

# A Practical Guide to Embedding Commercial Awareness into your Curriculum

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## Abstract

This chapter aims to equip lecturers with the tools they need to embed ‘commercial awareness’ in their teaching. The meaning of commercial awareness is explored and the arguments in favour of students developing this attribute are discussed. The chapter then introduces two examples from the law schools of UK universities where commercial awareness has been embedded. The first example concerns a very practical module which was specifically designed to ensure commercial awareness was at its core. The second example used student and employer partnerships to add commercial awareness to an established module which had a lot of ‘textbook’ learning but little real-world application. The examples provided offer lecturers with step-by-step toolkits to facilitate the creation of their own learning activities which embed commercial awareness. The positive impact of integrating commercial awareness is highlighted using feedback from students who have experienced these modules.

## Keywords:

- commercial awareness
- authentic assessment
- student partnerships
- employability
- employers

## <a> INTRODUCTION

At every turn, budding lawyers are reminded of the necessity to be commercially aware. Graduate recruiters and legal directories impress upon the reader the most important feature of good legal advice: having a lawyer who is ‘commercial’ in their approach. But what does this mean, and how can it be taught?

This chapter aims to address these questions as follows:

We offer some defining features of ‘commercial awareness’;

We detail why its inclusion adds value to your module; and

By sharing examples from our practice in two UK universities, we provide step-by-step toolkits to embedding commercial awareness into your teaching.

#### <a> WHAT IS COMMERCIAL AWARENESS?

Commercial awareness is not so much a skill as a way of thinking. There is an abundance of literature identifying the importance of commercial awareness, but there is no single agreed definition. There are, however, common themes in the definitions available. It is a mindset that involves (i) appreciating how the client operates and where they sit within their sector; and (ii) understanding their priorities, strategy, and approach to risk and cost. Unless a lawyer understands this, they cannot give 'commercial' advice.

Commercial awareness links to commercial skills, i.e. the skills that professionals need to demonstrate to give their client confidence, for example presenting, drafting and writing. This also encompasses an ability to handle documents and situations commonly encountered in the commercial workplace, such as analysing dense bundles of paperwork and identifying relevant issues.

#### <a> WHAT ARE THE BENEFITS OF INCORPORATING COMMERCIAL AWARENESS INTO THE CURRICULUM?

##### <b> For the student

The benefits to the student are clear. Not only do they gain a better understanding of the work of graduate employers, but they are also able to develop additional skills which make them more attractive to potential employers and will enable them to perform more effectively once in the world of work.

If learning activities are integrated as part of the core module, then every student benefits. This democratises these commercial awareness raising activities, rather than making them the preserve of a few students who are free from the constraints of paid work and/or caring commitments and can thus freely engage in resource-limited co-curricular opportunities.

One of the greatest advantages of a practical approach to learning is that it allows a more diverse group of students to shine. Those students who may not perform particularly strongly in traditional essay-based modules but who would make a very sound contribution as a junior lawyer are given the opportunity to excel in a simulated client-facing role, which improves not only their grades but also their confidence and sense of self-worth.

##### <b> For the graduate employer

Law firms themselves place a high value on commercial awareness. In simple terms, their lawyers need it, to keep the clients coming in. Knowledge of the law is a 'given' in practice: the real value a lawyer brings to the table is understanding how the law relates to the client's current priorities and pressures. Recruiting graduates who already have some demonstrated understanding of commercial awareness saves the employer time and resources if the groundwork has already been laid.

##### <b> For the HE institution

Universities want their students to get jobs, so giving students a sense of commercial awareness (which is what employers want) is an institutional, and therefore departmental, driver. We all want to see our students do well as a general principle, but there are also pressures on institutions to improve their employability metrics (i.e. measurements of the proportion of their alumni who enter graduate-level roles). If students are commercially aware, it follows that they will be in a better position to secure, and then retain, a graduate-level role, which in turn enables universities to perform better in the numerous league tables influencing students and their parents weighing up the potential return on investing a significant sum on university fees.

#### <a> EMBEDDING COMMERCIAL AWARENESS: Important First Considerations

The toolkits below provide a guide to embedding aspects of commercial awareness into Commercial Law modules.

