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In addition to its content, a university education in law is characterized by the formats and subjects of its examinations, in particular the career-relevant first state examination in law. The high career relevance of the first state examination in law as well as its specific requirements mean that preparation for the state exam takes center stage for students even in the early stages of their studies. These specific exam requirements, as well as a high degree of uncertainty among students, uphold the traditionally widespread existence of commercial refresher courses, and at the same time limit the leeway for the individual faculties and instructors.

At first glance, this does not seem to result in a favorable environment for elements of inquiry-based learning. Irrespective of the regular calls for a reduction in the list of examination subjects or the further expansion of the examination formats (Wissenschaftsrat 2012, p. 62), exploratory learning offers students the opportunity to develop a basic understanding of the legal working method. On the one hand, such an understanding facilitates the ability to systematically handle large quantities of material. On the other hand, it also improves the capacity for differentiated reasoning and thus considerably increases the quality of the examination results. Inquiry-based learning can therefore also offer significant added value within the supposedly “tightly laced corset” set by state examinations.

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Starting points for inquiry-based learning can be found in the focus areas that emphasize in-depth study; above all, they are provided in the teaching format of the seminar. These have become less significant due to changes in the study regulations at many faculties within this course of studies. In terms of inquiry-based learning, seminars offer the opportunity to place greater emphasis on students' own initiative, for example in the development of the respective research questions.

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## 28.1 Basic Conditions for Inquiry-Based Learning in Legal Studies

Pursuant to Section 5 (1) of the German Judiciary Act (*Deutsches Richtergesetz*, translated), qualification for the judicial office can be obtained by someone who “acquires a law degree at a university with the first state examination and subsequent legal traineeship with the second state examination; the first state examination consists of a university specialization examination and a state compulsory examination.” Qualification for the judicial office is simultaneously the admission requirement for the other “traditional” legal professions: notary, counsellor in public administration, companies and associations. Although the international comparison shows – and it is repeatedly demanded within the profession (from among the chorus of critical voices, only Wissenschaftsrat 2012, p. 59 et seq., in particular 61 et seq.) – that law as a university subject is also conceivable with completely different curriculum designs and examination formats, the present state of legal studies at German universities is characterized by the orientation towards what the German Judiciary Act calls the “first examination.”

This examination consists of a university section and a compulsory subject examination, the latter is the responsibility of state examination offices. Although the university portion in all departments is designed such that it is largely identical, with differences only in details, the state part of the first examination is considered the “actual” examination because of its supposedly greater comparability, in particular in terms of grading. The exam is predetermined by educational laws and regulations, both in terms of the examination formats and the subject matter of the examination. It is taken in a procedure that is considered strict and anonymous. The technical examination requirements, both in terms of scope of the material and the performance profile, are regarded as extremely high and difficult to predict. A great deal of career relevance is attributed to the final grade in the first exam and, in particular, the partial grade obtained in the state exam portion, since the examination format is considered by many – especially practitioners – to be particularly objective, reliable and valid due to its being externally assessed. In practice, this confidence in the efficacy of exams appears to be relatively stable as compared to the equally present awareness of margins of discretion, randomness in the testing process, and specific, non-specialist examination requirements.

On the other hand, the constant external assessment of university education, which must assert its relevance against private-sector revision books, can prompt positive standardization and quality-assurance effects. The level of education of German lawyers and the efficiency of German law are considered to be high, especially when compared internationally (Wissenschaftsrat 2012, p. 13 et seq.).

As stated above, the exams make up the dominant perspective of students of any teaching unit and its subject matter from the beginning of the course of study. As early as during the introductory phase of the course of study, students typically orient their learning behavior and the decision for or against their participation in courses, working groups or other courses towards preparation for the exams and their individual assessments of the examination requirements. There is considerable uncertainty about these requirements and the quality criteria for assessing examinations, especially during the introductory phase of the course of study (Broemel and Stadler 2014, p. 1212; Bork 2011, p. 61 et seq.). As a result of their previous learning experiences at school, students in the introductory phase of the course of study are typically accustomed to being able to pass examinations by reproducing and selectively transferring material from the classroom sessions. The specific requirements of exams in the form of case-solving require a contextualization of the learned material that goes well beyond the usual abstraction level of transference, however, and requires a case-solving technique that is independent of the content. Even though, in essence, this case-solving task requires competence in methodically meticulous interpretation and differentiated reasoning, students often neglect training this competence during exam preparation. The varying quality of the corrections, which are typically undertaken by grading assistants in the case of course-related examinations and assignments, and which often contain only abbreviated indications of the quality of the examinations and, above all, of concrete approaches to the improvement, also contribute to students' uncertainty regarding examination requirements. Not infrequently, students assume, up until the phase of exam preparation, that a good grade is attached to presenting the examiner with supposedly fitting keywords instead of convincing them through compelling rigor and quality of reasoning.

