. Prior knowledge/experience
  - What was your knowledge/experience of Labour Law prior to attending the course?
  - What was your knowledge/experience of the LRA, BCEA and EEA before attending the course?
  - Do you think you had knowledge/experience (before attending the course) that was relevant to the course?
  - If so, was that knowledge/experience from: work, trade union education or involvement, other training courses, formal education?
  - And was it taken account of in any way: in gaining access to the course? in the design, content, delivery of the course? (eg were you given opportunities to express this knowledge/demonstrate this experience and if so what kind of reaction did you get)

7. Knowledge/experience gained

- What knowledge/experience have you gained from the course?
- How will you use this knowledge/experience?

8. What do you think of the results which you achieved in the final exam?

9. Do you remember any occasion during the course when you challenged the lecturer on a point? (This could have been 'out loud' in the form of a question, or something you just said to yourself.)

**At this point, I will remind the student of any occasion when I noticed him/her challenging the lecturer and show him/her the relevant transcript. I will then ask the student to elaborate.**

11. Were there any occasions when you did not understand what was going on?

12. Were there any aspects of the course that you experienced as

- difficult?
- unnecessary?
- particularly important or relevant?

13. What did you think of the exam?

14. What was the most difficult task on the course? Why?

15. How do you think you were expected to learn on this course?

16. Was there any way in which you learned in the past that helped you on this course?  
If so, how did it help?

17. Any ways that were very different from the way in which you were required to learn on this course? How did this affect your ability to learn on this course?

**APPENDIX H:  
BIOGRAPHIC DETAILS OF THE 'RPL' UNIONISTS IN COURSE A IN  
RELATION TO MARKS ACHIEVED AND PARTICIPATION STYLES**

	SA1	SA2	SA3	SA4
1. Mark in exam	59%	56%	22%	26%
2. Race and gender	CM	AM	CF	AM
3. Highest formal qualification	Grade 10	Grade 10 (left school in Grade 11)	Grade 10	Grade 10
4. Age at time of course	43	34	35	50+
5. Occupation	Full time shop steward	Full time union organizer	'Multi-skilled' worker in factory making leather handbags	Pharmacy assistant in hospital
6. Previous occupation/s (from earliest to most recent)	Municipal turn-cock, clerk in insurance company, worked in stores department of electronics company	Hotel waiter, wine steward	Factory worker	Cleaner
7. Trade union involvement	Full-time shop steward, national general secretary	Full-time union organizer	Member of regional executive committee	Chairperson of union branch
8. Personal experience of labour law	Represented workers in disputes with management in Bargaining Council, CCMA (conciliation and arbitration); national negotiations. Trained shop stewards in aspects of the law	Represented workers in disputes with management, national negotiations. Ran training courses for shop stewards.	Represented workers in disputes with management	Had represented workers in three arbitration cases and had won all three. Trained shop stewards in aspects of the law.
9. Exposure to written texts at work/in union	'Worked with' labour legislation, wrote union reports and material for shop steward courses, prepared for negotiations, arbitration, conciliation.	'Worked with labour legislation' and with trade union texts. Wrote reports. Prepared for negotiations, arbitration, conciliation etc	'Worked with labour legislation'. 'I carry the LRA in my handbag wherever I go'	'Worked with' labour legislation for decades, in particular the Labour Relations Act of 1956

	SA1	SA2	SA3	SA4
10. Non-formal courses	Numerous trade union courses, Workers' College course	Numerous union courses, six-week course on LRA held at UWC and run by prominent labour lawyers, computer literacy course	Numerous trade union courses, Workers' College course	Numerous trade union courses, two Workers' College courses. Also conducts union courses himself.
11. Further formal study	Had completed two N3 subjects towards a technical matric certificate.	One year art course at Guguletu technical college. Obtained two subjects towards matric at 'finishing school' in Cape Town	Grade 10 and 11 mathematics at Adult Education centre. 'Wrote exams but did not go back to get results'	None
12. Style of participation in lectures	Active, challenged lecturer	Moderately active, gave responses to lecturer's questions and asked questions himself	Active in lectures and case study exercises, asked questions, reported back to class.	Active in class, asked questions
13. Recruitment of informal experience or knowledge in oral interventions	Various localizing strategies including local generalizations and particularizations to challenge the lecturer.	No, although he admitted in interview that questions were based on personal 'need'. Hypothetical localizing strategy and formal solicitations	Used hypothetical, localizing strategy to conceal personal experience, while gaining personal legal advice.	His questions were inaudible.
14. Style of participation in exam script	Language and literacy: +1; Length of response: +1; Accuracy: 0. Total: +1	Language and literacy: 0; Length of response: +1; Accuracy: +1. Total: +2	Language and literacy: -2; Length of response: -2; Accuracy: -2. Total: -6	Language and literacy: -1; Length of response: -2; Accuracy: -2. Total: -5
15. Best mark question	Fg/FAH and FAH	FG/fah	Fg/FAH	FAH
16. Social factors mitigating for and against success, mentioned by student	Did not mention any	Did not mention any	Did not mention any	Did not mention any, was surprised he hadn't passed
17. Additional social factors noted by researcher	None	None	Single parent with teenage daughter;	Pressures of union involvement while working full-time. Language difficulties: Xhosa speaking.

