

Legal Education

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Editorial Note

This edition of *Legal Education Review* is sure to provide pieces of interest to all readers. The articles range from those which offer insights into the training of legal skills in the law curriculum, to those which discuss innovative ways of engaging students, and all provide thought-provoking commentary about legal education. The Teaching Notes section of *Legal Education Review* offers the opportunity to read about others' experiences as law teachers and the trialling of teaching strategies. These might provoke thoughts about your own teaching and learning practices.

This *Legal Education Review* has a new editorial team. I would like to welcome Professor Paul Moyle from Edith Cowan University, Associate Professor Nan Sueffert from Waikato University and Allan Chay from Queensland University of Technology. The continuing support offered by Jeffrey Barnes of La Trobe University is greatly valued. Terry Hutchinson of Queensland University of Technology has also taken a leading role in making this edition come to life.

Many thanks go to Angus Young, who administers the *Review*, and to Sian Jones who worked on editing the contributions. Additionally, the journal acknowledges the important role that our referees play in ensuring the quality of our publication. The *Review* sincerely appreciates the time and expertise offered by these eminent academics.

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Lyndal Taylor
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Professional Responsibility in Practice: Advocacy in the Law School Curriculum

*Judith Dickson & Susan Campbell**

Introduction

This article discusses a research project that investigated the feasibility of introducing provisions granting law students a limited right of audience into the various State and federal statutes in Australia regulating the legal profession and procedure in the courts.

The Commonwealth Attorney-General's Department under the National Quality Project (NQP) funded the project for Clinical Legal Education. The NQP funded both programs and research in the area of clinical legal education. It had two objectives. These were the improvement of legal education and the extension of legal services to disadvantaged members of the Australian community.¹

The research discussed here grew out of our experience as teachers in university clinical legal education programs and in particular, of Susan Campbell's experience of her students representing clients in the Victorian Magistrates' Courts and the Family Court of Australia. Judith Dickson's experience of student advocacy in the United States in law school clinical programs was an additional catalyst to the research. It also grew out of our understanding of recommendations for education in ethics and professional responsibility made in a series of Reports during the past 10-15 years in Australia.²

* Judith Dickson is senior lecturer and clinical supervisor in the School of Law and Legal Studies, La Trobe University. Susan Campbell is formerly Professorial Fellow, Faculty of Law, Monash University.

1 J Dickson and S Campbell, *Student Advocacy in Australian Courts: Recommendations for a Model Program*, A Report of research conducted for the Commonwealth Attorney-General's Department under the Clinical Legal Education National Quality Project, September 2003.

2 See note 18.

For the purposes of this research, we define clinical legal education as a legal practice-based method of legal education in which law students assume the role of a lawyer and are required to take responsibility under qualified supervision for providing legal services to real clients.³ Clinical programs in Australia now include not only the community legal centre-based university programs but also field placements or externships in a variety of agencies.⁴

Several university law schools in Australia are already conducting informal programs in which students represent their clients in defined circumstances with the leave of the court.⁵ Thus, we were able to base the empirical component of the research on interviews conducted with a number of magistrates, judges and practitioners who have already observed at first-hand the process of student and apprentice advocacy.⁶

The research may be understood in the context of two ongoing and intersecting debates in Australia during the past 40 years. These are the debates first on the aims, content and structure of legal education and secondly on the operation of the legal system and access to justice. Interestingly, in Australia, governments have initiated both debates. Inquiries from the 1980s onwards discussed the relationship between legal education, the practice of the law and the operation of the legal system.⁷ Governments have challenged the organised legal profession, the courts and the university law schools to examine the part they each play in contributing to or