Apart from that, as their course of study progresses and especially during the run-up to the exam, students' need to choose courses that are relevant to exam preparation increases. Even with courses that are oriented directly towards the preparation of exam-relevant content, students expect each individual unit to be explicitly focused on their preparation in terms of the specific requirements of the written exams. In the final phase of the legal study, which would provide particularly good conditions for interdisciplinary inquiry-based learning due to the advanced status of the students, the students lack the time and the motivation for labor-intensive courses that are not directly related to exams (Broemel and Muthorst 2012).

## 28.2 Needs and Benefits of Inquiry-Based Learning in Legal Studies

The subject matter of legal studies attaches special importance to the integration of the individual sections and the lecture contents. This integration is a prerequisite for understanding the function of individual subareas. The structuring associated therewith makes it easier to manage large amounts of material and ultimately forms the basis for the ability to engage in the level of differentiated reasoning required in the examinations. This structuring, and not the available detailed knowledge, ultimately decides students' exam success, despite traditional student assumptions. Although exploratory learning trains a reflective approach to the methods of legal work, and thus focuses on establishing correlations, many students, confronted with the burden associated with the quantity of material and exam pressure, tends to result in a focus on traditional educational courses that are immediately relevant to exams.

A systematic view of the correlations between individual subareas is anything but a trivial learning objective in legal studies: It is of considerable importance both for understanding the function of individual regulations and for coping with the large amounts of material. During the introductory phase of the course of study, students are typically unfamiliar with legal methods. Although the contents of the courses are easily understandable, students in the first semesters and sometimes even beyond often find it difficult to recognize overarching and underlying structures, and to develop the system awareness that is essential for legal argumentation (Stadler and Broemel 2014; Bork 2011, p. 63). This difficulty is contingent, to some extent, on the subject matter of the field. The function and scope of individual concepts and institutions can only be fully grasped if one knows the implications for the areas being linked. This would require an understanding of at least the essential structures of the overall system (cf. Broemel and Stadler 2014, p. 1210 et seq.).

Students are thus faced with the difficulty that, regularly, the respective material for an area can only be understood in conjunction with the contents of the other areas and meaningfully applied to typically interdisciplinary issues. The high significance placed on integrating the individual subareas as well as on understanding interdisciplinary correlations makes studying more difficult at first. At the beginning of their studies, many students lack the overview of the structures in the curriculum that are scheduled for the later semesters. At the same time, the abundance of material that has already built up within a lecture, but even more so due to the large number of compulsory lectures each semester, often results in gaps in preparation and follow-up during the semesters (Broemel and Stadler 2014, p. 1209). Not infrequently, these gaps run through the entire course of studies and are only closed during the exam preparation or even make their way into the legal clerkship (*Referendariat*). Such gaps affect the ability to recognize the interconnections between regulations in individual subareas and to holistically understand the regulatory structure. Conversely, creating an understanding of the relationships and structures by orienting the content of legal studies towards integration would be particularly suitable for facilitating the learning and retention even of large amounts of material. A structural understanding

makes it possible to classify new contents from lectures or textbooks, to understand its function and the implications thereof for other regulations, and to permanently recall the contents (Stadler & Broemel, 2014, p. 1215), since these contents often run parallel to other institutions, regulations or problem areas, which provides significant synergistic effects during the learning process. In summary, it can be said that the breadth of the material and the complexity of the possibilities for interlinking make it difficult to understand relationships and structures, and sometimes lead to a feeling of being overburdened among students.