**APPENDIX I:  
BIOGRAPHIC DETAILS OF THE 'RPL' UNIONISTS IN COURSE B IN  
RELATION TO MARKS ACHIEVED AND PARTICIPATION STYLES**

		SB1				SB2				SB3				SB4			
1	Course result	2-	3	3	2-	2-	2+	2-	3	2+				3	2-	2-	
2	Race and gender	CM				CM				CM				CM			
3	Highest formal qualification	Matric				Matric				Matric				'Technical' matric			
4	Age at time of course	40+				30+				40				35			
5	Occupation at time of course	General secretary, national trade union since Nov 1994				Regional co-ordinator of trade union during first part of course (6 years). Had changed to part-time commissioner at CCMA and consultant for new dispute resolution agency by the second block				Provincial educator/organizer for trade union federation (4 years) at time of course. <sup>1</sup>				Was general secretary of a trade union at start of the course. Had been in this position for 5 years. Changed to client services manager for a pension and provident fund in Gauteng at the end of the year.			
6	Previous employment (from earliest to most recent)	Legal co-ordinator of the union (1 year), various other union positions (6years) Administrative work for national supermarket chain (10 years) Sheet metal worker (six months) Trainee quantity surveyor (2 years)				Regional educator for trade union (2 years). Organizer for another union (5 years). Voluntary community work with civic organizations.				Provincial organizer, teachers' union (5 years). Youth organizer, for national church body. Community-based organization (2 years). Fashion textile artist (3 years).				Regional co-ordinator of another union for 5 years. Worked for 5 years for Christian youth organization that gave support to unions. Responsible for national publications, including writing pamphlets, work books etc 3years with big hotel group			
7	Trade union involvement	See 5 above															
8	Experience of labour law	See 5 above															
9	Exposure to written texts at work/in union	Extensive high level union texts, legislation and educational materials				Extensive, high level union texts, legislation, CCMA texts				Extensive, high level union texts plus educational materials				Extensive high level union texts, legislation etc			

<sup>1</sup> National programme co-ordinator for trade union federation at time of interview (2001).

		<b>SB1</b>	<b>SB2</b>	<b>SB3</b>	<b>SB4</b>
<b>10</b>	Non-formal courses	Attended a union summer school at Wits and has presented numerous union courses himself. Was awarded a fellowship to visit the USA and do a review of the state of the unions at various levels of govt. Represented union at international conferences	Summer and winter schools run by trade union federation, arbitration course, later presented numerous union courses and taught on Workers' College course	Has presented numerous union education programmes	Numerous union training courses including legislation, negotiation skills, writing skills, economics.
<b>11</b>	Further formal study	None	Adult Basic Education course by correspondence through distance university	Two years fine art at a technikon, 2 years BA Political Studies at University A	Two certificate courses at the LLP
<b>12</b>	Style of participation in lectures	Asked questions, challenged lecturer, refused to be drawn into certain debates	Asked questions, answered questions put to him by lecturer	Asked questions and made some statements, 'hung back'	Silent
<b>13</b>	Recruitment of personal informal experience or knowledge in oral interventions	Local generalization (based on personal experience?)	Local generalization (based on personal experience?)	Local generalization (based on personal experience?)	N/A
<b>14</b>	Social factors mitigating for or against success, mentioned by student	Work overload, stress 'ran out of time' 'upheaval at work' 'burnout' new job (stepped down from position temporarily)	Wife gave birth to second child. Violent attack directed at him and family because of statement he had made on behalf of his union made him leave union employment.  Time constraints due to union pressures	Time constraints due to union pressures	Union pressures, personal factors (marital separation)
<b>17</b>	Other social factors, observed by researcher	Age- or status-related fear of failure?			

**APPENDIX J:  
BIOGRAPHIC DETAILS OF THE STUDENTS WHO ACHIEVED THE  
HIGHEST MARKS IN COURSE A AND COURSE B, IN RELATION TO  
MARKS ACHIEVED AND PARTICIPATION STYLES**

		Student who achieved the highest marks in Course A: SA15	Student who achieved the highest marks in Course B: SB15				
1	<b>Marks achieved</b>	89%	81%	80%	82%	80%	78%
2	<b>Race and gender</b>	WM	WF				
3	<b>Highest formal qualification</b>	MA, Oxon; BA LLB, Stellenbosch	Management Advancement Diploma, Wits B Proc RAU				
4	<b>Age at time of course</b>	50+	Mid 40s				
5	<b>Occupation at time of course</b>	Attorney specializing in motor vehicle assurance (MVA)	Part time legal work, pregnant, new mother				
6	<b>Previous employment (from earliest to most recent)</b>	Prosecutor	Assistant company secretary, division of a national mining corporation (5 years) Manager of a trust department, in same group (9 years) Retirement fund manager for national insurance company (3 years) Moved to Cape Town, undertook legal work part- time, while pregnant				
7	<b>Trade union involvement</b>	None	None				
8	<b>Experience of labour law</b>	None	None				
9	<b>Exposure to written texts at work</b>	Extensive daily exposure to legal texts mainly in relation to MVA	Extensive daily exposure to legal texts relating to pension fund industry				
10	<b>Non-formal courses</b>	[See below]	In-house company training.				
11	<b>Further formal study</b>	Side bar and bar exams	Management Advancement Diploma 13 years after completing B Proc degree				
7	<b>Style of participation in lectures</b>	Frequently asked questions, usually phrased in legal terms.	By her own admission 'very seldom'. I only once observed her answering a lecturer's question. This was in the lecture on Facilitating Change in the Workplace. When the lecturer asked for examples of changes in the workplace, she provided one: relaxation of regulations in the liquor industry.				
13	<b>Recruitment of personal informal experience or knowledge in oral interventions</b>	None (except for one quip in the lecture of Sexual Harassment. When the lecturer asked: 'What constitutes sexual harassment?' he replied: 'I don't know. I've never been sexually harassed'.	None				

		<b>Student who achieved the highest marks in Course A: SA15</b>	<b>Student who achieved the highest marks in Course B: SB15</b>
<b>14</b>	<b>Social factors mitigating for or against success, mentioned by student</b>	None	The time she had available to work on the assignments. The support of a 'syndicate' group which she formed with four other students.
<b>15</b>	<b>Additional social factors noted by researcher</b>	None	None

## **APPENDIX K: CASE STUDY EXERCISE (COURSE A)**

### **Case Study: Processing a Dispute Concerning a Retrenchment**

DEVENG (Pty) Ltd, a large engine and automotive components manufacturer, has been performing poorly for a number of years. It is losing market share and in the last two years has run at a marginal loss. The steady lowering of tariff barriers on automobile engines and other components means that it is likely to continue on this downward trend unless measures are taken to restore performance and profitability.

