

Chapter 5

**Outcomes, Implications
and
Recommendations**

5.1 INTRODUCTION

The qualitative data that were analysed, interpreted and discussed in Chapter 4 were obtained through individual interview/discussions with thirty participants who, the researcher believed, had significant experience of and interest in the concept of *thinking legally*. The analysis of these data produced seven conceptions of thinking legally. These represent the qualitatively different ways in which the participants had experienced, perceived and understood thinking legally in the context of their *world or life view*. These *conceptions* are statements of *categories of description* which are key components of this study.

However, the major outcomes or results of this study do not rest solely on the development and descriptions of the conceptions. There were also interrelationships among these conceptions which needed to be explored, described and articulated so that research outcomes could be developed which synthesise the components into a coherent whole. Each of the seven conceptions developed in this research study has been analysed for its *structural* and *referential* relationships with each of the other conceptions. The study's *Outcome Space* depicts these interrelationships and represents a *third order* or level of abstraction. The *first order* was the qualitative data obtained in transcript and diagrammatic forms. The *second order* was the seven conceptions derived from the first order data. Consequently, the Outcome Space, while being derived from an analysis of the study data, was a research outcome of a different order to the derived conceptions and has been included therefore in Chapter 5 rather than being seen as part of the data analysis, or second-order analysis, included in Chapter 4 of this thesis.

Since this research focused on thinking legally, a discussion of the implications of the study's findings is seen as an inherent part of its conclusions. This chapter concludes with a discussion of the research implications for legal and law-related educators and suggestions for the conduct of further research that could extend, enrich and apply this study's outcomes.

5.2 SCOPE OF THE CATEGORIES

The scope of the categories of description, obtained from an analysis of the data included in the transcripts of interview and the eighteen diagrammatic representations prepared by participants, has been arranged as follows:

- (a) *Foundational* conceptions;
- (b) *Dualistic* conceptions;
- (c) *Process* conceptions; and
- (d) An *Integrative* conception.

The *Foundational Conceptions* relate to the worldview, philosophical, legislative and judicial underpinnings of law in society and are represented by Conceptions A and B:

- Conception A:** *Thinking Legally as the rule of law; and*
- Conception B:** *Thinking Legally as a representation of a personal worldview.*

The *Dualistic Conceptions* arise from participants' attempts to define and circumscribe the relationships between individuals and society. These are represented by Conceptions C and D:

- Conception C:** *Thinking Legally as a process of justifying personal behavioural space; and*
- Conception D:** *Thinking Legally as a process of dealing with dualism.*

The *Process Conceptions* provide strategic approaches for the resolution of personal, institutional and societal difficulties. They are represented by Conceptions E and F:

- Conception E:** *Thinking Legally as personal processing of contextual and situational data ; and*
- Conception F:** *Thinking Legally as providing pathways for decision-making.*

The *Integrative Conception* is linked to the foundational, dualistic and process dimensions of Conceptions A to F but provides a synthesis of the structural, referential and conceptual components of the Outcome Space. This is represented by Conception G:

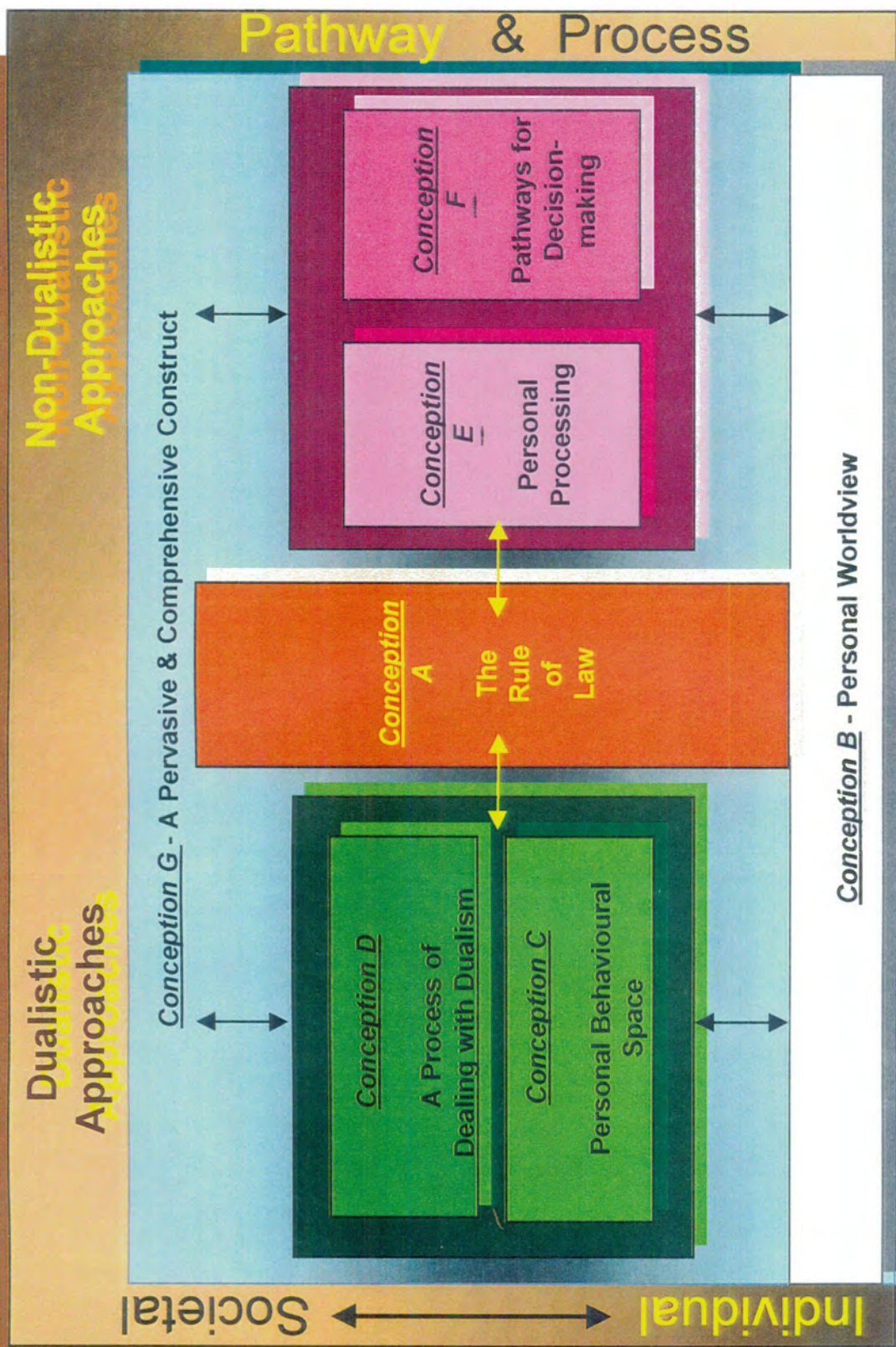
Conception G: *Thinking Legally as a pervasive and comprehensive construct.*

5.3 DESCRIPTION OF THE OUTCOME SPACE

Outcome Space, in phenomenographic terms, is a diagrammatic, graphic, symbolic or iconic representation of the structural and referential relationships among the conceptions or categories of description. It is composed from an analysis of these identified relationships. Consequently, an outcome space is a unique representation of a *third-order or level* of abstraction and conceptualisation, the *first-order* being the qualitative research data and the *second-order* the seven derived conceptions.

The Outcome Space of the participants' conceptions of thinking legally is depicted in diagrammatic form in [Figure 5.1](#). The key focus of this figure is the illustration of the structural interrelationships among the seven conceptions. The referential relationships among the conceptions are addressed, using a metaphoric approach, in Sections 5.6 and 5.7 of this chapter.

Figure 5.1: The Outcome Space of Thinking Legally



The conceptions have been grouped in four main clusters within the Outcome Space. These clusters represent (i) the *foundational* conceptions, (ii) the *dualistic* conceptions, (iii) the *process* conceptions and (iv) the *integrative* conception. The main purpose for developing such a statement of Outcome Space is to synthesise the research findings by relating these in an holistic and representative way. Consequently, the *unity in diversity* principle, that is so familiar to biologists and environmentalists, and *the whole is more than the sum of the individual parts*, so familiar to social scientists, are evidenced in the Outcome Space. Each of the seven conceptions has been located within one of the four clusters. These clusters themselves have structural interrelationships and there are structural interrelationships between the conceptions in each of the clusters.

Consequently, it was the location of each conception within the overall outcome space, that is the structural relationships outlined in Sections 5.4 and 5.5, together with each conceptions' interrelationships with the other conceptions in each of the clusters, for example, the referential relationships outlined in Sections 5.6 and 5.7, that have provided the basis for a synthesis of this study's outcomes. The metaphoric approach elaborated in Section 5.8 provides a useful analogic synthesis of the various components of the Outcome Space.

5.4 STRUCTURAL RELATIONSHIPS WITHIN EACH OF THE FOUR CLUSTERS

The following description of the Outcome Space deals with each of the conceptions and clusters in turn. This enables the structural elements of the Outcome Space to be defined, described and discussed.