First, it is important to consider what resources are at your disposal. For example, for an existing module, is there capacity for contact time to be increased so that new learning activities that promote commercial awareness can be implemented *in addition to* what is already offered? If not, how might the time be apportioned between new activities and the original content?

When designing or redesigning your module, do you have access to practising lawyers who might be able to help? Is student collaboration a priority or a possibility to be explored? How large is your teaching team? From the people around you, what skills do they bring that could be utilised in the design of new 'commercial awareness' activities?

Embedding commercial awareness can be, at least initially, a labour-intensive exercise. We hope that our toolkits will lighten the load by equipping you with some ideas. You can adopt the model that most closely aligns with your own circumstances or choose elements from both case studies to create your own bespoke plan.

#### <a> TOOLKIT 1: DESIGNING A MODULE EMBEDDING COMMERCIAL AWARENESS FROM SCRATCH

At the University of Chester, Commercial Law is an optional 20-credit module delivered to second year undergraduates, many of whom are from a non-traditional educational background and/or are the first in their family to attend university. Typically, the module is delivered to around 60 students each academic year, representing 50-60% of the cohort. Up to 20 students participate in each workshop.

The module leader is a qualified solicitor with a background in practising in a commercial law firm. The module follows the early life of a start-up client, and considers issues pertinent to setting up in business, funding options available for growth, and legal issues encountered as the business expands. Students are assessed at the mid-point of the module by way of a client presentation, and at the end of the module by way of a due diligence report.

The toolkit below is based on our experience at the University of Chester and includes discussion of the stages involved in building a new module embedding commercial awareness

and commercial skills. The four steps explained are iterative and as such this toolkit is best described as a cycle rather than a chronological guide.

#### <b> Step 1: Think about Design

It is important to design the module to address not only the legal learning outcomes of the module but also to incorporate commercial awareness and commercial skills as learning outcomes in themselves. The question then arises as to how best to design the overall flow of the module so that the opportunity to think commercially and demonstrate commercial skills becomes a natural process for students, rather than commercial awareness being an 'added extra' bolted on to the legal content.

At Chester, we achieved this by following one client through a series of 8 workshops. Students are introduced to the client (a manufacturer and retailer) in workshop 1 and are provided with the client's most recent instructions at the start of each subsequent workshop, by way of email or attendance note. Students follow the client's progress as it grows from a sole trader to a limited company, expanding via cash injection from an incoming shareholder, growing its supplier and client base, and expanding into new territory, ultimately looking to buy another company to diversify its business.

Following the client in this way allows students to appreciate how a client's concerns and priorities change over time. Advice formulated during workshops is tailored to what students know at that point about the client, its competitors, stakeholders and sector, and the instructing individuals' attitude to risk and cost.

It is important, of course, that a commercial law module tests knowledge and understanding of legal principles, and it may be tempting to fill the module with all manner of legal quandaries that could be encountered under the 'commercial law' head. However, it is vital not to overfill the module descriptor, and thus workshop time, with technical legal content. Doing so would be to the detriment of allowing students both the space to think commercially about how the law relates to the client's priorities and the time to practise the skills required in practice and for the assessment.

<c> TIP - Be clear with students from the outset that commercial law has a very wide definition, and that the module explores just some of the many commercial law principles as a vehicle for practising the mindset and skills needed to advise a client and to operate in the commercial world, regardless of which area of law they go on to practice.

#### <b> Step 2: Think about Delivery

When thinking about delivery of the module, make sure that sufficient weight is given to commercial awareness and practising real-world skills as well as to technical commercial law. Students should continually be reminded that 'getting the legal answer' is only the first stage: the real skill then lies in using that legal answer to provide tailored advice to the client on strategy and next steps, presented in a way the client understands.