The Board of Directors decide that an immediate cost-cutting exercise is necessary, to be followed by restructuring to better position the company in the market to face the challenge of imports (this will entail cutting certain production lines that are uncompetitive and focussing only on the manufacture of certain automotive components). A firm of consultants are appointed to investigate cost-cutting measures throughout the company's operation. After 6 weeks it reports to the Board and amongst other things recommends the retrenchment of 16% of the total workforce. The number of retrenchments will vary according to the department and grade of workers. The Board believes that if it takes this step as soon as possible it might not need to retrench any more workers during the company's restructuring, as they have calculated that the workers on the production lines to be cut should be able to all be re-deployed on the remaining lines.

The Board decide to go ahead with this retrenchment plan and advise the majority union at the company, the National Automobile and Automotive Components Workers' Union of South Africa (NAACWUSA) and the minority union, the Western Cape Nuts and Bolts Workers' Union (WCNBWU), with a view to consulting over its implementation (the company has a recognition agreement with NAACWUSA that deals with retrenchment procedures). There is also a workplace forum at the company but this is not advised of the retrenchments. The Board also advise that they will make financial information available to the unions and certain parts of the consultant's cost-cutting report (other parts it gives notice are confidential and cannot be disclosed), and it notifies the unions that the medium-term strategic plans to restructure the company are highly confidential and will undermine its competitiveness if they were to become known.

You are the senior shop steward for NAACWUSA at the company and must, together with your fellow shop stewards, respond to the notice from the company regarding the proposed retrenchments and the request to begin consulting about their implementation. What will you do about the following issues:

- (a) the request by the company to consult over the **implementation** of the retrenchments and the union's desire to avoid the retrenchments altogether;
- (b) the company's notice to both your union and the WCNBWU, and the failure to notify the workplace forum;
- (c) the steps that could be taken to minimise the impact of the retrenchments if it is decided that some retrenchments are unavoidable;
- (d) the information the union will want over and above that being supplied by the company to either avoid the retrenchments altogether or to minimise the impact of the retrenchments (see the previous week's notes for more detail on information disclosure); and
- (e) the intention of the company to restructure production in the medium-term and its belief that this will not require further retrenchments.

## **APPENDIX L: CASE STUDY EXERCISE (COURSE B)**

### **Atypical employment relationships**

#### **Exercise**

Even when atypical employment relationships are covered by legislation, their 'atypical' character gives rise to problems of enforcement, as the following exercise demonstrates.

High Rise Construction employs its unskilled labour from a pool of 'casual' labourers who congregate outside its gates each day of the week. Each morning the casual workers line up outside the company gate and if the company needs their labour on the day (which is usually the case) it hires as many as it needs on a first-come-first-serve basis. Casual workers are hired only for the day, and are paid at the end of their days work.

Jabo Mkhize has casualled regularly for the past three months. On average he manages to get about two days per week. Only very occasionally does a week go by where he gets no work at all. One day he has an angry exchange with his foreman. When he goes to collect his money at the end of the day, he is told by the foreman that he need not bother to come back. He subsequently pitches up at the company gates, but is passed over for others. After a couple of days he approaches the CCMA.

At a CCMA arbitration where Mkhize is alleging unfair dismissal and claiming re-instatement, the company's defence is:

- (1) Mkhize is a casual employee. Contracts of employment are entered into on a 'needs basis' and for one day at a time. Therefore, when he finishes work on a particular day he ceases to be an employee until the next time the company decides to hire him. Since he is not an employee, he cannot be dismissed.
- (2) The fact that Mkhize is a casual employee makes an order of re-instatement impracticable. At most the CCMA could order the employer to place Mkhize in the pool once again. This would place no obligation upon the company to offer Mkhize employment on any particular

day, and the CCMA's order would be futile if the company refused to offer Mkhize employment.

- (3) An order of compensation would also be inappropriate since compensation is determined with reference to pay periods. Since Mkhize's pay period is at most one day, that is the maximum compensation he could get. There is also no certainty as to how many days Mkhize would work in a week, and therefore no basis upon which his compensation can be computed.

Divide yourself into two groups. One group argue the case for High Rise, the other for Mkhize.

### Suggested response

- (1) It can be argued that a casual has a 'reasonable expectation of renewal' when it is in the very nature of casual employment to be contingent. The existence of a 'pool' would suggest a relationship that survives the short-term contracts. The expectation is, perhaps, one of 'remaining in the pool' and being considered for future engagements.
- (2) The court in *Radebe v Keeley Forwarding*<sup>1</sup> was prepared to order the reinstatement of an employee despite counsel's submission that such would be impractical. The court did not, however, actually order "reinstatement" into employment.<sup>2</sup> Rather the effect of the order of reinstatement was the place the casual worker back into the casual "pool" of workers where that worker would have to be treated according to the company's hiring policy. If that policy was not applied fairly the court was prepared to accept that that might constitute grounds for another unfair labour practice.
- (3) Perhaps the Commissioner could take an average of the employee's earnings over the period for which he had worked for the employer and awarding that pro rata according to the time elapsed between dismissal and the award. What might be considered "just and equitable" in the circumstances (should the dismissal be found to be substantively unfair) would probably be based on those figures.