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- 3 G Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology* CLEPR National Conference: Clinical Education for the Law Student: Legal Education in a Service Setting (Buck Hills Falls: CLEPR, 1973); S Rice, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (Sydney, Centre for Legal Education, 1996); M Noone and J Dickson, "Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers" (2001) 4 *Legal Ethics* 127.
 - 4 See *Guide to Clinical Legal Education in Australia 2003-2004* (Sydney: Kingsford Legal Centre, 2004).
 - 5 S Campbell, "My Learning Friend: Students in Court" (1993) 67 *Law Institute Journal* 914. Other programs operate at Griffith University, University of Newcastle, Murdoch University, University of New South Wales and have agreement to operate at La Trobe University.
 - 6 Details of interviewees and of the research methodology are described later in this article.
 - 7 See, eg. New South Wales Law Reform Commission, *The Legal Profession: Discussion Paper* (Sydney, 1979-81); Senate Standing Committee on Legal and Constitutional Affairs, *Cost of Legal Services and Litigation*, Discussion Papers Nos 1-7 and Final Reports 1 and 2, 1991-1994 (Canberra, AGPS); Law Reform Commission of Victoria, *Access to the Law: Accountability of the Legal Profession* (Melbourne, 1992); Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (Canberra, AGPS, 1994).

impeding access to justice. Most recently, the Australian Law Reform Commission (“ALRC”) focused on legal education and training as a significant influence on the operation of the legal system.⁸

In the last 20 years, a recurring theme in the two debates has been the relationship between the monopoly held by qualified legal practitioners over the provision of legal services and the obligation of legal practitioners to serve the community as well as their clients and the court.⁹ The idea and language of “professional responsibility” has been adopted or borrowed from the American literature in recent Reports.¹⁰

Of course, student advocacy in the courts is an exception to the monopoly. In this research, we examined the existing experience of informal student advocacy by investigating the attitudes of judicial officers and legal practitioners who had been involved either as magistrates and judges or as court supervisors. We hoped that an analysis of the responses would indicate whether a formal legislative scheme of student advocacy within the law school curriculum could be designed to ensure both professional ethical obligations to the client and court and educational purposes were met. In an environment where public legal aid funds are restricted and the legal profession is increasingly called upon to perform “pro bono” legal services, it is critical that any scheme providing legal services to disadvantaged people meet the same standards of competence and conduct as required of lawyers for fee paying clients.

The experience of judicial officers and supervising practitioners of student advocacy in Victoria and of apprentice advocacy in Tasmania has clearly been a positive one. Their views through the research are revealed as supportive of a formal student advocacy regime. They see benefits to the client, court, student and community. Based on these responses, we made Recommendations to the Commonwealth Attorney-General’s Department for the development of a student advocacy regime including draft model legislation. These Recommendations (excluding the associated discussion) are appended to this article.

8 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* Chapter 2; and Australian Law Reform Commission, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training*, Issues Paper 21 (Canberra, AGPS, 2000 and 1997 respectively).

9 *Access to Justice: An Action Plan*, supra note 7 for the most coherent discussion of this relationship and its impact on the community.

10 *Managing Justice: A Review of the Federal Civil Justice System*, supra note 8.

It is important to note the scope of this research. In our Report to the Commonwealth, we emphasised the limitations of the subject group in both size and experience cautioning that our conclusions must be understood in that limited context. We suggested that the research could properly be understood as a “pilot study” of attitudes of the judiciary and legal practitioners to a student advocacy scheme.¹¹ The research does not include a survey of client opinion of student advocacy and was not designed or funded to do so. We make the point, as one magistrate commented, that the client is not necessarily in a position to assess the competence of the professional representation provided. Client opinion on the approach and attitude of the student advocate would be valuable, and appropriately formulated research into client satisfaction is a logical next step.

It is important to note that this research project did not seek to examine the impact the experience as an advocate had on the student understanding of ethical obligations or of a wider professional responsibility.¹² However, the research suggests that a program in which students represent a real client in court could provide an outstanding opportunity for them to acquire a deep understanding of these obligations and responsibility.

Legal Education and Professional Responsibility

Forty years ago, in 1964, the *Martin Report* into tertiary education in Australia was published.¹³ The effect of the Report on legal education was to consolidate the position of the universities as providers and diminish the role of the practising profession in the primary stages of professional legal education. Underlying the *Martin Report's* recommendations for university-based legal education was the Committee's acceptance of the view that the legal profession performed a public function in the administration of justice. It was therefore necessary to have skills and knowledge of a standard able to meet public expectations.