While this may appear to be too lineal a process, it must be kept in mind that this is but a process of describing and defining the components of the Outcome Space. Outcome Spaces are much more complex phenomena than the mere assemblage of their parts. All of the structural and referential interrelationships of the conceptions and clusters, as well as the compilation of the Outcome Space itself, may be viewed as, using a musical analogy,

polyphonic harmony (Scholes, 1991, 820) rather than as *separate voices*. That is, instead of the components of the Outcome Space:

... marching in step with one another, and without particular interest in their individual melodic curves, they move in apparent independence and freedom though fitting together harmonically (Scholes, 1991, 820).

It is important that the approach adopted here to describe the Outcome Space be considered as a *means* towards the development of an understanding of the whole of the Outcome Space: conceptions, clusters and their dynamic, yet complex, interrelationships at both the structural and referential levels. The outcome space is not seen *an end in itself*.

The Outcome Space is described here using an inductive, interpretative and developmental approach, so as to be in keeping with the overall research processes used in this qualitative study. The overall strategy of this thesis is to proceed, in as logical a sequence as possible, from *surface knowledge* to *deep structures* (Biggs, 1991) using the phenomenographic approach outlined in Chapter 3.

5.4.1 The Foundational Conceptions

Conceptions A and B are ingredients in both the establishment and elaboration of the Outcome Space. They provide the structural bases for establishing the scope of the Outcome Space and establish key parameters within which they may be located and described.

The individual and worldview considerations, as discussed in Chapter 2 Section 2.2, are believed to relate to ontological, epistemological, philosophical, axiological, theological, contextual, affective, and the like, dimensions of life. These perspectives are seen as the foundations for the development of awareness and understandings of both the nature and the scope of thinking legally. Consequently, they are central to the structure of the Outcome Space. The phenomenon of thinking legally pervades each individual's worldview and sub-cultural perspectives as well as those of the society at large. In **Conception B - Thinking Legally as a representation of a personal worldview**, thinking legally is experienced in terms that relate to the core of a person's being and actions. This occurs because of the intensely

personal and unique nature of each person's worldview. One's worldview is contextually bound to the individual's personality, experience-base, and life perspectives. One's worldview also influences all of the dimensions of one's life as it represents an amalgam of personal goals, values, beliefs, assumptions, perspectives and faith. It is impossible to jettison one's worldview. It is an integral part of each person's *being* [Gadamer (1989) and Shin (1994)]. However, it must be acknowledged that one's worldview is continually being modified as a consequence of life's continuing experiences.

It is for reasons, such as those listed above, that Conception B is located in the Outcome Space as the base, or in building construction terms as the *footings* of the proposed structure, of the diagrammatic representation. An individual's worldview is so intrinsic to all that one does and is, that it would be unlikely to locate Conception B in any other position of the Outcome Space. The grey colouring used to depict this foundational focus of Conception B is representative of the colour of concrete that is used for the footings of buildings.

On the other hand, while **Conception A - *Thinking Legally*** is seen as the *rule of law* has implications for individuals, it is more evident at the group and societal levels. While Conception A has its roots in individuals' worldviews, because of the nature of social groupings and the organisation of societies, Conception A links to, but stems from, Conception B. It provides a structural link, as in [Figure 5.1](#), to other aspects of life.

In societies, the individual is seen as a fundamental part of the social order. The aggregation of individuals, together with their intents and actions, contributes to the group structures and social actions of a community. Conception B is a fundamental building block in any awareness and understanding of the social structure and processes. Conception A - *the rule of law* represents the explicit codification of these social processes that have been developed within a society so that it can order, manage and problem-solve in the fullest possible range of interactions that occur in that society. Consequently, Conception A is both directly related to, and developed from, Conception B. The structure and processes operating within a society are a reflection of the goals, values, beliefs and desires of both the individuals in that society and

the collective society itself. Otherwise, a social order would have to be imposed on the populace that was unrelated to its goals, aspirations and unique characteristics.

The rule of law, as expressed in Conception A, is directly related to, but developed from, the worldviews of the individuals in a society. The operation and manifestation of these worldviews in a community give expression, for example, to its culture and lifestyle. However, this is not just an informal, implicit or implied expression of the rule of law, no matter how powerful and pervasive this might be. Every society has its rules, mores, social order, decision-making structures and its procedures for resolving conflict, especially in relation to deviant civil or criminal behaviour. These rules, principles and processes are expressed implicitly through the society's accepted traditions, customs and community processes as well as through its explicit expressions of oral, written and practised codes of behaviour and laws. There is usually a codification of these in western democratic societies and they are referred to as legislation or Acts of Parliament. These are the negotiated written statements of consensus on particular life issues that have been of concern to the populace for one reason or another. In many societies, there may be no written codification or some combination of oral and written traditions. While it is not the place here to address this matter in detail, it is sufficient to say that Legislative Acts are usually overt expressions of the mind or the will of the people. These overt expressions are based on implicit and covert expressions of individual and community worldviews.

The location of Conception A in the Outcome Space is considered important. It is believed to be instrumental in forming the expressed linkage between each individual's worldview and the societal expectations, especially in structural and process terms. It is often the explicit declaration of a society's rules that provides either the structural elements or the context, for example, for the development of both one's conscience and values. The relationship between Conception A and Conception B is one of mutual interdependence rather than being a consequential or dualistic one. While the nature of Conception B is dependent on the notion of an individual's worldviews, Conception A is a similar notion, but at the *supra-individual* level. As soon as small groups within a community interact, there is a need for some expression of the rule of law. In other words, the rule of law in a society is an expression of

the *community's worldview*, although the term worldview is usually, although not exclusively, applied to more individual concerns. In structural terms, however, Conception A is both built upon and developed from the various individual expressions of Conception B in the society in question. Consequently, Conception A - *the rule of law* is directly related to a community or societal expression of Conception B - *a personal worldview*.

In [Figure 5.1](#), Conception A is depicted as a rust-brown colour. This colour has been chosen to represent the steel girders or structural reinforcing that is used in the construction of high-rise buildings. The steel provides the contractor and future owners of the construction with security, provided engineering specification and building codes have been adhered to, in that it links the foundations (Conception B) and a building's framework (Conception A). In a similar manner, Conception A develops from the foundation (Conception B), as well as providing the conceptual, structural and procedural elements for the framework of laws in societies. There are unique conceptual and process symbioses between Conception B and Conception A in that a society is composed of individuals who have many common, and also many different, worldviews, needs and goals. The rule of law must therefore be both collective and individualistic.

Consequently, the *foundational* conceptions of the Outcome Space are structurally positioned in [Figure 5.1](#) in appropriate location and relationship to each other.

5.4.2 The Dualistic Conceptions

The next major section of the Outcome Space relates to Conceptions C and D. These are:

Conception C: *Thinking Legally as a process of justifying personal behavioural space; and*

Conception D: *Thinking Legally as a process of dealing with dualism.*

These conceptions are another structural component of the Outcome Space. This conception cluster is related to a notion of *dualism* that is evident in two of the conceptions developed in this study.

A *dualism* is believed to be a:

Theory or system of thought recognising two independent principles; (philos.) a doctrine that mind and matter exist as distinct entities (opp. to MONISM and PLURALISM); doctrine that there are two independent principles, good and evil; (theol.) doctrine that Christ consisted of two personalities (attributed to Nestorius by his opponents) (Readers Digest, 1965, Volume 1, 275).

Conceptions C and D have been clustered together because of their focus on the content or topic of dualism as well as because of their referential relationships (see Section 5.6 for a detailed discussion of this).

Within the transcripts of many of the research participants, it was evident that some forms of thinking tended to be seen in dualistic terms. This was either because individuals perceived things as right or wrong, black or white, allowable or disapproved, commissioned or sanctioned, lawful or illegal, or other couplets such as good and evil, and thesis and synthesis. Many components of one's worldview relate to dualistic notions such as these. Consequently, notions of dualism are deemed to play an important role in the life and experience-base of individuals.

In Conception C, the participants' main focus related to the individual, in terms of the appropriate personal behavioural space for functioning as human beings. It related also to the personal boundaries that people set for themselves, or has been established for them, as a result of membership of a families or groups, or from social pressures exerted from external social agents or contexts. Consequently, personal behavioural space is a complex network of interacting factors that are considered either *internal* to the individual, and consequently deeply personal, or *external* because of the social context in which the individual lives. While people are social beings generally, individuals do possess personal space within which they operate in their preferred social setting, though they may do so differentially in various contexts.

The process of establishing *personal behavioural space* is the result of a complex web of factors that is linked inextricably to the personhood of each individual. The ways that

personality, conscience and cognitive style, for example, are linked to life's experiences are unique for each person. However, it is also the case that individuals have personal boundaries in almost every area of their lives so that decisions and choices can be made. These choices range from minute issues such as 'What will I do next?' to quite complex decisions such as major policy decisions that may have profound personal or community implications. The boundaries of personal behavioural space are continually undergoing modification as each individual responds to explicit and implicit social and cultural influences. The territory circumscribed by Conception C could be equated with the personal space that people either create or claim for their personhood and relationships.