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<sup>1</sup> *supra*

Relevant readings (other than in the footnotes) might include:

- PAK Le Roux “Job Flexibility, Employer Prerogative and Employee Rights” (1992) Vol. 2(3) *Contemporary Labour Law* 25
- (1991) Vol. 4(9) *Labour Law Briefs* 58
- Marius Olivier “Extending Labour Law and Social Security Protection: The Predicament of the Atypically Employed” (1998) 19 ILJ 669

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<sup>2</sup> See also *BCAWU v ISO Composiet* (1987) 8 ILJ 479 (IC) where the Industrial Court held that it was not fair to order the reinstatement of temporary employees (with whom casual employees might be equated) where the work for which they were hired had been completed.

**APPENDIX M:  
EXAM RESPONSE OF THE STUDENT WHO ACHIEVED THE  
HIGHEST MARKS IN COURSE A (SA15)**

**(Response to Question 8)**

## Question 8.

If am assuming that the letter handed to Joe in fact confirmed that he had been dismissed.

### The substantive considerations:

Dismissal can only take place where there is (inter alia) a fair reason for the dismissal. The reason given for Joe's dismissal is that he had threatened violence towards management & that that is a dismissible offence. The question is, therefore, firstly, whether Joe had in fact threatened violence to Mr. S. I will argue that the mere pointing of a finger at Mr. S. does not in itself <sup>constitute the</sup> threatening of violence, neither does the raising of his voice at Mr. S. constitute the threatening of violence. There was, therefore, <sup>probably</sup> no breach of the alleged rule. Secondly, regard should in any event be had to the circumstances of the case. One should look at Joe's age, his period of employment with that employer, his disciplinary record (previous "convictions"), his personal circumstances, the way in which other employees have been dealt with in similar circumstances, etc. Regard should also be had to the fact that Joe's conduct was prompted by <sup>(possibly)</sup> discriminatory treatment which he had received at the hands of Mr. S. in "demoting" him on an arbitrary ground covered by Item 2, Schedule 7 of the L.R.A. (Item 2 (b)). Apart from the fact that it may be questioned whether Joe had in fact committed a dismissible offence, it can be argued with conviction that the circumstances (& other considerations) did not justify a summary dismissal, or a dismissal at all.

Procedural steps: A dismissal must also be

procedurally fair. In this case the employer should firstly have conducted a preliminary investigation to ascertain all the relevant facts. Thereafter, if it wished to proceed Joe should have been given a fair hearing. He should have been given clear & understandable notice of the charge against him & he should have been allowed sufficient time to prepare his defence. He would have been entitled to representation at the hearing ~~as provided for in the~~ and he should have been allowed to call witnesses & cross-examine the employer's witnesses (primarily Mr. S.) He should have been allowed to state his case fully. He was entitled to be advised in writing of the employer's findings after the hearing and his rights (re taking the matter further) should have been explained to him. Quite clearly a fair procedure was not followed in Joe's case. ✓

**APPENDIX N:**

**EXAM RESPONSE OF SA1 IN COURSE A**

**(Response to Question 8)**



before the formal hearing  
Then I will find out from Joe whether they  
had a hearing.

Was he allowed ~~to~~ to put his side  
of the allegations against him.

Was he allowed to bring in witnesses

Was he allowed to cross-examine the company's  
witnesses.

Was he allowed representation from a co-employee  
or a trade union representative

Was he allowed to consider the company's  
funding and to ~~mitigate~~ mitigate his  
circumstances ~~to~~ before the company gave him  
the penalty.

If the company failed to follow the steps  
as pointed out above. My decision to be  
will be that the company is substantively  
and procedurally unfair.

Another comment I would like to make in  
terms of Joe's case that Mr. Strole did not  
deal properly with the incapacity problem, because  
he never followed the procedure in terms  
of Schedule 8 on ill health.

**APPENDIX O:**

**EXAM RESPONSE OF SA4 IN COURSE A**

**(Response to Question 8)**

Question VIII (8)

### Unfair Dismissals.

The decision was taken on his absence, to see if there was a similar case.

He was supposed to be given a chance to state his case and represented in the disciplinary hearing by Shop Steward.

So look at his ill health the service as a stevedore - to look at the thought of the company of his weakness.

(5)

**APPENDIX P:  
SB15's BIBLIOGRAPHIES FOR ASSIGNMENT 2 and 3 (COURSE B)**

**Bibliography for Assignment 2 (see Appendix D for assignment brief):**

Books:

1. Basson and others, *Unfair Labour Practices* 1998 2<sup>nd</sup> ed
2. Du Toit and others, 1998 *The Labour Relations Act of 1995*, 2<sup>nd</sup> ed
3. Grogan J, *Workplace Law*, 1999 4<sup>th</sup> ed

Articles:

1. Jacobs G, "Suitably qualified "definition "potential" problems for employers, *Employment Equity Digest* 1998 vol 6 no 3
2. Le Roux P A K "The Employment Equity Bill: an update" *Contemporary Labour Law* 1998 Vol 7 no 10 pg 95
3. Redpath J, *The Booby Traps in the Employment Equity Act*, *Employment Equity Digest* 1998 vol 6 no 5
4. Schonteich M, *The demography of Employment Equity*, *Employment Equity Digest*, 1998 vol 6 no 6
5. Truter L, *Employment Equity Act: The final changes and their implications*, *Employment Equity Digest*, 1998 vol 6 no 5
6. Van Niekerk A *Equality rights in employment: The new law begins to bite*, 1998 *Current Labour Law* vol 7 no 24
7. Van Niekerk A *Employment Equity* *Current Labour Law* 1998 ILJ
8. Van Niekerk A *Affirmative action- three cases, two views* *Current Labour law* 1997 vol 4 no 1
9. Author unknown\* *Towards a rainbow workforce* *Employment Law* 1998 vol 14 no 2
10. Author unknown\* *Protecting applicants* *Employment Law* 1998 vol 14 no 2

\*After photostating articles in *Employment Law*, I noted that the names of the authors were unfortunately not mentioned.