11 Dickson and Campbell, *supra* note 2, at 13.

12 Adrian Evans at Monash University in Melbourne is currently conducting a large-scale research project into the values of Australian lawyers with a component directed at graduates of clinical programmes and this one in particular. See also, A Evans, “The Values Priority in Quality Legal Education: Developing a Values/Skills Link through Clinical Experience” (1998) 32 *The Law Teacher* 274.

13 Committee on the Future of Tertiary Education in Australia, *Tertiary Education in Australia (Martin Report)* (Australian Universities Commission, Canberra: Government Printer, 1964).

In 1979, the Bowen Committee¹⁴ was also interested in the role of legal education. By the time it was reporting on legal education in New South Wales, the Commission of Inquiry into Poverty (the “Henderson Inquiry”) had published its report, *Law and Poverty in Australia*.¹⁵ At times, the language of the Bowen Committee’s Report reflected the pervasive concerns of the Henderson Inquiry. The Report discussed the need for law schools to produce lawyers to meet the needs of the community, including the poor in the community. The Committee saw the law school as playing a key role in the development of a professional culture. It described the process as one of “professionalization”, that is, “the development of skills . . . but it also involves the development of a feeling for the professional role – for its responsibilities and limits”.¹⁶

This duality of purpose was re-emphasised by the Australian Law Reform Commission in its report on the Australian federal civil justice system when it recommended: “university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility”.¹⁷

This recommendation is part of the considerable, ongoing discussion in both academic writing and in the Reports of Law Reform Commissions in Australia of the need for law schools to engage their students in a serious discussion of the nature of professional responsibility.¹⁸ A similar discussion has taken place in both the United States and in Canada.¹⁹

14 Committee of Inquiry into Legal Education in NSW, *Legal Education in NSW* (Bowen Committee) (Sydney: Government Printer, 1979).

15 Commission of Inquiry into Poverty Second Main Report, *Law and Poverty in Australia* (Ronald Sackville Commissioner) (October 1975).

16 Committee of Inquiry into Legal Education in NSW, supra note 14, at Ch 3.30-1.

17 ALRC, supra note 8.

18 See, eg, A Goldsmith and G Powles, “Lawyers Behaving Badly: Where Now in Legal Education for Acting Responsibly in Australia” in Kim Economides (ed), *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998); New South Wales Law Reform Commission, *First Report on the Legal Profession* (Sydney: New South Wales Law Reform Commission, 1982); *Cost of Legal Services and Litigation*, supra note 7; *Access to Justice: An Action Plan* (1994) supra note 7; *Managing Justice: A Review of the Federal Civil Justice System*, supra note 8; *A Discussion Paper: Challenges to the Legal Profession* (Canberra: Law Council of Australia, 2001); M Noone and J Dickson, Special Edition, “Teaching Legal Ethics” (2001) 12 LER, supra note 3 (Nos 1 and 2); and the collection of articles (both Australian and international) contained in M J Le Brun, *Improving the Teaching and Learning of Legal Ethics and Professional Responsibility in Australian Law Schools*, Workshop Materials (July 1999) (the materials developed under a National Teaching Fellowship Award). See also K Economides (ed), *Ethical Challenges to Legal Education & Conduct* (Oxford: Hart Publishing, 1998); J Giddings, “Teaching the Ethics of Criminal Law and Practice” (2001) 35 *The Law Teacher* 161 and Special Edition, “Teaching Ethics” (1999) 33 *The Law Teacher* (3).

The ALRC recommendations also expressed the concerns for competence and ethical conduct encapsulated in the statutory regulation of advocacy (the monopoly). Fundamental to our research was an understanding of this statutory regime.

Statutory Regulation of Advocacy

The statutory regulation is of two types. First, there is the legislation regulating who may practise law.²⁰ Secondly, there is the legislation that regulates each court's jurisdiction and procedure.²¹ These latter statutes and rules generally allow a party to proceedings before the court to be represented by a legal practitioner,²² thereby indirectly granting a right of audience to the legal practitioner.