Conception D, on the other hand, is of a different order of dualism from Conception C. While Conception C focuses on the nature of the dualism, Conception D relates to the ways in which the boundaries of the behavioural space are established, maintained and revised. Individuals make either an implicit or explicit decision to establish a boundary between acceptable and unacceptable behaviour based on certain values, assumptions, beliefs and personal experiences so that they can both participate in and respond to particular settings and life circumstances. Often these boundaries are temporary, rather than permanent, and are usually contextually bound. While there is usually some transfer of learning and behaviour from context to context, the boundaries between these dualistic factors are subject to ongoing change. Conception D deals with the ways in which these boundaries are established, monitored and managed. As people's life experiences become more diverse yet comprehensive, the experience bases from which they are able to operate become usually more dynamic and fluid, especially if they have reflected on life's experiences and learnt from them. Consequently, the process of dealing with dualism is an ongoing one. It requires that individuals respond to new or changed settings and situations. Reflection, in and on personal life experiences, provides individuals with the power both to define and to manage their boundaries. The processes both of establishing and maintaining these personal boundaries are unique, as individuals make their own decisions on the basis of their worldview, values, beliefs and personal experience.

Conceptions C and D are located structurally, in a vertical manner, other in [Figure 5.1](#) since they represent stances complementary to the establishment of personal boundaries. One cannot have behavioural space without the establishment of personal boundaries. These boundaries need to be evaluated continually and made relevant to the particular decision-making setting within which one may be operating. Conception C is located closer (in [Figure 5.1](#)) to the *individual* end of the spectrum because of the individualistic expression that people give to their worldviews. These expressions are deeply individual matters which are related to the integrity, personality and culture of each person. Individuals operate also within personal behavioural spaces that are both implicitly and explicitly differentiated.

On the other hand, Conception D operates more at a societal level as everyone's behavioural boundaries interact with external rather than internal factors. As individuals respond to the external influences and pressures, they process data usually and make decisions from two main points of view. Firstly, they deal with the potential impact of the pressures on their personal space. Secondly, they make personal modifications to both their worldviews and life practices on the bases of these influences. Consequently, there is both correlation and compatibility between Conceptions C and D that could be described as a co-dependency. These conceptions consequently are inextricably interrelated.

The colour coding of these dualistic conceptions, in various shades of green in [Figure 5.1](#), has been chosen because of the vivid nature of the ideas expressed by participants in relation to these conceptions. The colour green depicts also the luxuriant personal growth that occurs in individuals as they experience life. The 'green cluster' is meant to create a symbolic image of creative endeavour in which each person participates as a result of life's experiences.

5.4.3 The Process Conceptions

The third major cluster of conceptions in the Outcome Space includes Conceptions E and F. These are:

Conception E: *Thinking Legally as personal processing of contextual and situational data;* and

Conception F: *Thinking Legally as providing pathways for decision-making.*

These conceptions provide another focus to the participants' understanding of the concept of *thinking legally*. The notion represented in these conceptions is that emphasis is placed on working out the personal, corporate, civil, criminal, and other situations in which one may be either inadvertently, purposely or voluntarily placed.

The focus here is related closely to concepts and processes of *problem-solving* and *decision-making*. In other words, this cluster of conceptions focuses on the approaches, strategies and tactics used by individuals, groups and society to resolve conflicts that arise. These conflicts may be because of factors related to the personal, interpersonal, business, governmental and international actions of individuals, groups and the society itself. The emphasis of this third cluster of concepts is not so much on the 'What?' or 'Why?' questions but rather on the 'How?' Processes, by which conflict-resolution may be designed, implemented and evaluated.

Conception E expresses the research participants' understandings of the *process dimensions* of social actions. They expressed various ideas indicating that members of society, no matter what their personal dispositions or worldviews, encounter incidents and situations in the course of living. These cause conflict to or with someone, some group or organisation, even the State. Such conflict has to be resolved. The processes by which these are achieved are usually idiosyncratic to the individual or to the nature of the conflict. Some conflicts may be resolved privately, personally and peacefully. Others may be more public matters that cause quite a deal of tension, worry and even anger. The focus of this conception is 'how to' resolve the conflict and thereby to promote a resolution. These processes are quite diverse and may range from informal discussions, through mediation and alternate dispute resolution procedures, to more formal processes such as court cases, appeals and governmental intervention.

The process dimensions of Conception E may be also very implicit, voluntary and ill-defined because of the personal nature of the conflicts to be resolved. On the other hand, these processes may be quite formal, explicit and mandatory. One's willingness to settle a

neighbourly dispute may be an example of the former, while a summons to provide evidence at a criminal trial would represent the latter.

The research participants expressed both understandings and perceptions that some importance needed to be placed on the manner in which one attempted to undertake the conflict-resolution. The notion of *strategy* was fundamental in their discussions. However, unlike the ideas expressed in relation to Conception F, the participants viewed the processes as open-ended, diverse, flexible and not necessarily pre-determined. There was a degree of informality in their conversations that portrayed notions of spontaneity and creativity in the processes to be employed in the conflict resolution rather than there being a limited set of codified approaches. Consequently, the focus of Conception E was quite divergent and open-ended, especially in procedural and strategic matters. The strategies for personal action were very dependent on setting, circumstances and personal choice.

On the other hand, Conception F seemed to be focused as much in the public, as in the private, domain of the participants. The key concepts and foci here were related to a pre-determined set of institutionally sanctioned approaches to both the resolution of conflict and the making of decisions. These often were endorsed publicly as the major avenues for reducing tension over controversial matters at interpersonal, social group, business and community levels. Conception F, in contrast to Conception E, seemed to provide a limited number of socially approved approaches to the resolution of conflict. The participants in conflict situations were guided, often by expert advice, to a limited number of possible strategies or pathways for the resolution of the conflicts in which they were engaged. However, it should be voiced here that these strategies are able to be both augmented and modified by appropriate social processes. An example of these would be the current foci on mediation and alternate approaches to dispute resolution.

The notion in Conception F, of a limited number of seemingly approved or endorsed strategies, may be the mere overt expression of the practical and proven approaches to particular forms of conflict-resolution. Often individuals and communities seem to revert to the conservative approaches of the tried and proven techniques of personal or public action,

rather than seeking to explore a diverse range of options before choosing the most creative, divergent or valid means available. Notions here of conformity, as compared with creativity, in conflict-resolution, are contrasted often with diverse and distinct, as compared with conservative, approaches.

The notion of a limited set of possible courses of action for conflict resolution might be closely associated closely also with the knowledge base of the individuals. If one is well-informed on particular matters, one usually has the confidence to explore both creative and divergent alternatives as opposed to implementing proven approaches to the resolution of conflict. However, this might also be a matter of personal choice or style based on particular criteria such as access or preference. Some individuals seem more able to cope with divergent approaches to problem-solving while others seem to prefer tried and proven strategies.

In [Figure 5.1](#), Conceptions E and F are located beside each other in the Outcome Space. This is because they were often viewed by the research participants as *alternatives*, as distinct from the *sequence* which is associated with Conceptions C and D where one progresses from matters of a more individual nature to those more explicit at a societal level. Conceptions E and F were seen by the participants therefore as complementary strategies that mutually supported each other.

The colours, light pink and magenta for Conceptions E and F and burgundy for the *process conceptions* cluster in the Outcome Space (see [Figure 5.1](#)), are intended to portray a sense of both divergent individualism, as represented by Conception E; and the convergent social alternatives associated with Conception F. Conceptions E and F have a coherence about their character and interrelationships especially in non-dualistic terms. This seems predicated upon a notion of *processing* problems and conflicts to resolve their inherent difficulties rather than on dualistic notions, such as right or wrong, that were associated with Conceptions C and D. Consequently, the *dualistic conceptions* (C and D) are seen as both opposed to, yet complemented by, the *process conceptions* (E and F). These two sets of conceptions represent entirely different perspectives and approaches to the resolution of conflict. This is further elaborated in Section 5.7.

5.4.4 The Integrative Conception

The final section of the Outcome Space relates to Conception G which is:

Conception G: *Thinking Legally as a pervasive and comprehensive construct.*

The research participants, who expressed qualitative data from which this conception has been derived, viewed thinking legally in both very comprehensive and integrative ways. There was a sense in which all aspects of the participants' lives were viewed as being impacted upon by not only society's rules but also the agreed processes for the resolution of the conflicts that arise at all levels of social life. Also evident was a notion of the necessary participation of both individuals and groups in the social processes by which these rules and their agreed processes are debated, endorsed and implemented.

Conception G exhibits different qualities and has a much wider scope of application to the previous three clusters of conceptions. It could be likened to an overarching principle or perspective within which all of the other conceptions are structurally, conceptually and procedurally located. The research participants were aware of this through their expressions of the overt impact of law in a society as well as through the need for an implicit and pervasive influence of it throughout society. These notions are derived from the social aspirations that are evident in values, goals and beliefs, to develop personal knowledge bases and community procedural systems that facilitate the effective operation of the law of the society.

The research participants were expressing the view that a community should operate in a manner that integrates fully all aspects of its society. The operation of these contributing factors should ensure that the *whole is more than the sum of the parts*. The interactions among the various factors, as well as the nature of the factors themselves, provide a focus for this holism. This enables a society to maximise the understanding of its operations as it diagnoses its difficulties and initiates remedial action to prevent and/or overcome identified concerns.