Cases in order of appearance

1. *Langemaat v Minister of safety and Security and others* (1998) 19 ILJ 240 T
2. *Public Servants association and another v Minister of Justice and others* (1997) 18 ILJ 241 T
3. *Schmahmann v Concert Communications Natal (Pty) Ltd* (1997) 8 BLLR 1092 LC
4. *Swart v Mr Video (Pty) Ltd* (1997) 18 ILJ CCMA
5. *Abbot v The bargaining Council for the Motor Industry* (1998) 58 case no J23/97 Western Cape
6. *Rosenfeld v Southern Pacific Co* 444 F. 2d 1219
7. *Diaz v Pan American Airways Inc* 442 F 2d 1273 1981
8. *NUTESA v Technicon Northern Transvaal* (1997) 4 BLLR 467 (CCMA)
9. *Leonard Dingler Employee representative Council v Leonard Dingler (Pty) Ltd and others* (1998) 19 ILJ 285 LC
10. *Van Zyl v Department of Labour* (1998) 7 CCMA 5.3.1
11. *George v Liberty Life* (1996) 17 ILJ 571 IC

### Other sources

1. Interview/discussions with Mrs U Tamboer, Welfare Manager, Sweet-Orr & Lybro
2. Attendance of "Employment Equity Solutions" breakfast seminar : speaker Adv J H Munnik
3. Media
4. File, containing articles and features from the Internet, on Canadian employment equity law
5. Relevant Acts and Explanatory memorandum on the Employment Equity Act
6. Breakwater Monitor 1997
7. Several other articles, though not quotes above, presented useful background information

### **Bibliography for Assignment 3, a case study exercise (see Appendix D for assignment brief):**

#### Books:

1. Basson and others Essential Labour Law (1998) volume 2
2. du Toit D , Woolfrey D, Murphy J, Godfrey S , Bosch D and Christie S The Labour Relations Act of 1995 ( 1998) 2ed edition
3. Finnemore M and van der Merwe R Introduction to Industrial Relations in South Africa (1992) 3<sup>rd</sup> edition
4. Grogan J Workplace Law (1999) 4<sup>th</sup> edition

#### Journals

1. Albertyn C, Misconduct during the strike Employment Law (1994) volume 10 number 3
2. Cameron E The Right to a hearing before dismissal – Problems and Puzzles (1988) Industrial Law Journal volume 9 part 2
3. Cheadle H, le Roux PAK, Thompson, and van Niekerk A Strikes and Lockouts Current Labour Law (1998)
1. (Author unknown) Dismissal of the innocents—derivative misconduct Employment Law (1999) volume 14, number 6
2. Jordaan B Guilty of suspicion—dismissal for suspicion of misconduct Employment Law (1995) volume 12 number 2
3. Le Roux P A K Discipline and group misconduct Contemporary Labour Law (1993) volume 2 number 11
7. Pretorius P One and the same: the parity principle Employment Law (1995) volume 11 no 6
8. van Niekerk A The Afrox cases: important interpretations of the LRA Contemporary Labour Law (1998) volume 7 number 6

Cases in order of appearance:

1. *Kabuoe v Gulf Steam Steel (Pty) Ltd* 17 ILJ 105 (105)
2. *Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Ltd* (1999) 20 ILJ 299
3. *Columbus Joint Venture t/s Columbus Steel v NUMSA* (1998) 19 ILJ 279 (LC)
4. *Wholesale Meat Distributors v FAWU and others* (1998) 8 BLLR 859 (LAC)
5. *SACCAWU v Cashbuild* (1996) 4 BLLR 457 (IC)
6. *SACCAWU v pep Stores* (1998) 6 BLLR 719 (CCMA)
7. *Metrocash t/a Metro Cash and Carry v Fobbs and another* (1998) 18 ILJ 1516 (LC)
8. *Construction and Allied Workers Union and others v Klappmuts Concrete (Pty) Ltd* (1996) 17 ILJ 725 (IC)
9. *Boardman Brothers (Natal) Ltd v Chemical Workers Industrial Union* (1998) 19 ILJ 517 (SLA)
10. *Fedcrow v Liprapac CC* (1998) 1 BALR 4 (CCMA)
11. *CWIU v Reckitt and Coleman SA (Pty) Ltd* (1990) 11 ILJ 1319 (IC)
12. *NUM v Durban Roodepoort deep Ltd* (1987) 5 ILJ 156 (LC)
13. *NSCAWU v Coin Security* (1997) 1 BLLR 85 (IC)
14. *Von Stein Distributors (Pty) Ltd* (1994) 5 LLC 46 (IC)
15. *NUM v Amcoal Colliers Ltd t/a New Denmark Colliers* (1989) 10 ILJ 733 (IC)
16. *NUM v Bonar long NTC (SA) (Pty) Ltd* (1990) 11 ILJ 1447 (IC)
17. *Oconobrick Manufacturing (Pty) Ltd v SABAWU and others* (1998) 4 BLLR 408 (LC)
18. *Dhlamini v Minister of Education and Training and others* (1984) SA 255 (N)
19. *Yichiho Plastics (Pty) Ltd v SA Clothing and Textile Workers Union and others* (1996) 17 ILJ 648 (LAC)
20. *Maphatane v Shoprite Checkers (Pty) Ltd* (1996) 17 ILJ 965 (IC)
21. *Empangeni Transport (Pty) Ltd* (1992) 13 ILJ 352 (LAC)
22. *Foodpiper CC t/a Kentucky fried Chicken v Shezi* (1993) 2 LCD 32 (LAC)
23. *NUMSA v N R Steel* (1995) 16 ILJ 128 (IC)
24. *Chauke and others v Lee Service Centre CC t/a Leeson Motors* (1998) 19 ILJ 1441 (LAC)
25. *Anglo American Farms t/a Boschendal Restaurant v Komjwayo* (1992) 13 ILJ 573 (LAC)
26. *Pep Stores (Pty) Ltd v Lake NO and others* (1998) 19 ILJ 1534 (LC)
27. *EATWUSA v The Production Catering Company (Pty) Ltd* (1988) 9 ILJ 702 (IC)
28. *Williams v Gilbeys Distillers and Vintners (Pty) Ltd* NHK 11/2/2113 (CAT)
29. *FAWU v Amalgamated Beverages Industries* (1992) 13 ILJ 1552 (IC)
30. *SACCAWU and others v Cashbuild* (1996) 4 BLLR 457 (IC)
31. *FBWU v Hercules Cold Storage* (1990) 11 ILJ 47 (LAC)
32. *Metro Cash and Carry Ltd v Tshelha* (1996) 17 ILJ 1132
33. *Sappi Fine Papers (Pty) Ltd t/a Adamas Mill v Lallie and others* (1999) 20 ILJ 640 (LC)
34. *Ncora irrigation Scheme v FAWU* (1992) 13 ILJ 718 (ARB)
35. *HOESCHT (Pty) Ltd v CWIU and another* (1993) 14 ILJ 1456 (LAC)
36. *Lubners Furnishers v SA Commercial Catering and Allied Workers Union and another* (1996) ILJ part 4, volume 17