In no State of Australia is there legislation of either category granting students any right of audience in the courts.²³

Each State of Australia has legislation that regulates the practice of law in that State.²⁴ Typically, the legislation prohibits legal practice by anyone other than a qualified legal practitioner and the legislation sets out the way in which a person attains that qualification. The language of the legislation is such as to clearly include advocacy before the courts as "legal practice". This is consistent with the common law.²⁵ This prohibition

19 American Bar Association, "In the Spirit of Public Service: A Blueprint for the Rekindling of Professionalism" (1986); Committee Responding to Recommendation 49 of the Systems of Civil Justice Task Force Report, *Attitudes-Skills-Knowledge: Proposals for Legal Education to Assist in Implementing a Multi-Option Civil Justice System in the 21st Century* (Ottawa: Canadian Bar Association, 1999).

20 For example, the *Legal Practice Act 1996* (Vic), *Legal Profession Act 1987* (NSW), *Legal Practitioners Act 1893* (WA), *Legal Practitioners Act 1981* (SA), *Legal Profession Act 1993* (Tas), *Law Society Act 1952* (Qld).

21 For example, in Victoria there is the *Supreme Court Act 1986* (Vic), *County Court Act 1958* (Vic) and *Magistrates' Court Act 1989* (Vic); Rules prescribing procedure in each court, eg, *General Rules of Procedure in Civil Proceedings 1996* (Supreme Court); *County Court Rules of Procedure in Civil Proceedings 1989*; *Magistrates' Court Civil Procedure Rules 1989*. Each Australian State has a similar statutory regime.

22 For example, O 1.18 of the *Victorian Supreme Court Rules* is headed "Power to act by solicitor" and provides that, with some qualification, any act which a party to proceedings may do himself or herself may be done by his or her solicitor. Similar provisions are found in the other courts' legislation. See also *Legal Practice Act 1996* (Vic) ss 8(1) and 314(1). See also, eg, *Justices Act 1902* (WA) s 68, *Supreme Court Act 1995* (Qld) s 209(1). In New South Wales the *Legal Profession Act 1987* s 38L(2) grants barristers and solicitors a right of audience in any court.

23 The Tasmanian legislation discussed below refers to articulated clerks and "apprentices".

24 *Supra* note 20.

25 See *Barristers' Board v Palm Management Pty Ltd* [1984] WAR 101 at 105 in which Brinsden J quotes with approval from *State ex rel Florida Bar v*

on non-lawyers engaging in legal practice is consistent with a view that there needs to be some guarantee of competence in those who do offer legal services. The regulatory regime is founded on this view. It assumes that the fulfilment of the prescribed education, training requirements and admission to practice provides that guarantee. Similarly, the regime places legal practitioners under the disciplinary jurisdiction of the Supreme Court, thus conforming to the traditional view that this ensures high ethical standards.²⁶

The one variation to this uniformity of approach occurred in Tasmania. In 1968, the then *Legal Practitioners Act 1959* was amended to provide a limited right of audience to apprentices and articled clerks.²⁷ Issues of competence and conduct were dealt with by expressly subjecting the apprentices and articled clerks to the same “duties and obligations” as legal practitioners and barristers. This scheme remains in the Tasmanian legislation.²⁸

Legislation establishing jurisdiction and the rules of civil procedure of most courts throughout Australia generally contains a provision, almost identical in terms, that a party to proceedings before the court may be represented by a legal practitioner who may do any necessary act in the proceedings on behalf of the party.²⁹

In criminal matters, legislation such as the *Magistrates’ Court Act 1989* (Vic) s 38 provides for a party to appear either personally (s 38(a)) or “by counsel or a solicitor or other person empowered by law to appear for the party” (s 38(b)).³⁰ It seems that Australian Parliaments accept that legal practitioners have a special status before the courts and are uniquely qualified to represent others before them.

It is interesting to note that where legislation of either category allows for the possibility of an unqualified person

Sperry 140 So (2d) 587 at 591 (1961): it is generally understood that the performance of services in representing another before the courts is the practice of law. See also J Disney et al, *Lawyers* (Sydney: Law Book Co, 1986) 526-94.

26 For a fuller discussion of the “competency and conduct” arguments supporting lawyers’ monopoly over advocacy, see J A Dickson, “Students in Court: Competent and Ethical Advocates” (1998) 16 *Journal of Professional Legal Education* 155. See also *Damjanovic v Maley* [2002] NSWCA 230 for a recent reassertion of this principle.