At Chester, during our workshops, students are typically split into smaller groups to formulate responses to previously unseen client instructions prior to presenting back to the group for

discussion and feedback. During each session the commercially aware mindset and the skills of teamworking and practical problem solving are used to formulate advice, and then presentation skills and/or drafting skills are practised to communicate this advice in a client-friendly way. Our workshop series follows the structure set out below, balancing legal and commercial content and the opportunity to practise skills:

Workshop (90 minutes)	In-class activities
1. Commercial awareness, presentation skills	<ul style="list-style-type: none"> <li>• Defining commercial awareness and its importance.</li> <li>• Introduction to client, discussion of how knowledge of client impacts advice.</li> <li>• Defining a good presentation and critiquing examples.</li> <li>• Discussion of assessment criteria.</li> </ul>
2. Choice of business medium	<ul style="list-style-type: none"> <li>• Formulating advice on the most appropriate business medium to adopt in response to instructions.</li> <li>• Presentation of advice and formative feedback on presentations.</li> </ul>
3. Financing the Business	<ul style="list-style-type: none"> <li>• Formulating advice on how best to structure equity/debt finance arrangements to achieve client goals.</li> <li>• Presentation of advice and formative feedback on presentations.</li> </ul>
SUMMATIVE ASSESSMENT 1	Presentation to two clients on choice of business medium and financing the business (50% of overall mark)
4: Commercial solutions to business problems	Roleplay (as Board of Directors) critiquing due diligence report.
5: Running the Business: Buying & Selling I	<ul style="list-style-type: none"> <li>• Formulating advice to client on contractual dispute.</li> <li>• Drafting due diligence report on potential business acquisition.</li> <li>• Formative oral feedback on report</li> </ul>
6: Running the Business: Buying & Selling II	<ul style="list-style-type: none"> <li>• Roleplaying paralegal to identify constructive criticism of DD report. Formative feedback on points of constructive criticism.</li> <li>• Formulating advice to client re: sale of goods dispute.</li> </ul>
7: Expanding the Business I	Formulating advice on authority dispute and agency ratification.
8: Expanding the Business II	<ul style="list-style-type: none"> <li>• Considering data room from a second potential business acquisition.</li> </ul>

	<ul style="list-style-type: none"> <li>• Drafting DD report outlining legal issues relating to commercial agency and proposing commercial solutions.</li> <li>• Formative oral feedback on report.</li> </ul>
SUMMATIVE ASSESSMENT 2	Due diligence report to client wishing to purchase another business. Identifying potential legal risks and how to minimise these within share purchase documentation (50% of overall mark)

<c> TIP - Dedicate time to ‘selling’ the module to students by exploring with them reports highlighting the importance of commercial awareness in the workplace, testimony from employers underlining the importance of the skills and mindset practised, and feedback from graduates on the value of the module for the future.

<b> Step 3: Think about Tasks and Materials

For the module to prepare students for the world of work, the tasks undertaken, and documents used, need to replicate as closely as possible the real - and sometimes messy - world of practice. Provide students with varied real-world documents to help them become accustomed to the need to interrogate documentation as part of ‘looking for the answer’. For example, if asking students to formulate advice relating to authority of agents, provide them with an attendance note, an employment contract and a signed invoice rather than setting a ‘problem scenario’ in 1 document neatly explaining all issues.

<c> TIP - Set practice-focussed reading as preparation for sessions, to ensure students become familiar with the law ‘as practised’. For example, as an alternative to setting textbook reading on battle of the forms, you could provide a link to a client briefing from a commercial law firm (freely available from a simple internet search) advising how best to draft umbrella agreements to avoid disputes.

<b> Step 4: Think about Authentic Assessment

Authentic assessment (assessing students on their ability to use the knowledge, skills and competencies they will need to employ in professional life) allows students to see a context for their learning and, importantly, permits those who may not excel in essay-driven modules to really shine through strong performance in real-world tasks.

Build assessment tasks (and concomitant module learning outcomes) that test not only the legal principles explored during the module but also the commercial awareness and commercial skills that are required in the workplace. Importantly, these tasks need to be useful to students: they need to teach them something about how the law is practised and how to use the skills needed to communicate appropriately with clients.

At Chester, students submit two assessments. The first involves students recording a 10-minute video presentation providing advice to 2 new clients. The first client is advised on the most appropriate business medium to adopt for a new venture and the second is advised on

how best to structure a funding stream to finance expansion plans. The assessment brief comprises a set of instructions from each client (these clients are different to our case-study client considered during workshops) in the form of attendance notes which set out not only the factual matrix but also the clients' priorities, concerns, and attitude to risk. Students are prepared for this assessment from the first workshop, which is expressly designed to be devoid of legal content and to concentrate instead on the importance of understanding the client's business, sector, priorities, and the personalities of those from whom we take our instructions. Through workshops 2 and 3, students practise formulating practical advice in the context of the client's priorities relating to choice of business medium and choice of funding arrangement, and consider how best to phrase and present their advice in preparation for the assessment.