## **APPENDIX Q: EXTRACTS FROM LECTURE TRANSCRIPTS**

### **Transcript extract 1: Extract from lecture on Worker Participation**

LA2: And if we had more time I could have gone round the room and asked some of you the kind of things which you are doing in your workplace where in fact no employer, no supervisor can tell you how to do it only you can work that out or perhaps we will do it now, are there any examples you can think of here, from your own work situation, the kind of things, situations where the workers themselves must decide on the job how they do things.

[no response from class]

LA2: I can think of examples, but

[No response from class]

LA2: Take for example a secretary in an office today working with a computer ...

### **Transcript extract 2: from the interview with Student B1**

...he [Lecturer B4] presented a kind of world view which accepted and presented certain things as givens and immutable laws of nature almost, saying there is this globalization, there is competitiveness, we are in this world, we can't fight it kind of thing and therefore we need to, so at one stage he asked for a comment and he actually directed himself to me and I said well I don't think it is appropriate to comment now. I have the opposite view to you on the issue and I don't think I want to debate it in the class and then he got upset because he made the point 'But this is where we should be debating the issue' and I just said that what you were doing is sketching the scene for what you are going to say about development in the field of labour law and if are going to get sidetracked into a debate about globalization and the causes of globalization and whether it is reversible or not I don't want to engage in it in this terrain ...

### **Transcript extract 3: Extract from lecture on Conciliation (from field notes)**

[LA3 asked the class how it was decided, in an arbitration hearing, who should call their witnesses first. A student gave a response that was inaudible to me but must have suggested it was the person who started the dispute. ]

LA3 responded: The party who initiated the dispute. Everybody agree? You all agree?. A lot of you agree?

[Students ventured further responses which did not satisfy LA3. He kept on asking whether the other students agreed. Eventually, SA15 ventured an answer, in legal terms.]

SA15: I'm guessing, but wouldn't it be very much the same as now [inaudible] the onus of proof lies, in the case of a dismissal [inaudible], the onus of proof of the dismissal is on the employee. The onus is on the employer.[inaudible] and that onus or [inaudible]...

[Although SA15's response was as hesitant and partially inaudible as all the rest, LA3 immediately affirmed it.]

LA3: That's exactly, that's exactly the answer I was looking for. That yes, very often, with certain disputes, other than dismissal disputes, the party who refers the dispute has to start off because they bear the onus of proof.

#### **Transcript extract 4: from lecture on Disclosure of Information and Retrenchments, Course A**

LA4: All of you have a different range of experience. I know some of you have probably got a union background, some from management, some of you might not have much labour law experience at all ... but I think it would be useful if you have been involved in retrenchment proceedings, as part of a union, or part of management, it would be useful if during the proceedings you could feed back some of your experiences to the group. So we could look at some of the problems which you have experienced in the different, as management and trade unions. (Opening remarks by the lecturer, LA4)

#### **Transcript extract 5: from interview with SA1**

[I asked SA1 how he was going to use the knowledge he had gained from the course.]

SA1: To be quite honest, to be honest, I think there's no way I will allow management to conquer me on issues like this, ja.

MB: Because now you've got the, that kind of legal knowledge?

SA1: Even though, I think even though there's some kind of relationship in this company already where management will really, they will take very very long to discipline, they will think very very carefully if they want to dismiss a worker, because I think when, in here, we stand on our authority, you see, and ever since, not to say they are scared, but they are very very cautious, even sometimes where situations warrants, not dismissals – disciplinary inquiries, or they are too. Maybe I don't know whether management feel that they, that they are not equipped enough, or skilled enough to deal with disciplinaries and so on.

MB: Are they afraid of strikes, are they afraid of, what is the ultimate sort of threat from?

SA1: No, I was just think they, I think they feel that there are short comings, you know,

MB: Within management?

SA1: Ja, when they come up against the worker representatives that we are like more knowledgeable about the law and so on.