In so doing, inquiry-based learning can make a significant contribution to understanding the legal working method and the added value of correlations as well as to a reflected methodical approach. Inquiry-based learning can significantly increase the quality and effectiveness of the learning process during the following period of study. An independent search for a research topic already sensitizes students to the fact that regulatory problems from everyday reality regularly concern different legal regulatory areas, the problem-related regulatory structure of which only arises as a result of their interaction. On the other hand, the search for a topic often forces students to first confront the question as to what constitutes a worthwhile analysis from a legal point of view. Inquiry-based learning thus provides a meaningful supplement to traditional tasks in the form of case-solving, which can lead to a certain narrowing of perspective and learning behavior, depending on the students' understanding (Wissenschaftsrat 2012, p. 56; and the contributions in Hof and Götz von Olenhusen 2012). Even if engagement with the content of lectures or practicing case-solving requires a high degree of methodological competence, the courses designed for inquiry-based learning more strongly favor a reflected approach to methods of legal argumentation by addressing method questions more or less directly. In addition to imparting interpretative techniques, this also applies to the open question as to the scope of legal methodology, which remains unresolved in jurisprudence, from the mode of interpreting standards or declarations of intent regarding an extended analysis of the functioning of regulatory structures to the processing of interdisciplinary references (for a broader understanding of the education, cf. the contributions in Hof and Götz von Olenhusen 2012).

Due to their subject matter and their resource-intensive support ratio, courses with elements of inquiry-based learning are especially suitable for teaching competencies that are often merely assumed in everyday teaching and testing of legal education, but not systematically taught. They directly address the criteria and added value of differentiated, balanced and problem-based reasoning. This deepening of methodological competence substantially promotes not only the students' learning success in the other, traditional courses but also the quality of the examinations (Stadler and Broemel 2014; Broemel and Stadler 2014). In addition to the rigor of the line of thought and emphasis, especially the persuasive power of reasoning (for more detail, see Broemel and Stadler 2014, p. 1209, 1211 et seq.), the essential quality criteria of examinations correspond to the skills and competencies that are taught and deepened in courses for inquiry-based learning.

Ultimately, the needs and benefits of inquiry-based learning depend upon the understanding of the research methods in one's own subject. The discussion on research

methods and the methodical approach (Engel and Schön 2007; Stürner 2014; Röhl 2011, p. 70 et seq.) as well as on the subject matter of legal scholarship (Muthorst 2011, p. 9 et seq.) does not fail to have an effect on the concept of inquiry-based learning. For a methodical understanding which sees the goal of legal scholarship first and foremost in the reflected processing and systematization of practical legal questions, the application-oriented case solutions and the seminars based on dogmatic work do cover some part of inquiry-based learning that is not inconsequential. From this perspective, the need for additional steps towards implementing inquiry-based learning may be limited to the selective adaptation of existing course formats. Even a didactically focused understanding of research, that is, research as a systematic preparation of the legal material with the aim of receptivity, tends to result in a greater appreciation of the possibilities of using inquiry-based learning within existing structures. From the perspective of an understanding of legal methods that is less oriented towards application or reception, inquiry-based learning is also a starting point for sensitizing students to the breadth of the methodological spectrum of legal scholarship.

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### 28.3 Starting Point for Inquiry-Based Learning in Legal Studies

The starting points for inquiry-based learning in legal education lie first and foremost in the traditional seminars and in the structuring of the focus areas. In addition, curricular support of the internships could enhance the incentives that are created by the experience of applying one's expertise.

Due to their comparatively small group size and above-average support intensity, seminars are traditionally among the courses with comparatively favorable external basic conditions in legal education (Bork 2011, p. 62 et seq.). In seminars with a traditional setup, students work on one of the pre-defined, content-related topics over a period of several weeks, write a seminar paper of 20–30 pages and present their work results in an oral presentation, which is followed by a discussion by the group. A seminar paper written with a high degree of reflection can meet the requirements for inquiry-based learning both in its development process and in its outcome. When working on the topic, students identify legal issues, work on the relevant state of legal research and, on this basis, formulate their own position, which is thoroughly founded on legal scholarship. Such an approach corresponds to the way in which many lawyers work. If the quality of the thought process and reasoning is appropriate, the term paper is easily suitable for publication in a scholarly journal. What is decisive for the scope of the research experience is the openness of the given topic and the autonomy with which students are able to set their own priorities within this topic and develop theses and arguments.

The frequently observed difficulties that students have in setting up and justifying the focus of the work on a topic make it clear how unfamiliar working independently on issues within a given topic is for students. Thus this task of identifying the research question represents a considerable part of the research process in that, on the one hand, the