The second part of the module leads into Assessment 2 which asks students to draft a due diligence report for a new client proposing to acquire an existing business. The first workshop in this part (workshop 4) is dedicated to understanding the steps involved in a corporate acquisition, what due diligence and disclosure entails, and how legal risks can be managed by provisions in a share purchase agreement. Through workshops 5 to 8, students continue advising our client in response to instructions regarding potential sale of goods and agency disputes. There are specific opportunities carved out of workshops to practise navigating longer commercial documents and drafting and critiquing due diligence report wording. The brief for Assessment 2 is accompanied by an online data room - a folder on the virtual learning environment - containing real-world documentation (e.g. correspondence, terms and conditions, sale of goods contracts, emails, invoices) which reveal unresolved legal issues in the target business. The aim here is to prepare students for document handling in practice, replicating the need to delve into paperwork to uncover pertinent issues.

Students are provided with a sample assessment pack at the beginning of the year which contains the previous year's assessment briefs and are invited after each workshop to reflect on how the content of that workshop could be applied to relevant sections of the sample assessments.

<c> TIP - Ensure familiarity, from the earliest opportunity, with the layout of the module's assessment briefs, the types of documents that are provided to accompany the briefs, and the marking rubric itself.

<a> TOOLKIT 2: ADDING COMMERCIAL AWARENESS TO AN EXISTING MODULE: HOW TO INCLUDE STUDENTS AND EMPLOYERS IN THIS PROCESS

The Commercial Law module at the University of Reading is a popular optional module for final year undergraduates with a typical cohort size of 200 students. It is academically rigorous and its primary focus concerns the sale of goods. For many years, the module only employed 'traditional' forms of learning and assessment. This included lectures, tutorials, and an end of year examination consisting of essays and problem questions. The curriculum had limited 'real-world' application, no student input, and afforded students no choice. We wanted to change that; the core module content (the lectures and tutorial questions) would remain, but

we sought to add new learning activities and assessments which would help students to better develop their understanding of commercial awareness. We did this through a staff-student collaboration, and in consultation with practising lawyers.

The toolkit below is based on our experience and offers a practical step-by-step guide for including students and employers in the design of learning activities which develop commercial awareness. We appreciate that collaboration with employers and students may not always be feasible, but we hope that you will be able to use elements of this toolkit to fit with your own circumstances.

#### <b> Step 1: Determine the ambit of the proposed student collaboration

The involvement of students in collaborative projects can broadly be described in two ways; students may simply be consulted on their views, or their role could entail greater responsibility and involve them making decisions and being 'agents of change'. It is important to determine what kind of collaboration will work for you. At the University of Reading, we decided to give students control over the design of assessments and workshops to develop commercial awareness. The original 'academic' content ('tutorials and lectures') would remain unchanged.

<c> TIP - Bovill and Bulley's (2011) 'Ladder of Student Participation' is a very useful guide to determine where to 'place' your collaboration<sup>1</sup>

#### <b> Step 2: Find your student-partners

Consider how you want to recruit your student-partners. What criteria might be necessary? How many students should be involved? From which pool of students should a selection be made? At the University of Reading, we created a summer vacation 'Research Placement' which was funded by a small bursary. All undergraduates at our law school were offered the chance to apply by way of a 300-word statement and a copy of their C.V. Shortlisted candidates were then offered a brief interview.

<c> TIP! If finances allow, a bursary is an important component because it promotes equality of opportunity.

#### <b> Step 3: Consider with your student-partners how module changes will be made

Discuss with your student-partners how you envisage the staff-student collaboration. Ask them how they feel about the level of autonomy that will be given and detail the level of support that you will be providing. Form a joint plan of action and proposed timetable for tasks. For us, this meant that the student-partners would be conducting research during the summer break; the research would then be used to make changes to the module. The

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<sup>1</sup> Catherine Bovill & Catherine Bulley (2011). A model of active student participation in curriculum design: exploring desirability and possibility. In: Rust, C. (ed.) Improving Student Learning (ISL) 18: Global Theories and Local Practices: Institutional, Disciplinary and Cultural Variations. Series: Improving Student Learning (18). Oxford Brookes University: Oxford Centre for Staff and Learning Development, Oxford, pp. 176-188.



research placement was equivalent to about 35 hours' work, but students had some flexibility regarding when they undertook various tasks.