#### **Transcript extract 6: from interview with Student A3**

SA3: ... as a worker representer, you as a organiser, co-ordinator who comes into doing that case, you have to understand that worker because sometimes it goes about the individual worker's pride and that is what you have to take in consideration. So you got to tell that worker: 'Look you can't lift this anymore, I think your job is security, same salary, less hours, less stress'. You got to sell it to the worker, so that weren't there [in the exam question case study]. Then after you've sold it to the worker you know where you stand, then when you go to management, they'll approach you, management will approach you and they will tell you: 'Look, John can't do that work anymore, he's not competent enough'. Then you've got to sell them a hard case. 'Then I'm giving in but it's like I've got to go back to this guy, you [pause]

MB: So you've got to actually tell them that guy doesn't want it, even though you've managed to persuade him?

SA3: Already, so. You, you got to come out with peripherals, with benefits for the guy, you know.

MB: So, I mean, what I'm hearing you saying is that you have to first of all take in a huge lot of almost psychological factors into account. And then you've also got to, you've got to take up positions in

relation to people, of persuasion, you know, where you actually move them in a particular direction, before you even get into

SA3: Yes, because it's a lot of worker's pride, you know, it's like: 'I've been on this machine 20 years, why remove me?'

MB: And when you're dealing with management is there a similar kind of emotion that you have to deal with?

SA3: With management you got to be blunt but you also got to be cautious. Sometime, like you discover you're too blunt and they, you know, then they pull rank but um, with management you got to listen to their side and you got to also listen to the worker's side, and you got to reason but your point and your standing is from the workers' side.

MB: And that you always maintain?

SA3: You stand from the worker side. Like when I do cases, the employer's got this attitude: 'Oh god, S...{her name}, just say what you want and get the fuck out'. So it's from workers' side, it's basically got to come from the worker's side.

#### **Transcript extract 7: from the lecture on the Labour Market, Course B (from field notes)**

Lecture B7 started his lecture by defining the labour market as a 'place' where 'people come together to sort out who will work for whom' and then proceeded to show a graph showing the demand/supply curve (wage on the y axis, employment on the x axis and the intersection representing 'nirvana', as he put it.) See Figure 18.

LB7 drew in several variations to the curve to represent concepts such as non-wage costs and 'the social wage' and made the point that the higher the wage the more likely one was to offer one's labour on the labour market and the less employers would want to employ. At this point, SB1 interjected: 'That is purely a model. Why don't you start with 'The system can't provide for employment'.

LB7 replied: You are right, there a lot of assumptions there. People are going to be asked to draw certain conclusions from something that is not real. We are just showing the demand and supply of labour.

LB1, who was sitting in on the lecture, appealed to SB1: Let him [LB7] show the model. It is not the real world. Let's use it to understand labour market theory'.

LB7 went on to explain that such models were useful if you wanted to answer questions such as: If there are people who aren't employed does that exert a downward pressure on the labour market? Or what about the globalisation debate? Does it lead to pressures on demand for labour in this country? Change in the type of workers people want ....

This was the kind of discussion to which labour economics could contribute, he said. He then proceeded to add to the graph to show non-wage costs.

LB7: Consider this a (firm). We all know South Africa has the highest non-wage costs. They are costs which are not important to a worker, not relevant to their supply of labour decision. What are these costs?

Student: Training.

Student: Mercedes Benz.

LB7: Yes and medical aid, pension fund.... The employer wants to hire less people because of issues surrounding the wage. You could cheapen the non-wage costs while not harming the workers – for example, with a better social health system.

At this point SB1 intervened again. He said his comments earlier were trying to give the debate ‘a South African flavour’. LB7 insisted: ‘But you got to get a sense of what the labour market is...’ and he proceeded to present the class with concepts that, while they were presented as academic, formal and thereby somehow neutral, were nonetheless steeped in the discourse of the employer.

Consider the labour hassle factor’, he said. ‘They [employers] can’t make profits if they don’t have labour. The cost of using labour. Not a precise cost, a very vague thing. Hiring labour is not just about the wage. At same wage you want to hire less people. Conflictual. You can’t expect workers to agree. That notion of a labour hassle factor implies the curve shifting around here. [Illustrates on graph.] How big is the labour hassle factor? How much is it shifting the curve around? There is a big debate about wage-employment elasticity. A lot of debate in NEDLAC about that. It is about how steep this curve is.[Points out on graph.] If you lower wages [inaudible] Employers see Department of Labour is too labour friendly. Want to go capital intensive route. Does that happen? Do people try to circumvent labour relations? Yes. Is that a pressure on the labour market? Yes. Either you say these people don’t like workers, they are skullduggers – give a bad image to employers – or you say this is one of the forces of the labour market at work.

Later in the class, SB1 challenged him again: If the wage is pushed up it doesn’t imply unemployment. Theoretically perhaps. There are questions of profit margins etc. Of taking a drop in profit That implies that this isn’t a proper wage curve. There is fat in the curve.

LB1 argued again that the purpose of the curve was not to represent reality. It is an ideal type. A heuristic device. Not meant to represent reality. The reality is that there are a whole range of variables.

LB7 commented tersely: If this is ridiculous, treat it as commercial break ... and proceeded to continue with his account of ‘forces of change’.

#### **Transcript extract 8: From interview with SB1**

The only thing [the course] brought home to me is that you have to read a lot and keep abreast of judgments. You know something that might have been relevant a year, six months has been changed and a new precedent has been set by the courts... As a result of that when I came back into the union and I went into the legal section, I initiated a system in the union nationally whereby we put all of our provinces, we subscribed to the Butterworths Labour Law electronic library, we secured subscriptions of the Industrial Law Journal and the Employment Law for all of our provinces. So I introduced all of that, got that going, so our provinces and people responsible would be able to be updated, read the latest cases and that kind of thing. Because it was something which came home to me during that period that unless you are up to date on issues you can often give wrong advice

#### **Transcript extract 9: from interview with SA15**

[I asked SA15, a qualified attorney with an LLB from Stellenbosch University and a masters in Law from Oxford, how he studied.]