It was evident that the research participants, through this conception, were indicating their awareness of the need for society to both interrelate and integrate the fullest possible range of factors, especially legal ones, that affect their well-being.

Conception G, in Figure 5.1, is represented by a sky blue colour because of both the clear environmental climate and context which it provides for each of the foundational, dualistic and process Conceptions A to F.

5.5 STRUCTURAL RELATIONSHIPS AMONG THE FOUR CLUSTERS

Any Outcome Space, such as that depicted in Figure 5.1, needs to indicate not only its structural components but also the structural linkages that are evident among its major sections. The four clusters of conceptions that have been both identified and described in the previous section, now become the focus for not only an analysis but also description of the interrelationships amongst the clusters.

Conceptions A and B are closely interrelated in that Conception A is a overt expression of both the ideals and goals that a society expresses through its community worldview. It is evident that the worldviews of individuals in a society become the building blocks for the initiation, development and continual monitoring of the rule of law in that society. In democratic systems, such as that operating in south-eastern Queensland in the late 1990s, the contribution of individuals to a community is valued. Some individuals may choose to participate in more productive ways than others. However, there is a general community expectation that most individuals will play their part in contributing to their society. This may be achieved in various ways some of which include the paying of taxes, expressing community values, providing services for the community members, participating in a public manner in community life and holding public office. It is believed that both individuals and groups are able to participate in community life in their chosen manner and that people contribute to the community from the basis of their worldviews. The processes of aggregating these worldviews provide a community with the right to express overtly its agreed consensus

in its laws, which are Acts of Parliament, and through its agreed procedures for the resolution of conflicts that arise. Consequently, Conception A - *the rule of law* is an overt expression of the community's worldviews which are based on those of each individual member. This represents an explicit structural relationship between Conceptions A and B.

Conceptions A and B, the *foundational conceptions* cluster, are structurally related also to the dualistic cluster of Conceptions C and D as they provide both the rationale and the criteria for the development of each member's personal and social behavioural space. An individual's sense of personal security is linked inextricably to his or her personal space which is delimited by behavioural boundaries (Conception C). These boundaries are established as the notions which are associated with Conception D, and are implemented in formal and informal, personal and community ways which are represented by Conceptions A and B. The dualistic cluster of Conceptions C and D, therefore, is structurally related to the foundational conceptions (Conceptions A and B).

In a similar manner, Conceptions E and F, the *process conceptions*, are a cluster of pathways and processes that enables dualistic characteristics, for example, right-wrong, legal-illegal, social-antisocial and private-public, of Conceptions C and D to be debated, negotiated and resolved. Conceptions E and F are related also to Conceptions A and B in that they represent the strategies that are used by a community in order to declare and endorse overt expressions of the law within the context of the community's worldview. They represent the means by which the community has both established and maintained its systems and rule of law. Conceptions E and F might be private or public in nature with negotiations being agreed through informal oral agreements, or in formal arrangements such as contracts, legislation or court decisions. The *foundational, dualistic and process conceptions* are clusters of interrelated concepts, components and processes that are complementary yet essential to the balanced operation of a society. This is expressed in the apparent visual balance of these clusters in [Figure 5.1](#).

As outlined in Section 5.4, Conception G is the overarching conception that forms not only the backdrop but also the context for the operation of the *foundational, dualistic and process*

conceptions. The structural relationships with Conceptions A to F are therefore very comprehensive as the focus of Conception G is considered to be integrative and holistic. Consequently, [Figure 5.1](#) is believed to depict a useful structural representation of the seven conceptions developed through this research study. The Outcome Space is characterised by explicit criteria, structural cohesion among the conceptions and clusters, and perceptual balance across the dualistic and non-dualistic dimensions of the diagram, as well as structural integration through the contextualisation of Conception G.

5.6 REFERENTIAL RELATIONSHIPS WITHIN AND AMONGST THE CLUSTERS

The structural relationships among the conceptions and the four clusters are outlined in Sections 5.4 and 5.5 of this thesis. These structural interrelationships are the bases for any discussion of the referential relationships among the conceptions.

Between Conceptions A and B, the *foundational conceptions*, there are linkages that bond these main ideas together in what might be called *vertical interaction*. This is taken to mean that there is a hierarchy of concepts that spans the scope of the *individual - societal* dimensions that are depicted on the vertical axis of [Figure 5.1](#). The key concepts associated with Conception B are linked directly with those of Conception A, since these concepts are ordered in a parallel manner to the *individual - societal* dimensions of the vertical scale. This occurs because of the contributions that worldviews make to an overall consideration of the nature of the rule of law and the processes that are used by societies in order to generate the body of oral and written law or legislation. There is the body of common law that is developed also as a result of the resolution of conflict. This is embedded in the culture of the society but are subject to constant change. As the community issues vary, so too do the political, social, legal, judicial and other decisions that are made, for example, to resolve conflict. Change is a endemic feature of human existence. Consequently, there is a continual interchange between both the concepts and the processes that interact between Conceptions B and A.

Conceptions C and D of the *dualistic* cluster interact vertically also, in [Figure 5.1](#), since Conception C is associated with more personal matters that are of interest to each individual, while Conception D relates to the individual's interactions with other humans. The notion of what is, for example, right or wrong for an individual is determined often in a relativistic manner as an outcome of one's interactions with others. Conception C focuses on the notions of personal values, beliefs and opinions that are in some ways independent of the views of others. Conception D, however, is most often processed in one's interactions with others and is, therefore, placed higher up the *individual - societal* scale than Conception C.

Conceptions C and D are interrelated also with Conception B, since individual worldviews represent the dominant criteria that are used for delimiting personal behavioural space. However, these conceptions are linked also to Conception A in a horizontal manner in [Figure 5.1](#) as the rule of law represents either implicit or explicit expressions of the interactions of Conception C and D with other components of the Outcome Space. These relationships are depicted in the outcome space by the black sets and yellow sets of double-headed arrows.

In a similar manner, Conceptions E and F are interrelated inextricably with Conception B, since one's worldview provides the personal criteria, such as assumptions, beliefs, presuppositions and values, for both the processing and the selection of pathways in decision-making and conflict resolution. The rule of law (Conception A) provides also the benchmarks for the acceptability of personal judgments about decisions. However, while Conceptions C and D are ordered vertically, Conceptions E and F are sequenced horizontally as they have no scalar relationship on the vertical dimension of either *individual - societal* or *pathways & process*. Conception E and Conception F have similar interrelationships to Conceptions A, B and G. They are alternatives that are chosen perhaps by personal preference or style. Because of the process emphasis of Conceptions E and F, they are deemed to be non-dualistic in that the purposes of processes are to resolve dualisms which occur in human life from time to time. These include situations where one has to make choices based on alternatives such as right-wrong, legal-illegal and profitable-unprofitable. It is for reasons such as these that Conceptions E and F are located on [Figure 5.1](#) on opposite sides of Conception A - *the rule of law*, to that of Conceptions C and D. However, each of the conceptions from the *dualistic*

cluster and the *process* cluster are interrelated referentially with Conception B - *a personal worldview*.

The relationships of the *integratory* Conception G to each of the other conceptions are both complex and contextual as the concepts associated with it are integral to each of the Conceptions A to F. This integration occurs in relation to the vertical scales of Figure 5.1 as well as across the dualistic and non-dualistic dimensions of the horizontal. Therefore, there are coherent referential interrelationships among each of the conceptions and the clusters depicted in Figure 5.1.

5.7 A MUSICAL METAPHOR - JAZZ COMBO

One of the major problems identified in the development of this study's Outcome Space is that diagrammatic representations tend to promote notions of **analysis** of the constituent parts rather than a **synthesis** which is *more than the sum of the parts*.

A musical metaphor has been selected to give appropriate emphasis to the synthesis of this study's Outcome Space. Figure 5.2 - A 'Jazz Combo' Musical Metaphor is an attempt to use the figurative, yet symbolic, language of music to give expression to a set of ideas that are *polyphonic*. This means that:

The words are applied to 'many-sounds' or 'many voice' music, i.e. to music in which, instead of the parts marching in step with one another, and without particular interest in their individual melodic curves, they move in apparent independence and freedom though fitting together harmonically. Frequently the terms are applied in a restricted way to the music of the great age of unaccompanied choral song, i.e. the age which rose to its climax with Palestrina, Byrd, Victoria, and their contemporaries at the end of the sixteenth century (Scholes, 1991, 820).

In the Outcome Space terms of Figure 5.1, the *many voices* are the *conceptions*. They demonstrate independence but *fit together harmonically*. It is this notion of *fitting together harmonically* that is the focus of this metaphor as cognitive and meta-cognitive synthesis (referred to in Chapter 3, Sections 3.9.5.1 and 3.9.5.2) relates directly to it.

The metaphor which has been chosen to illustrate this *fitting together harmonically* is a *Jazz Combo*. While there are many types and forms of Jazz Combos, they are formed usually by musicians using piano, keyboard, reed, brass and drums. Often several types of instruments may be used from these categories. A combo has a conductor who operates with the musicians in a similar manner to a stage-band conductor. The conductor may be one of the lead instrumentalists.