27 See *Legal Practitioners Act 1968* (Tas) Pt IIA.

28 Section 20D(4). However, apprenticeships were abolished in 1999. See the *Legal Profession (Apprentice at Law) Amendment Act 1999*.

29 *Supra* note 21. The *Judiciary Act 1903* (Cth) provides in s 78 that: “In every Court exercising federal jurisdiction the parties may appear personally or by such barristers and solicitors ...”

30 Section 38(c) also allows for appearance by police prosecutors.

appearing in court to represent another, it generally provides that no fee is payable to that person for that unqualified advocacy.³¹ An assumption underlying our research was that if a formal system of law student advocacy is introduced in Australia, the relevant legislation or court rule would include a similar provision.

Courts' Inherent Discretion to Regulate their Own Proceedings

It is well established that the courts have an inherent discretion to regulate their own proceedings. The leading case expounding the nature and extent of this discretion is that of *O'Toole v Scott*,³² a decision of the Privy Council on appeal from the Supreme Court of New South Wales.³³ The Privy Council stated that there was a "general principle that, subject to usage or statutory provisions, courts or tribunals may exercise a discretion whether they will allow any, and what persons, to act as advocates before them".³⁴ The discretion was stated by the Privy Council to be "an element or consequence of the inherent right of a judge or magistrate to regulate the proceedings in his court"³⁵ and that there should be no restrictions on its exercise.

The principles enunciated in *O'Toole v Scott*, which in turn drew on the principle laid down in *Collier v Hicks*,³⁶ were followed and reasserted in *Hubbard Association of Scientologists International v Anderson and Just* (the "*Hubbard Case*").³⁷ There the Full Court of the Victorian Supreme Court stated:

The true position would appear to be that the general rule is that any court can, in the exercise of control over its own

31 See, eg, *Supreme Court Act 1995* (Qld) s 209(2), *Magistrates Court Act 1921* (Qld) s 18(2); *District Court of Western Australia Act 1969* (WA) s 39; *Magistrates Court (Civil Division) Act 1992* (Tas) s 36; *Legal Profession Act 1993* (Tas) s 46(3). However, it appears that at least in some courts there is no such express prohibition. See *Local Courts Act 1904* (WA) s 29. Their employer, however, may recover a fee. See *Legal Practitioners Act 1981* (SA) s 21(3)(i), (n), (o) etc relating to industrial matters and conveyancing transactions.

32 *O'Toole v Scott* [1965] AC 939.

33 That case concerned the power of a magistrate to allow a police prosecutor (who was not the informant) to conduct the police case. It was argued that the relevant section of the New South Wales *Justices Act 1902*, which permitted a party to appear personally or by a legal practitioner, was exclusive and prohibited any other person from appearing.

34 *O'Toole v Scott*, supra note 32 per Lord Pearson at 952.

35 *Id* at 959.

36 (1831) 2 B. & Ad. 663; 109 ER 1290.

37 [1972] VR 340.

proceedings, allow itself to be addressed in a proper case by any person it considers a proper person to be allowed audience.³⁸

A similar view was taken in *R v Visiting Justice at Pentridge; Ex parte Walker*.³⁹ Similarly, in 1993, the Western Australian Court of Criminal Appeal permitted two law students to represent an appellant who had language and hearing disabilities⁴⁰ and the South Australian Supreme Court in the same year allowed an unqualified person to represent litigants.⁴¹ In both these latter cases, the courts relied on their inherent discretion.

Recently, the New South Wales Court of Appeal upheld a single judge's exercise of discretion to refuse leave to an unqualified person to represent a litigant, but reaffirmed the existence of the discretion.⁴²

Unless statute expressly abrogates the inherent discretion of the courts to regulate their own proceedings, the discretion coexists with statutory rights of audience granted to legal practitioners and with statutory rights of parties to be represented by legal practitioners.

The logical implication from these cases is that a court has the power to allow an unqualified person to appear before it to represent a party to proceedings. However, the courts have been reluctant to exercise that power in favour of unqualified persons.