SA15: ...firstly you got to understand what the topic is about and you got to go through the work and then you either, and you must understand the content, if you don’t understand it you are not past base one, then the second point is memorizing it, and either you have already got it up here or you go through it over and over again. I don’t go over and over it again by just re-reading it I go over it again by checking myself. I say okay now the topic is on sexual harassment, I’ve read through the notes, what can I remember, I jot it down and then it tells me what I have stored up here and what I haven’t and by going, reading through it again, next time I will improve on my own checking up...

I go over and over it again but not just by re-reading it but by testing myself what I can recall of the content and what I miss out on I make notes and I force myself then to remember what I have forgotten this time around. Next time around I probably will remember it until in the final analysis I have got ninety or a hundred percent up here [indicates his head].

**Transcript extract 10: From interview with Student A1**

[I asked SA1 how he studied for the exam.]

SA1: I went through the notes and I extracted all the parts that is in the Labour Relations Act. So then I merged the notes and the LRA. You see, in actual fact, what I normally do when I, when I study, um, I think to a certain degree, um, I should have done that, if I look back now through the course, I should have done (it) from day one, you know.

MB: Ja.

SA1: You know. What I normally do, all the important points, I normally extract, I type it up.

MB: Ja, immediately?

SA1: Ja, then I, then I blow it up here on the, on our copy machine.

MB: Okay.

SA1: Then I paste it on my wall.

MB: That's a good idea, ja.

SA1: So you always – you constantly look at it and that allows you remembers it.

MB: Ja,

SA1: when I sit, in the exams room, I picture myself in my room.

MB: Ja, is this your room at home or..

SA1: At home, ja. Then I picture myself at home. I'm lying on the bed okay then I can sort of visualise those pastes.

**Transcript extract 11: From the interview with SA15**

[I asked SA15 whether there was there any stage in the course where he felt he could draw on his own personal experience, either his private experience or his experience as a lawyer?]

SA15: No, because I told you (in) my particular instance I hadn't practiced labour law at all. I had no knowledge whatsoever of even the most basic concepts in labour law. When I was at university it wasn't a subject, there was no such thing really as labour law in the sixties, it is a new development, I couldn't draw on anything. Even a simple disciplinary hearing I knew nothing about it. Nothing. All I knew was that you had to give an employee a fair hearing you can't simply discharge them. I had nothing to draw on.

MB: Do you think there is a role for experience...?

SA15: Yes undoubtedly. If you do arbitrations or are involved in arbitrations on a regular basis, that is a practical thing, the procedure, how arbitration runs, certainly that is going to assist you to some extent in passing your exam here.

MB: But not to full extent?

SA15: No because to a large extent you must still know what the relevant act says and you have to swot up a few points.

**Transcript extract 12: from interview with SB1**

SB1: One fundamental difference [between trade union and formal education] is that it has an almost overtly working class or trade union bias to issues so it often contains a critique of the current system and starts posing options or opening up space for debating alternatives, whether it is changes to current law or whether its economics whether it is organizational structure or anything, its intention or clear objective is to strengthen the role of the organization, to basically advance the interests of workers and the economic class that they come from, so it is an overtly political event, (the) educational event.

**Transcript extract 13: from interview with SB2**

SB2: ... [a trade unionist's] way of thinking is also influenced by the collective where, sitting down as individual, you had to grapple issues on your own and when grappling with those it means taking them to another level. You have to follow things through. One would sometimes try to internalise it, saying you are lazy you don't want to do the work. It is not that, man, it is not about what you do, it is just getting down.

**Transcript extract 14: from interview with SB1**

[SB1 was sent to America on an exchange fellowship to do a study of institutions relevant to his union work.]

SB1: We had to write up a very brief kind of report which we tabled to them, of whether the visits met our expectations, what were some of the issues that we found lacking in the programme that kind of thing. It was restricted to a couple of pages and then you had a kind of debriefing seminar where everybody had to, it obviously had a particular intention, I knew what the intention was. I played the game.

MB: What was the intention?

SB1: The view is clearly to foster greater awareness of world politics and promote free market thinking particularly within developing countries among influential people in the system of that society.

MB: How did you straddle?

SB1: I was genuinely interested in learning what happens so in that sense I was keen, I was for example questioned by one of the people who oversee the programme, why do you wear an earring. I simply refrained from entering into ideological debates, I wrote up the report said this and this is where it differs from SA but my concluding remarks what I found in America was the high degrees of kind of racism, not in institutionalized form but clearly there which is brewing and there is a lot of anger amongst people about what is happening. I brought that into the report and said it is quite clear that unless it is addressed you know what has happened in South Africa will seem like a Sunday school picnic compared to what could happen here if these things are not addressed because it is clear there are serious problems. I was conscious of what, I didn't in any of my reports put anything that I didn't believe in but I was also careful how I put things, so in a sense by knowing exactly what they wanted I

was able to... if I wasn't aware what their intention was, I might have gone on a tangent about a particular issue.

MB: How did you learn what it was that they wanted. Were they quite clear?

SB1: Because I have been a political activist for a long time I tend to understand a lot of these things and (then again) maybe I am wrong, I read people wrong.

**Transcript extract 15: from interview with SA6**

[Here SA6 describes the 'stage fright' he experienced during the Course A exam.]

..., the night I went there and I got to the gate it's almost like I started panicking and we met each other outside and the people started talking about that and I got so scared and I just walked away and when I came in I was frozen. To be honest with you, I just, when I got home the evening, my wife asked me what is wrong with me. I said I know all the answers, all the answers, but tonight I just couldn't write.

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