<c> TIP - Don't assume that you will find it easy to give students autonomy, or that students will not be nervous about the responsibility it entails. Spend time building up your relationship before key tasks are assigned.

<b> Step 4: Conduct industry-based research; interview relevant employers

We contacted alumni and local law firms to arrange semi-structured interviews between our student-partners and lawyers in practice. If you can do the same, it is an invaluable exercise because it provides an authentic insight into what employers are looking for, and if your student-partners are conducting the interviews, they are enhancing their people skills and networking by undertaking the research.

The student-partners devised a series of questions, including asking interviewees for their definition of 'commercial awareness' and for suggestions on the kinds of learning activities which could develop it.

<c> TIP - Conducting interviews online can save time for interviewees. Ask for permission to record the discussion; clips of the conversation can then be used in class so that all students can hear the advice from practising lawyers.

<b> Step 5: Conduct student-based research; run focus groups with the wider cohort of students

Students who were planning to choose the Commercial Law module were invited to join focus groups; these were also run by the student-partners. Students were asked how and when they wanted to be assessed; they were also consulted on how they felt about the module being redesigned to include more commercial awareness.

<c> TIP - It is important to include the wider student cohort so a greater number of students can have an input into their learning; this is likely to enhance the student experience.

<b> Step 6: Use the research to co-design a choice of authentic and inclusive learning activities

The interviews conducted by our student-partners with employers made it clear that we needed to pay more attention to the 'client' if we wanted our students to develop commercial awareness skills. To this end, the lawyers in practice suggested authentic or 'real-life' activities that we could adopt including writing a letter of advice to the client, mediation, and client interviewing.

Students in the focus groups told us they wanted more practical application of their learning; they also wanted options in respect of assessments. We therefore introduced a choice of assessment titles for their first piece of summative coursework (40% of their total mark). This involved 'traditional' essay titles, but with a twist: students were able to choose whether to offer this work as a written or oral presentation. We also took account of *when* students wished to be assessed during the academic year.

We used the original module content (the lectures and tutorial questions) to form the basis of a fictional case study about legal issues arising between two companies. Authentic-looking sources were created including emails, social media posts, letters, and a website. The case study (a single bundle of documents) was then used to facilitate workshop activities that the lawyers had suggested to develop commercial awareness. The case study also formed part of the basis on which students would be assessed during their formative work and second summative assessment. The students considered the perspective of 1 party for a formative exercise, and then swapped to the other party for their summative work.

The original module consisted of 5 tutorials, each 1 hour in length. We doubled this to facilitate the addition of commercial awareness workshops. At the end of the module, students were awarded a 'Certificate of Commercial Awareness' detailing the activities they had undertaken during the workshops. Formative and summative assessments were woven between the Seminar cycles, affording students the opportunity to receive regular feedback on their learning.

Seminar (2 hours)	Tutorial Questions (1hr)	Commercial Awareness Workshop (1hr)
Seminar 1	Scope of Sale of Goods Act 1979 and Consumer Rights Act 2015	What is commercial awareness? Introduction to the legal themes and clients in the case study
Seminar 2	Obligations under sale of goods contracts	How to write in plain English to the client
FORMATIVE ASSESSMENT	Practise writing letter of advice on a disputed issue to the case study client.	
Seminar 3	Remedies and restricting liability	The importance of context: understanding your client's business
SUMMATIVE ASSESSMENT 1	Essay or Oral Presentation from a choice of topics (40% of overall mark).	
Seminar 4	Property and risk	An introduction to mediation using the case study
Seminar 5	Agency and exceptions to <i>nemo dat</i>	An introduction to client interviewing using the case study

SUMMATIVE ASSESSMENT 2	Report on legal issues raised in the case study for a fictional supervising solicitor and letter to the client to explain those issues (60% of overall mark)
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Additional activities were provided during the module to support students' acquisition of commercial awareness including a weekly online 'Commercial Law Club' with guest speakers including lawyers and academics. Invited guests were not required to undertake any preparation: they were informally interviewed about their background, career choices and current job. This gave students an insight into different careers and an opportunity to hear personal stories from people with diverse backgrounds.