Figure 5.2 A 'JazzCombo' Musical Metaphor



Figure 5.2 provides a visual representation of the Jazz Combo to be used as the metaphor. Five instruments are used in this metaphor and it is assumed that these instruments are played by musicians, although for the purposes of visual simplicity, the musicians are not represented in the graphic. The images are symbols, or figurative visual representations, of the combination of instrument and musician. This Jazz Combo consists of piano, keyboard (synthesiser), trumpet, saxophone and a rhythm section symbolised here by the drum and sticks. The combo leader may, or may not, be one of the instrumentalists. If this is the case in this combo, the leader would be either the trumpeter or pianist. While a combo may play music in which all the instruments are always contributing to the sound, combos are renowned for featuring solo instrumental performances at various times throughout a performance. Consequently, there is a sense of *diversity and conformity* in combo presentations.

The symbolic meaning of each of these instruments is as follows:

The conductor represents the need for co-ordination in the combo and, in Outcome Space terms (Figure 5.1), is a representation of Conception A. The *rule of law* serves as a mechanism to order, regulate, and co-ordinate the various contributions of the many voices: informal, formal, implicit, explicit, public and private, and the like. A combo conductor usually co-ordinates the performances but, because of the small and intimate nature of the group, usually relies on the expertise and contributions of all the instrumentalists. Usually, the combo members co-operatively design their style and specific interpretations of the music which may consist of published works or music which they have specially written for themselves. Consequently, the conductor is viewed more as a facilitator rather than the leader of the combo. This analogy is an accurate meaning that is given to Conception A's contribution to the Outcome Space of Figure 5.1.

Conception B is represented in this combo by the rhythm section which includes drums, stage backdrops and props. These signify the basic metre and beat of the combo music as well as the visual imagery that is usually associated with jazz settings. The analogy here relates to personal worldviews that are unique, just as jazz settings are quite unique and variable, but,

like the rhythm section of the combo, they play such a valuable yet basic role in the performance of the combo. If the rhythm section is out of step with the other instrumentalists, the musical performance will be a disaster. However, the other instrumentalists are allowed usually a considerable degree of flexibility in the interpretation of their contributions to the combo sound. The musical strategy of *improvisation* encourages, and often acclaims, this. Conception B plays a similar role in this study's Outcome Space. It provides the basic rhythm for the Outcome Space but allows for a considerable degree of variation in interpretation provided that the voice being heard stays in step with the individual and community worldviews.

The piano of the metaphor represents Conception C. Personal behavioural space tends to be seen in very 'black and white' terms in that individuals tend to have fairly firm notions of what is right and wrong or legal or illegal, and the like, for them. It is firmly in the foreground of their life experiences and is usually a major influence in their processes of decision-making, especially about personal behavioural boundaries. Pianos only have black and white notes. Personal views of behavioural space tends to be more clinical and clear-cut than broader community notions of right and wrong. However, the piano of the combo has an important lead role to play especially in those difficult sections of the performance where many of the instruments are making unique yet different contributions to the overall combo sound. Another analogy between Conception C and the piano is that the community worldview is a combination of individual voices each of which is represented by the notes on the piano. When played singly and or independently, they can often produce a cacophony of discordant voices, but when played by skilled and trained musicians can produce wonderful melodies and harmonies. The piano, Conception C, has to work also in a complementary manner with the rhythm section represented by Conception B.

Conception D is represented by the synthesiser keyboard, since not only can it be tuned as the need arises, but it can also deal electronically with the many voices it synthesises. The synthesiser of the combo can be programmed to produce 'new' sounds that each of the other combo instruments cannot produce. Consequently, the synthesiser provides a unique yet often original set of sounds to both complement and enhance the overall performance. Synthesisers

are also designed with numerous preset tabs, buttons or codes to provide the musician with ready and quick access to particular required sounds. Conception D plays a similar role to this within the Outcome Space. The dualistic cluster (Conceptions C and D) of the Outcome Space is, therefore, represented in so many ways by the piano and keyboard of the combo.

On the other hand, **Conceptions E and F, represented by the brass instruments**, are of a very different form to the other instruments of the combo. The brass instruments usually make significant solo contributions to the overall tone and the feel of the music being presented. Jazz music is well-known for its solos and duets, introduced at selected times in a musical rendition. The brass instruments, represented here by trumpet and saxophone, are designed as lead instruments. They lend character to the sounds that are produced by talented and trained musicians. Conceptions E and F operate in a similar manner to the brass instruments in that it takes trained and skilled operators to 'play' them successfully so as to bring breadth, clarity and holism to the combo music.

In contrast, Conception G is of a very different order to Conceptions A - F. As outlined in Sections 5.4 to 5.6, Conception G provides a climate, context or setting within which all of the other conceptions are located. In the Jazz Combo metaphor, Conception G cannot be an individual instrument. No instrument has been created to fulfil the design specification required by Conception G. Therefore, in this metaphor, **Conception G is represented by the overall musical sound that is produced by the combo when performing its repertoire.** This sound, if the instrumentalists are in tune, talented and trained, can produce both wonderful and uplifting renditions.

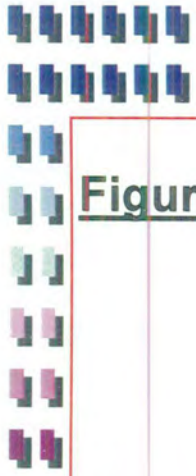


Figure 5.3 Conceptions and the 'Jazz Combo' Metaphor

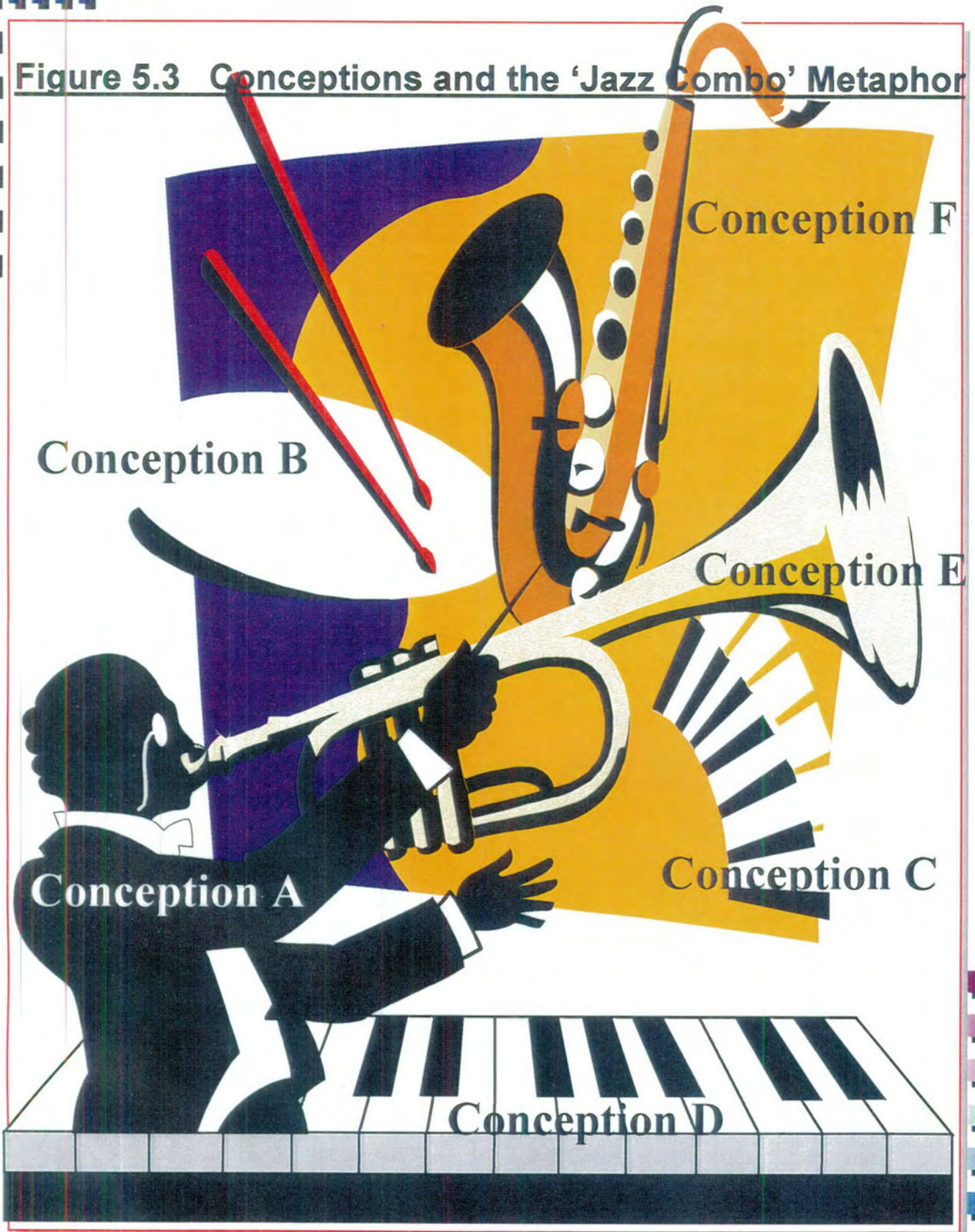




Figure 5.4 Conception G and the Musical Metaphor



On the other hand, if the instrumentalists are novices and are attempting to play music that is either too difficult for their skill levels, or for which they have not completed sufficient practice, the overall music produced will not be as impressive as the obverse. It may even be objectionable to the audience who may either quietly voice their opinions, leave the performance or demand their money back. Therefore, the overall performance of the combo is usually judged, not just on the abilities of any one of the instrumentalists, but also on the overall polyphony demonstrated. Figure 5.4 attempts to depict this overall integration of the voices with Conception G being represented by the music played and the sound produced by the combo.