While approving in principle the approach taken by the Privy Council in *O'Toole v Scott*,⁴³ the Victorian Full Court in the *Hubbard case*⁴⁴ made it clear that, in the superior courts at least, only qualified legal practitioners were thought suitable advocates. The Court viewed with some alarm the prospect of "untrained and unqualified" advocates conducting litigation.⁴⁵

In *Cornall v Nagle*⁴⁶ the Victorian Supreme Court expressed the same arguments:

The purpose of the legislation in this state ... is clearly the protection of the public. The Act [*Legal Profession Practice Act 1958* (Vic)] reflects the need to ensure that those who

38 Id per Gowans J at 342.

39 [1975] VR 883.

40 *Schagen v The Queen* (1993) 8 WAR 410.

41 *Galladin Pty Ltd v Aimmorth Pty Ltd & Ors* (1993) 60 SASR 145.

42 *Damjanovic v Maley*, supra note 26.

43 Supra note 32.

44 Supra note 37.

45 Id.

46 [1995] 2 VR 188 at 209.

hold themselves out as willing to perform – and who are commonly paid to perform – legal work on behalf of others ... shall be properly skilled and qualified and appropriately regulated in that behalf ...

The inference to be drawn from these cases is that, although the courts may exercise their inherent discretion to allow an unqualified person to appear as advocate, they will not generally do so.

However, it is important to read these decisions in the context of contemporary litigation. Applications by non-lawyers to appear before superior courts are comparatively rare. Even with the increasing limitations imposed upon the availability of legal aid, defendants to criminal trials are very rarely compelled to appear unrepresented, although the position may be different with appeals. In civil matters, legal aid is far more restricted, but the jurisdictional arrangements in civil matters are such that the majority of civil claims sought to be brought or defended unrepresented would be in the courts of lower and intermediate jurisdiction such as the Magistrates'/Local Courts and County or District Courts, rather than in the Supreme Courts.

Consequently, it is not surprising that the Supreme Courts reiterate that representation by unqualified persons should be permitted only in exceptional circumstances.

However, the pressure resulting from the decreasing availability of legal aid is far more apparent in the Magistrates' or Local Courts and in the Family Court. It is in these courts that the attitude to unqualified representation can be seen to be more flexible.

Nevertheless, the dicta of the superior courts emphasising that the underlying rationale for limiting the right to appear to qualified practitioners is to ensure competent and ethical representation in the public interest cannot be ignored.

The most important principle to be drawn from the cases is the protection of the public through ensuring competent and ethical representation, both in court and in preparation for court. Our view is that any scheme that permits students to appear must build in guarantees of standards of competence and ethical responsibility.

The Experience of Student Advocacy

There is very little literature in Australia or elsewhere dealing specifically with student advocacy. This is not surprising in Australia given its lack of formal status. It is surprising that

there is not more research and discussion in the United States where students have been appearing with formal status in courts since the late 1960s.⁴⁷

The writing that does consider students as advocates does so in the context of clinical legal education. This approach is consistent with the integration of student court appearances into clinical programs both in Australia and in the United States.⁴⁸

Specific court rules or in some cases legislation were developed in the United States in the 1970s to authorise student practice. However, it is important to view the United States situation in the context of the structure of the legal profession in that country where it is a “fused” profession. That is, there is no formal division of work into advocacy and non-advocacy, no separate formal group of advocates. In addition, legal education and training does not include a period of practical training after the law degree. These factors may be seen as contributing to the assumption that clinical practice included advocacy in the courts.

In contrast, clinical practice in Australia has focused on the “solicitor” model of practice and the concept of student advocacy requires a leap to the “barrister” model.

However, the American student practice rules are important as they express the belief that student advocacy and practice have both educational and service goals, the latter being reflected in the rules that generally restrict the students’ right of audience to representation of “indigent” clients.⁴⁹

This combination of goals is a recurring theme in the clinical literature. Jerome Frank in 1933 criticised legal education for ignoring the interrelationship between the legal system, lawyers’ work and the operation of society.⁵⁰ Later, in the 1960s and 1970s William Pincus wrote extensively of the need to expose law students to the practice of law to inculcate a sense of professional responsibility for access to legal services.⁵¹

47 The Model Student Legal Assistance Rule adopted by the American Bar Association in 1969 has been followed generally by most States.