#### <a> HOW TO CREATE AN AUTHENTIC CASE STUDY

Both of our examples stress the importance of using authentic-looking documents. It is important to introduce these from day 1 of your module, as this allows students to become familiar with this style of material before they see it in the assessment brief. This does not mean that they need to have a complete bundle straight away: releasing documents in stages works better and is more reflective of practice.

A good starting point is to envisage the problem question 'in reverse'. Instead of giving students the distilled facts in a single paragraph, produce a series of mocked-up source materials such as letters, emails, contracts, and invoices between fictional businesses. Templates are freely available online to assist you with this. This approach allows students to develop their ability to find the issues themselves.

Once you decide on the type of business that your fictional businesses engage in, research that area of commercial activity. Have a look at some of the standard form contracts used in that industry, download, and adapt them. Similarly, look at the published accounts of those types of businesses. Again, these can be adapted to fit your case studies.

Reproducing real-world documentation takes significantly longer than drafting up a problem question, but this investment is worthwhile as it enables students to engage as they would, in the world of work, with complex documentation and to practise the skill of identifying the pertinent sections of dense paperwork. It's a good idea to produce documentation that can easily be updated or 'tweaked' so that it can be used for more than one academic year.

<c> TIP - When creating characters for your case study, ensure that diversity is represented in your choice of characters and their roles in your fictional businesses.

#### <a> HOW TO APPROACH ASSESSMENT WHEN USING AUTHENTIC MATERIALS

If you decide to employ authentic assessment methods, bear in mind that students will need ample opportunity to practise the mindset and skills required to perform well in these assessments. Weave formative assessment opportunities through the workshop series,

whereby students can receive both peer- and tutor-led feedback on the practical skills (presentation, report writing etc) they are developing and the commercial awareness they are cultivating in response to client instructions.

There should be absolute transparency around how assessments will be marked to ensure students are not disadvantaged by the novelty of these assessments. Share and invite discussion of the rubric at the earliest opportunity, and wherever possible make past assessment briefs available from the beginning of the module. It is also advisable to share extracts from anonymous past attempts during sessions, to show students what they need to do, and to avoid, to score well.

<c> TIP - Be prepared for the fact that students may struggle with handling uncertainty and ambiguity: assure them that this is valuable preparation in working with real clients.

#### <a> MEASURING IMPACT

Feedback at Chester and Reading has demonstrated the value of embedding commercial awareness. Students consistently report that they enjoy the practical focus of the modules and the insight they provide into the working world, with many reporting that they see it as a welcome break from the black-letter law and a valuable opportunity to practise client-facing skills, to handle real-world documentation, and to understand what thinking 'commercially' entails.

*"The Commercial module was so helpful to me when I did a work placement this summer. Having an awareness of how to word my advice (like we did in our presentation and in the due diligence report) was so useful when I was communicating research to partners at the firm. I think the module really helped me with professionalism and the ability to communicate clearly."* University of Chester student

*"An innovative module that is far more representative of work in practice. Building employability directly into the curriculum is definitely the way forward."* University of Reading student

In addition to qualitative feedback, quantitative data can be obtained by asking students to rate their understanding of 'commercial awareness' using a Likert scale ranging from 1 to 5, at both the beginning and the end of the module. When this exercise was conducted at the University of Reading, only 25% of students rated their understanding of commercial awareness as 'good' or 'excellent' before starting the module; this had risen to 76% after completing it.

#### <a> CONCLUSION

Embedding commercial awareness and commercial skills into an undergraduate module takes significant thought and preparation to ensure that the tasks set are engaging and authentic, and that the module 'hangs together' effectively to address both technical legal learning

outcomes and the skills gap that exists in today's workplace. We hope that our case study toolkits will give colleagues food for thought and will assist in constructing a module that enables your students to become commercially aware.

<a> TOP TIPS

1. Be authentic: find the right balance between 'practical' skills and purely 'academic' content and use real-world examples, documents and tasks
2. Be creative: about assessment, and allow plenty of opportunity for practise
3. Be confident: sell the value of the module to students before and during the module