Hence, the *Jazz Combo*, visually illustrated in Figures 5.2 to 5.4, is an appropriate and powerful metaphor of the conceptions and their interrelationships, at structural and referential levels, as expressed in the Outcome Space illustrated in Figure 5.1.

5.8 LITERATURE REVIEW AND OUTCOME SPACE - A DISCUSSION

One of the analyses that should be undertaken in a study of this kind is a comparison of the relationships between the information reviewed in Literature Review, included in Chapter 2, and the Outcome Space of Chapter 5. The following discussion examines both the similarities and the differences between the literature reviewed on *thinking legally* and this study's outcomes.

The seven conceptions that have been identified in this study, provide a diverse yet, in some way, alternate view to that portrayed in the literature. However, there are some elements that are common to both the literature reviewed and this research study's outcome space.

These common elements relate to:

- participants' worldviews (personal knowledge and experience base) of thinking legally [Schaeffer (1990), Sire (1990) and Jones (1993)];

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- **explicit relationships between individuals' worldviews and the rule of law in their society** [Hart (1967), Freund (1968 & 1993), Kelsen (1973), Copi (1979), Berman (1980), Nash (1983), Schaeffer (1990), Sire (1990) and Jones (1993)];
 - **the dichotomous manner in which the research participants viewed their knowledge as *content* and knowledge as *process*** [Stenhouse (1975), Anderson (1980), Adams (1981), Kemmis, Cole & Suggett (1983), Case (1984), Shuell (1986), Goldring (1987), Sternberg, (1987) and Newmann (1990)];
 - **the seeming lack of adequate, yet agreed to, pathways for the processing of private and public problem-solving** [Caully and Dowdy (1986), Weinstein and Meyer (1986), Bradney (1987), Le Francois (1988), Peczenik (1989) and Bereiter (1990)];
 - **the need for an holistic approach to problem-solving in society** [Edwards (1989), Jenkins (1990), Naylor (1990) and Newmann (1990)] ;
 - **the need for personal approaches to the solution of unique problems** [Cornett (1983), McCarthy (1987), Hermann (1988), Butler (1994) and Edwards (1994)];
 - **the infusion and integration of thinking legally into almost every facet of individual and corporate/public life** [Demetriou and Charitides (1986), Downs (1989), Guerra (1989), Nathanson (1989), Moss (1990), and Armytage (1996)];
and
 - **the holistic, yet pervasive, nature of thinking legally for each individual in a society** [Diaz (1985), Goldring (1987), Bolton (1989), Gadamer (1989), Shin (1994) and Gold (1996)].

These common elements of the participants' conceptions provide a basis for a consideration of the differences that exist in the participants' expressions of the qualitative differences in their

experiences and understandings of thinking legally. Differences also are evident in the participants' preferred approaches and tactics for resolving problems in private and public domains of life.

No assumption is made in this thesis that the outcomes of this study necessarily are representative of all the possible conceptions of thinking legally. However, given the size and diversity of the participants' life experiences, it may be that the seven conceptions developed here are more generally applicable to the wider Queensland and Australian society. How these might span multi-cultural dimensions both within Australia and overseas is a matter for further research.

Each of the factors listed above relates to common elements within and across the seven conceptions of thinking legally. However, there are other associations with the literature that was reviewed in Chapter 2. This literature relates to these common elements in the following ways:

5.8.1 Participants' worldviews (personal knowledge and experience base) of thinking legally

The literature of Hart (1967), Freund (1968), Kelsen (1973), Copi (1979), Berman (1980), Nash (1983), Lee and Fox (1991), Freund (1993), and others, provided structures and schemata for understanding the legal frameworks that operate in many western democratic societies. Various approaches were reviewed in Chapter 2 to ascertain their potential for holistic and comprehensive conceptual frameworks for this research study. The worldviews of those involved in legal and law-related endeavours including legal education were reviewed in an attempt to match their understandings with those of Holmes (1983), Hoffecker (1988), Schaefer (1990), Sire (1990), and Jones (1991) who discussed these worldviews from philosophical, theological and holistic perspectives.

This notion of worldview has powerful implications for each individual, group and society as a whole, since it provides avenues for the expression of holistic

understandings as well as enabling the underpinnings of personal and public perspectives to be investigated. These avenues include: (i) personal decision-making, (ii) interpersonal relationships, (iii) public lobbying, (iv) lifestyle expressions, (v) employment decisions, and (iv) leisure and recreational expressions.

This study has attempted to integrate various perspectives from diverse sectors of the research literature in a manner which is productive and holistic. The *Legal Knowledge Framework* outlined in [Figure 2.5](#) represented an analysis of the research literature while the *Outcome Space* in [Figure 5.1](#) and the *Jazz Combo Metaphor* of [Figures 5.2, 5.3 and 5.4](#) represent a structure and synthesis of the research findings. These two sets of outcomes appear to be quite different from each other, but are in fact quite complementary. They represent explicit representations both of the worldview and life-world expressed in the literature and by the participants. Their complementarity is based on an understanding of Section 5.8.2 below.

5.8.2 Explicit relationships between individuals' worldviews and the rule of law in their society

The worldview of individuals is based on personal assumptions, values and beliefs that are developed through involvement with social groups such as family, school, church and the local community. Because each individual's experience-base is unique and developmental, there is an ongoing symbiosis between one's knowledge-base and one's experience-base. In a similar manner, there is a symbiotic relationship between people's worldviews and the rule of law in their society. This results from the common and agreed assumptions, values and beliefs that community members personally develop through encounters in the practice of their life as well as through their formal education. The principles and practices of law in a society are an expression of a community's worldview at the systemic level. In more practical terms, most individuals are a product of the general thinking or worldview of their community, yet they have the opportunity to contribute to the development of that community's worldview together with its ways of operating.

Various factors contribute to an increasing emphasis on the important relationships between worldview and the rule of law. Factors, such as the alienation of selected individuals from a society through imprisonment and the migration of people from other communities, are mitigating factors that should be taken into account in any discussion of a symbiotic relationship between worldview and the rule of law. The nature of a community's communication system, through oral means as well as through the print and electronic media, has a dramatic influence on the overall knowledge-base of individuals.

Consequently, there are relationships between worldview and the rule of law that were not identified in Chapter 2 of this thesis. It is of some concern that the literature that was reviewed did not take into account many of the contextual elements that are so intrinsic to these understandings. While there is extensive literature on this notion of worldview, it is imperative that research studies such as this one be undertaken to establish the inter-connectivity between worldview and the rule of law. The Outcome Space of [Figure 5.1](#), for example, is an explicit example of how a representation of the interrelationships between complex conceptualisations such as worldview and the rule of law might be expressed.

Another difference between the literature review of Chapter 2 and this study's outcomes is outlined in Section 5.8.3.

5.8.3 The dichotomous manner in which the research participants viewed their knowledge as *content* (know what) and knowledge as *process* (know how)

In the legal and law-related literature, it was evident that authors have difficulty developing schemata for considering the contributions of knowledge-as-content (*know what*) and knowledge-as-process (*know how*). No schema reviewed in Chapter 2 seemed able to integrate these two types of knowledge successfully. The works of Dunn and Dunn (1978), Johnson (1980), Cornett (1983), McCarthy (1987), Biggs (1988 and 1991), Hermann (1988), Butler (1994) and Edwards (1994), for example, are indicative of both the knowledge-bases and strategies that might be used to develop

this integration of *know what* and *know how* but, at the present time in the arena of legal and law-related education, this does not seem to have been completed.

The research literature by Anderson (1980), Adams (1981), Kemmis, Cole and Suggett (1983), Case (1984), Goldring (1987), Sternberg (1987), Edwards (1989), Naylor (1990), Newmann (1990) and others, also provides schemata that in part indicate the need for this integration of *know what* and *know how* but each fails to provide holistic approaches to this dilemma.

It is believed that this study's outcomes, expressed in diagrammatic form through [Figure 5.1](#), [Figure 5.2](#), [Figure 5.3](#), and [Figure 5.4](#), and discussed in detail in Sections 5.2 to 5.7, provide an initial attempt to integrate and contextualise the *know what* and *know how* of thinking legally. However, the conceptual cluster of Conceptions C and D (see Section 5.4.2), while providing a context for such integration, is itself *dualistic*. The conceptual cluster of Conceptions E and F (see Section 5.4.3) is *non-dualistic* in that processes and pathways are provided in order to resolve the problems and legal difficulties encountered. The Outcome Space ([Figure 5.1](#)), therefore, provides considerable scope for overcoming many of the dichotomies between the *know what* represented by Conceptions C and D and the *know how* depicted by Conception E and F. The integration of these dimensions is a social imperative.

