

## PROFESSOR JOHANNES CHAN MAN-MUN (1): ADVICE ON LEGAL WRITING

### **What makes good legal writing in academic settings?**

In one sense, it is not much different from any other good writing: the clarity of expression, the clarity of thoughts. I think these are the most important aspects of it. And a lot of times, the problem of good writing is not really about the writing style, but rather it's the thought behind. And time and again, we have seen students who have no idea what they are talking about and then keep going round and round, or they have no idea what are the issues and so on. So if you can't get your thoughts clarified beforehand, you don't know what you are writing, you can't have good writing.

Writing is to communicate. And a lot of people think that writing is just for yourself and so on. You have to think about it from the audience's point of view.

### **As a law professor, what are you looking for in the writing that you read?**

There are some general things we are looking for. For example, in a student paper, the clarity of expression is one thing, the extent of research, the argument: how does it run, what kind of argument, what point are you trying to convey, whether it's convincing. And sometimes students overlook that part, it's not just putting an argument. Sometimes they put up just completely fancy arguments and I keep telling them, 'You can argue anything you like, but then in a legal professional setting, it has to be able to convince and if it's too far-fetched, you simply won't convince people'.

Another thing is you have to engage with the opposing views. Recently, I've just marked another sixty essays and some of the problem is, they just put forward their views as if there were no opposing views or we can forget about the opposing (view) and then they say why transsexual marriage should be recognized, why certain things should be done that way, but then, what are the opposing arguments? What are the considerations that you have to address in a way? Sometimes they overlook that and then some students come back and say, 'Oh, but if I have to express my case, and I have to deal with the oppositions, then how could I put them altogether and you give me only six thousand words?' etc. And that would be the challenge – how to be economical: brevity and clarity. And sometimes we need to exercise a little bit of discipline on ourselves and that applies to

even academics as well.

**What are the main challenges that novice lawyers encounter when engaging in legal writing in a professional setting?**

One is time. You don't have the luxury of time. And in real life, everything has to be done yesterday. And there are many occasions, even when I go to court, I think, 'Oh, how nice if I got another day' or even 'How nice if I got another hour'. I never feel that I'm fully ready to go into court that I need no further preparation. It never happens that way. So timing and self-discipline are very important aspects which you have to train even from your student days, to leave yourself sufficient time. Don't leave things to the last minute. There will always be uncertain, unforeseeable things that happen in the last minute.

Tension could work both ways. I think tension is a good thing. I remember, again, Lord Denning in his book on due process. He said he can still remember forty days (years) from his first day of practice how nervous he was when he first appeared in court, but forty years later, he's now been on the bench for so long, he still feels that anxiety. This is the anxiety of your responsibility to reach a fair decision. And I always believe that this kind of tension would push you a bit further than what you think you can do, but then at the same time you will have to be able to cope with that tension.

**What advice do you have for students who are learning legal writing?**

Before you start reading a case, ask yourself why you want to read this case. You can get that from lectures or from reading textbooks, so you have to have some ideas why you want to get this case before you read it and then focus on those parts. And then in mooting, for example, and time and again, we have seen students doing the mooting and then citing a case, and then you have to stop him and 'Tell me why you want this case and how does it help you?' and so on. And somehow, they're suddenly stuck and then when you point out, 'The factual situation is very different', and then they concede. They should have thought about that before. So all this ties in, I think, with practice and there is no easy way. They have to do the hard way to go through and read enough

cases for that. And this is something that you cannot derive and learn just by reading headnotes or summaries.