assessment of the suitability of a specific question requires an overview of the current state of the art of the respective research fields. At the same time, the conscious decision for or against a certain question increases the individual identification with the research subject. The more open-ended the assigned topics are, however, the less controllable the overall course is for the seminar organizers. The development of the individual seminar topics by the students makes the coordination of the content of the topics more difficult. In addition, identifying and laying out a suitable topic poses a difficult task that is prone to causing frustration (Bork and Muthorst 2013, p. 72 et seq.). Similar to the choice of a dissertation topic, after spending some time familiarizing oneself with an idea, it may prove to be either too complex or to have already been comprehensively worked through in legal scholarship. In general, law students are not used to dealing with difficulties that are typical of the research process such as intermediate results that are not foreseeable at the beginning or the ongoing adaptation of a line of thought, either from their courses, the working groups or the written exam preparation (Broemel and Muthorst 2012, p. 89, 94). The accentuation of inquiry-based learning thus requires that students receive ongoing support during the individual phases of the research process, and in particular when dealing with foreseeable obstacles and difficulties. Compared to traditional seminars, this research orientation does not necessarily increase the effort required for the ongoing support, but it does increase the visibility of the support need and thus the likelihood that students will avail themselves of the support effort. The additional expenditure of time is generally rewarded by the quality of the result and the learning success.

The individual focus areas to be selected, which the university portion of the first state examination in law will cover, thus provide special space for elements of inquiry-based learning insofar as they are already designed for deepening knowledge, and because the departments enjoy a certain leeway both in the design of the compulsory courses for the focus areas and in the examination formats (see Broemel and Muthorst 2012, p. 96). A seminar-like course could be combined with elements of inquiry-based learning in the focus area. This course could be combined with examination formats that assess the way in which typical difficulties and obstacles in the research process are handled. In addition to the manuscript that is prepared, justification for the selection of the respective research question as well as the ongoing reflection in a research journal could be the subject of an overall assessment, which would be included in the final grade of the university part of the first state examination in law. The latent tension between the risks inherent in each research process and the legal requirements for the conception and assessment of examinations, and in particular their comparability (Broemel and Muthorst 2012, p. 97 et seq.), can at least be reduced to a certain degree. Depending on the content orientation of the respective focus area, seminars that focus on inquiry-based learning could include connections to relevant neighboring disciplines. With the consideration of knowledge from administrative sciences or competition theory or other disciplines like sociology or psychology, for example, the methodological competence can be extended beyond interpretation questions and case solutions by a reflected approach to the processing of interdisciplinarity (regarding the desideratum, Wissenschaftsrat 2012, p. 56 et seq.; differentiating, on the other

hand, the articles in Engel and Schön 2007). A systematic immersion in research elements in legal education would not least facilitate students' transition to the possibility of subsequent doctoral studies. In practice, research competence also provides the ability to adapt to the ongoing changes in the legal and actual basic conditions of a particular area of life, to align the premises of previously established regulatory structures with those changes and, if necessary, to draw appropriate conclusions. In legal practice, lawyers rely on the ability to update acquired bodies of knowledge in changed contexts, and to classify individual, newly emerging issues into broader bodies of knowledge with a moderate degree of abstraction. Inquiry-based learning then imparts a competence that is significant for practical work, that of transferring and further developing acquired knowledge in the face of dynamic changes.

This relevance of research competence for the lasting quality of practical activity, which is also known from other disciplines, likewise suggests that elements of inquiry-based learning be situated in the practice-oriented portions of legal studies. At present, students typically complete their intended internships independently of their legal education in their departments. A supplementary, systematic processing of the internships, which would transform the questions raised in the context of the practice into research questions, could make students much more aware of the connection between theoretical and practical issues. It could also increase students' ability to make differentiated observations and promote a reflective approach to understanding and coherence among students.

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## **28.4 Conclusion: Perspectives and Desiderata for Inquiry-Based Learning in the Field of Legal Studies**

In legal studies, inquiry-based learning promotes methodological competence and an understanding of overarching structures and their added value in legal scholarship, as well as a capacity for reasoning. Inquiry-based learning thus improves the quality of learning and exam success. Nevertheless, as they progress, students are increasingly reluctant to respond to course listings for courses that utilize inquiry-based learning, courses that are not directly geared towards teaching compulsory material or courses that focus on preparing for examinations. In view of this predicament, the prospects for inquiry-based learning lie in revealing the added value of an understanding-oriented approach for both the learning process and the quality of examinations, and to rigorously align courses towards inquiry-based learning in terms of their objective, support and evaluation.

Beyond this basic condition set by the first state examination in law and the corresponding list of examination subjects, the design of the focus areas offers departments considerable leeway to accentuate elements of inquiry-based learning in the content of the courses as well as in the examination formats. Inquiry-based learning could thus compensate for a deficiency in university education in the field of law (in detail, Röhl 2011, p. 67, 70 et seq.), which is sometimes criticized within the discipline.



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