A further difference between the literature review of Chapter 2 and this study's outcomes is outlined in Section 5.8.4:

5.8.4 The seeming lack of adequate, yet agreed to, pathways for the processing of private and public problem-solving.

The work of Kelsen (1973), Stenhouse (1975), Cully and Dowdy (1986), Shuell (1986), Weinstein and Meyer (1986), Bradney (1987), Biggs (1988), Le Francois (1988), Morris *et al.* (1988), Mudd and La Trielle (1988), Peczenik (1989), Bereiter (1990), Jenkins (1990), Newmann (1990), Gold (1981, 1996), and others was

reviewed in Chapter 2. These schemata provided numerous examples of frameworks that had been developed to assist individuals with choosing pathways and utilising processes to resolve legal difficulties. These schemata are valuable tools for the resolution of particular types and forms of conflict. However, each of the schemata has a limited scope of issues or situations to which it can be applied. This is because the authors or researchers have used limited frames of reference when devising their frameworks. There appears to be a shortage of models in the research literature to promote the integration of many of these schemata. The works of Demetriou and Charitides (1986), Downs (1989), Guerra (1989), Nathanson (1989), Moss (1990), Roy and Howe (1990), and Armytage (1996) seem to be more progressive in these matters but these too are rather too myopic.

It is believed that the Outcome Space (see [Figure 5.1](#)), developed as a result of this study, is a beginning of a new era where attempts are made to provide comprehensive conceptual frameworks to assist in the integration of the schemata that are evident in the research literature. It is essential that the development of the micro-schemata and the macro-frameworks continues simultaneously and symbiotically. If this occurs, then the following two differences, discussed in Sections 5.8.5 and 5.8.6, between the research literature and this study's outcome space may be addressed.

5.8.5 The need for an holistic approach to problem-solving in society

This study has demonstrated through a review of (i) the legal and law-related literature and (ii) the study's research outcomes, that a notion of *thinking legally* can be identified, defined, and structured. Conception G, of the outcome space depicted in [Figure 5.1](#), is an example of the comprehensive and all encompassing need for *thinking legally* to be integrated into all facets of personal and public life. The works of Diaz (1985), Goldring (1987), Bolton (1989), Gadamer (1989), and Shin (1994), for example, are indicative of the human ability that is available to assist with this integration.

5.8.6 The need for personal approaches to the solution of unique problems

While it is essential for community consensus to be developed for the peaceful functioning of a society, each individual within a community is unique. Each has a particular worldview, a set of personal aspirations and goals of life, as well as unique personality and family characteristics which must be taken into account if the individual is to gain satisfaction from life and community living. While decisions may be made in broad policy terms at the community level, each individual needs to be able to make personal decisions about particular implications of policies. This is an intensely individualistic requirement if the quality of life for each individual is to be maintained and encouraged. Also, as a matter of personal style, each individual will implement unique interpretations of the strategies for resolving difficulties.

As a coherent community framework for integration is yet to be developed, two differences, between the legal and law-related literature and the outcomes of this study, are also noted. These are discussed in Sections 5.8.7. and 5.8.8.

5.8.7 The infusion and integration of thinking legally into almost every facet of individual and corporate/public life

This study has indicated the diversity and pervasiveness of *thinking legally* in individual and community life. Legal and law-related educators need to understand the implications of this for the quality of life of community members as well as for the ongoing functions of the community as a whole. A state of tension exists between the need for each individual to contribute to community life and for the society to provide frameworks of policy and practices that support, enhance and protect individuals.

5.8.8 The holistic, yet pervasive, nature of thinking legally for each individual in a society

If a community is to develop its effectiveness, especially in the protection of its members and in the resolution of conflict, it must deal with the need to develop systems for informing, engaging and utilising its members. The implications of the law and legal systems for the successful functioning of each community member and

the community as a whole are complex and dynamic. Consequently, holistic and pervasive programs or strategies to develop the ability of each community member to *think legally* should be planned and implemented so as to empower individuals, to provide them with adequate knowledge and to promote their participation in and contributions to society.

Consequently, several differences have been identified between the research literature and the outcomes of this study. These differences are further addressed in Sections 5.9 and 5.10 where the implications of this study and future research possibilities are discussed.

5.9 IMPLICATIONS OF THE STUDY

A research study, of the kind reported here, has a number of implications which are addressed in the following sections. These relate to:

- the **research participants** (Section 5.9.1);
- **educational enterprises** at primary, secondary and tertiary levels (Section 5.9.2);
- **teachers, tutors and lecturers** involved in legal and law-related education (Section 5.9.3);
- the **body of academic knowledge** generated by this research study (Section 5.9.4);
- **professional staff** involved in legal enterprises (Section 5.9.5); and
- **governments** promoting the education of its citizens (Section 5.9.6).

5.9.1 For the research participants

The research participants have been initiated into a process of thinking about *thinking legally* through the activities of this research study. This process has raised their level of awareness and made them cognizant of the need for the development of a conceptual framework of thinking legally. However, it may seem both inappropriate and unproductive to cease work with these research participants. An ongoing process

should be put in place to further the thinking on the theme of this study among the research participants.

This study's inductive and participatory design also requires that the outcomes be communicated to the participants so that the personal developments that they have commenced in their thinking about *thinking legally* may be extended and enhanced. It is proposed that this be undertaken as soon as possible after the completion of this thesis. This will be achieved through written communication to all the research participants as well as through the conduct of a post-doctoral conference to which all participants will be invited.

5.9.2 For the educational enterprises at primary, secondary and tertiary levels

In Chapter 1, the need for a comprehensive and coherent framework *for thinking legally* was described, especially in relation to the educational needs of both primary and secondary schools, and also to those general tertiary courses, such as Bachelor of Liberal Arts programs, that cater for the general education of all citizens.

While a range of micro-frameworks has been identified in Chapter 2 from the legal and law-related educational literature, the outcomes of Chapter 5 need to be communicated to and discussed with the educational bodies responsible for the design, development, implementation and review of the curriculum. If *thinking legally* is to be enhanced in societies, then every effort should be made to influence as widespread an educational audience as possible. If the framework and outcomes of this research study can be infused into the frameworks of curriculum areas, such as Studies of Society and the Environment of the Australian Schools Curriculum, then some impact might be made on the general education of all students during the compulsory years of schooling.

In the tertiary sector, this situation is more problematic because of the non-compulsory nature of courses and programs. Every effort should be made to inform those involved in Legal and Law-related Education of the processes and outcomes of this research

study. To acquaint primary, secondary and tertiary educators with this study's outcomes it will be necessary to use strategies such as journal articles, papers, submissions, conference presentations and personal representations.

5.9.3 For teachers, tutors and lecturers involved in legal and law-related educational enterprises

If the perspectives and implications outlined in 5.9.2 can be achieved, there is a need to develop inservice education and professional development programs to assist the teachers, tutors and lecturers to: (i) understand the study's outcomes; (ii) investigate possible implications for their curriculum areas and course programs; (iii) consider strategies for the integration of the study's outcomes into their programs; (iv) develop strategies for implementing the specific initiatives in courses; and (v) provide professional support for the infusion of the thinking legally conceptual framework, that is the Outcome Space with its Conceptions A to G, into curriculum planning, implementation and review.

It is the implementation of strategies and practices in schools and tertiary institutions that has potential for assisting students to develop the understandings included in this study's research findings. The outcomes of this study need to be infused into and accessed by those involved in Legal and Law-related Education.

5.9.4 For the body of academic knowledge that has been generated

The legal and law-related literature, accessed in this study, has indicated the general need for macro-frameworks to be researched, formulated and communicated. While there are numerous micro-frameworks, a body of academic knowledge on *thinking legally* has been initiated by this research study. It is desirable that the conceptual framework, outlined in the Outcome Space of [Figure 5.1](#), be related to the body of academic and practical knowledge that is accessed by legal and law-related educators.

Another implication of this study is that attention should be paid to the relationships between the existing knowledge bases of academics and practitioners and this study's

outcomes. If these new learnings are to be assimilated, accommodated and implemented, strategies need to be developed to use cohesive ties and integrating devices such as curriculum integration, Key Learning Areas (K.L.A.s of the Curriculum Framework for Australian Schools) and methodologies for *teaching legally*.

5.9.5 For professional staff involved in legal enterprises

The practising lawyers among the participants had a desire to relate the practice of their profession to the developing body of academic knowledge and skills that are being extended through research studies such as this one. The theory-practice gap can be widened too easily. The practitioners need to be kept both informed of and up-to-date with developments taking place in academic circles. The appropriate integration of theory and practice is in the best interests of the community at large and those involved in the design and implementation of legal and law-related activities within the community.

5.9.6 For governments promoting the education of their citizens

It seems important that organisations responsible for the education of citizens be made aware of the developments taking place in academic circles. The implications of these developments relate to the need to obtain, review, modify, redesign and implement the outcomes of academic study. Otherwise, the pursuit of new knowledge is purely an academic exercise. The linkages between this research study and formal educative programs at the primary, secondary and tertiary levels, as well as more informal initiatives such as community education, need to be explored and developed. This usually occurs through the support and funding of professional development, curriculum review, curriculum materials and publications, conferences, workshops and seminars.

The implications of this study for additional research are addressed in Section 5.10.

5.10 PROPOSALS FOR FURTHER STUDY

There are several of research studies that need to be initiated as a result of the completion of this study. New research endeavours should critique, validate and attest the authenticity of a research project's outcomes. This study's outcomes must stand the test of scrutiny and rigorous evaluation by others. This may be achieved if the following proposals for continuing investigation are taken up by researchers.

Some potential areas for further research study include:

- an investigation of contextual factors that may have influenced this study (Section 5.10.1);
- a validation of Conceptions A to G (Section 5.10.2);
- the review of the conceptual design of this study's Outcome Space (Section 5.10.3);
- a critique of the relationships between (i) the legal and law-related literature, and (ii) the outcomes of this study (Section 5.10.4);
- the identification of developmental stages through which each individual's *thinking legally* progresses from novice to expert (Section 5.10.5);
- an investigation of the conceptual interrelationships among *thinking legally*, *teaching legally* and *learning legally* (Section 5.10.6);
- the development of teaching and learning methodologies that are both compatible and consistent with this study's outcomes and which promote student abilities to *think legally* (Section 5.10.7);
- comparisons of intra-cultural and inter-cultural perspectives on, and practices for, *thinking legally* (Section 5.10.8); and
- replications of this study in cross-cultural contexts (Section 5.10.9).

These suggested areas for further research are described in detail in the following sections.

5.10.1 Investigation of contextual factors that may have influenced this study

While this study has attempted to take as many contextual factors as possible into account during its design and implementation, there may be factors that may have inadvertently influenced the research processes. Some of these may have had explicit

impacts while others may have demonstrated implicit effects on the study. For example, factors such as the interview time of day, the length of the interview, the personal climate and environmental influences immediately prior to the conduct of the interview/discussions, the participants' personality, to name a few, may have had significant or other influences on the processes and outcomes of the study. Factors such as these are likely to be significant for a study of this kind because of the belief that qualitative data needs to be experienced and obtained *in situ*. While assumptions have been made about similar factors in this study, the qualitative researcher is unable to, and does not intend to, control all the variables operating in the context of the phenomenon being investigated.

5.10.2 Checking the authenticity of Conceptions A to G

Conceptions A to G, as a set, have been voiced for the first time through this study. While the research design, project procedures and process believability have been implemented in congruence with phenomenographic principles, the outcomes of this inductive study need to be substantiated. Contextual clarity, definitional integrity, conceptual authenticity and comprehensiveness of each of the conceptions need to be attested.

While it is not the intention of a qualitative study to produce generalisable outcomes, if the study's outcomes are both worthy and rigorous, they will stand the test of time and further investigation. This may be accomplished either by using the data generated in this study or through the development of additional data to complement this study.

5.10.3 Review of the conceptual design of this study's Outcome Space

In a similar manner, the Outcome Space ([Figure 5.1](#)) needs to be scrutinised and evaluated to ascertain its comprehensiveness, believability and authenticity. The structural and referential relationships among the conceptions need to be reviewed in the light of this study's research data or with additional data. This could be achieved through the acquisition of additional data to complement and test this study's processes

and findings. Alternately, researchers may desire to analyse the data already obtained through this research study.

5.10.4 Critique of the relationships between (i) the legal and law-related literature and (ii) the outcomes of this study

The discussion, in Section 5.8, of the relationships between the legal and law-related education literature and the outcomes of this study expressed in this chapter should be subjected academically to review. While researchers attempt to implement both fastidious and conclusive procedures, they are fallible. Consequently, an in-depth literature-based study needs to be undertaken in order to elaborate and validate the general conclusions drawn in this study. This could be achieved through subsequent research to this study or as an independent project sponsored by a professional or governmental agency interested in and supportive of Legal and Law-related Education. Groups such as the Queensland Law Society, Queensland Bar Association or the Australian Legal Education Council would be possible sponsors of such a study.

5.10.5 The identification of developmental stages through which each individual's *thinking legally* progresses from novice to expert

If the conceptual framework developed through this study is conclusive, then further investigations need to be undertaken to identify the phases of the process of developing the abilities for *thinking legally*. Just as there are believed to be psychological 'ages and stages' associated with the development of individuals, there might well be sequential stages in the development of 'content - concepts - conceptions or conceptualisations'. These phases or stages need to be researched, defined, described and made available to educators for implementation in curriculum programs. These phases or stages will correlate possibly with some of the educational and developmental psychological research, such as that of Biggs (1991) in relation to surface approaches, deep approaches and achieving approaches.

5.10.6 An investigation of the conceptual interrelationships among *thinking legally*, *teaching legally* and *learning legally*

This study has focused on the design of a conceptual framework for *thinking legally* rather than on methodologies or approaches to *teaching legally* or *learning legally*. It is believed, however, that research into the relationships among these three elements would provide curriculum developers and educators with valuable insights for assisting community members, including school and tertiary students, with fuller understandings, abilities, skills and personal competencies. These could assist them to function more effectively both in society and in the community where they live.

5.10.7 The development of teaching and learning methodologies that are both compatible and consistent with this study's outcomes and which promote students' abilities to *think legally*

Educators have been able to develop teaching methodologies that have been congruent with the nature and types of learning that are required of their students. The laboratory approach of the sciences, the literature-based and experiential approaches of language education, the practical approaches of physical education, the inquiry approaches of the social sciences, or the 'hands on' approaches of primary school mathematics programs, are illustrative of these.

With the rapid increase of Legal and Law-related Education programs, for example in senior sections (Years 11 and 12) of Australian secondary schools, it would be reasonable to assume that teaching methodologies ought to be developed that are compatible with both the nature and scope of these Legal Studies courses. Future studies could be undertaken in order to build on the conceptual work completed in this research study by relating the conceptual design to the methodologies of teaching for learning.

5.10.8 Comparisons of intra-cultural and inter-cultural perspectives on, and practices for, *thinking legally*

One of the assumptions referred to in Chapter 3 related to the contextualisation of this study to the thirty participants whose lived experience was focused on the south-eastern section of Queensland, Australia. It is to be assumed that factors such as life-style and culture, amongst others, may have played a major role in shaping the thinking of the research participants. This may be a subject of considerable conjecture as to whether other participants, from the same or different geographical and cultural contexts, would have responded differently from the thirty participants of this study. Both intra-cultural and inter-cultural comparisons, of the kind proposed, could provide a wealth of data and research outcomes that would complement the current study.

5.10.9 Replications of this study in cross-cultural contexts

In a similar manner, replicate studies should be conducted in cross-cultural settings to test this study's outcomes. This could be undertaken in contexts with different language and conceptual structures, socio-economic conditions, cultural traditions, geographical locations, or political systems.

5.11 CHAPTER CONCLUSION

This study has focused on a investigation of thirty participants' perspectives on the research question:

Based on your life experience, what does it mean to *think legally*?

These participants were believed to have had a range of life experiences that, together with their personal and/or professional understandings, would assist them to address the research question. The analysis of their responses to, and interactions with, this research question has enabled the researcher to formulate seven key ideas, expressed in this thesis in the form of *conceptions*. These were developed from the verbatim transcripts of participants'

interview/discussions and from the diagrammatic representations developed by eighteen of the participants.

The seven conceptions have been formulated into a theoretical model which defines, discusses and maps the *structural* and *referential* interrelationships among the conceptions. These sets of interrelationships among the conceptions were formulated into the diagrammatic representation of a theoretical model in the form of an *Outcome Space*, the meaning of which was extended and synthesised by the use of a metaphor. The range of conceptions that have been developed within the context of the theoretical model expressed as Outcome Space, provides an understanding of the participants' insights and awareness of *thinking legally*. The processes for developing the model, as well as the model itself, have been tested for *believability* and *trustworthiness* using criteria and strategies that were outlined in the study. The outcomes of this study are now accessible for further analysis and critical review, in both similar situations and different contexts, for cross-study as well as for cross-cultural comparisons.

The phenomenographic approach used in this study has enabled insights to be gained into a range of qualitatively different ways in which the participants understand, interpret and perceive *thinking legally*. This qualitative and inductive approach has proven to be a conceptually efficient, though procedurally extensive, approach for the development of the study's outcomes. While it is acknowledged that a different group of research participants would have had life experiences different from those involved in this study, the qualitative outcomes of this research are indicative of the results that may have been obtained from any group of south-east Queensland or Australian research participants. However, it is recognised that the nature and quality of individuals' life experiences are usually both culturally defined and interpreted. So it may be that both the conceptions and the Outcome Space developed in this study are culturally bound and may differ from similar studies that could be conducted in other settings.

The study has sought to elaborate a range of implications about thinking legally for the various stakeholders in legal, educational and societal enterprises in south-east Queensland

and Australian society. There is a need for ongoing research to corroborate, critique and extend the outcomes of this study. However, it is hoped that the knowledge frontiers that have been addressed here will provide a base for fruitful, extensive and quality research in the not too distant future. It is hoped also that the results of this study will provide assistance to those who are themselves either *thinking about thinking legally* (or who need to be), or those who are *educating and training others to think legally*. This is a particular focus for curriculum designers, resource developers, teachers, lecturers and students who are involved in legal and law-related programs such as Law School courses, and Years 11 and 12 Legal Studies programs.