48 Two relevant pieces deal with the content of US rules. See F G Avellone, “The State of State Student Practice: Proposals for Reforming Ohio’s Legal Internship Rule” (1990) *Ohio Northern University Law Review* 17; and J W Kuruc and R A Brown, “Student Practice Rules in the United States” (1994 Aug) *The Bar Examiner* 40.

49 See the American Bar Association Model Rule Clause IIA (1969).

50 J Frank, “Why Not a Clinical Lawyer-School?” (1933) 81 *University of Pennsylvania Law Review* 907.

51 See W Pincus, “Programs to Supplement Law Offices for the Poor” (1966) 4 *Notre Dame Law Review* 887; W Pincus, “The Lawyer’s Professional Responsibility” (1969) 19 *Journal of Legal Education* 22; W Pincus, “Legal

These developments were given further impetus by constitutional decisions of the United States Supreme Court requiring representation of criminal defendants.⁵² The practical need to provide legal representation in the wake of these decisions led to the pragmatic view that law students were capable of limited practice.⁵³

There is now a vast literature, mainly American, on clinical legal education.⁵⁴ It reflects the changing emphasis on goals during a 35-year period, at times concentrated on skills and more recently a reassertion of the goals of social justice and access to justice.⁵⁵ In the area of advocacy, Black and Wirtz⁵⁶ have argued that clinical programs in which real clients are represented offer the best vehicle for educating students in advocacy. Not only does such a program offer the opportunity for technical skill development, but, just as importantly, it offers the opportunity for education in the values of lawyering urged on the American legal profession by the MacCrate Report in 1992.⁵⁷

As Noone and, later, Giddings describe, the Australian history of clinical legal education is intimately connected with the history of the community legal centre movement, resulting in clinical programs typically based on the premise that education of students about the law and the legal system can most effectively occur while providing legal services to

Education in a Service Setting" in *Clinical Education for the Law Student: Legal Education in a Service Setting*, CLEPR National Conference (Buck Hill Falls, Pennsylvania: Council on Legal Education for Professional Responsibility, 1973); W Pincus, *Clinical Education for Law Students: Essays by William Pincus* (New York: Council on Legal Education for Professional Responsibility Inc, 1980).

52 *Gideon v Wainwright* 371 US 335 (1963) and *Argersinger v Hamlin* 407 US 25 (1972).

53 H P Monaghan, "Gideon's Army: Student Soldiers" (1965) 4 *Boston University Law Review* 45; J R Brown, "The Trumpet Sounds: Gideon – A First Call to the Law School" (1965) 43 *Texas Law Review* 312.

54 See the bibliography contained in *Clinical Law Review* Special Issue No 1 (2001). See also P G Schrag and M Meltsner, *Reflections on Clinical Legal Education* (Boston: Northeastern University Press, 1998).

55 See L G Trubek, "US Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective" (1994) 5 *Maryland Journal of Contemporary Legal Issues* 381; J C Dubin, "Clinical Design for Social Justice Imperatives" (1998) 51 *SMU Law Review* 1461.

56 J P Black and R S Wirtz, "Training Advocates for the Future: The Clinic as the Capstone" (1997) 64 *Tennessee Law Review* 1011.

57 American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (the MacCrate Report) (ABA, Chicago, 1992).

58 M Noone, Australian Community Legal Centres – the University Connection, in J Cooper and L G Trubek (eds), *Educating for Justice: Social*

disadvantaged people.⁵⁸ The idea that clinical students could extend their education and their service through advocacy emerged early, although implementation did not occur until the 1990s.⁵⁹

The question arising in considering a program of student advocacy is how the program might ensure that the student reaches acceptable standards of skill and ethical conduct with the client receiving an acceptable standard of legal service. Can this be provided and how? Is it possible that the extension of existing clinical programs in Australian law schools to include limited advocacy meets both these goals?

In the United States, there appears to be only one published piece of research dealing with students as advocates. In 1973, Wicks published the results of their large-scale survey of judges, students, practitioners, clinical supervisors, Bar Association officials, state attorneys-general and law school deans.⁶⁰ The research was conducted during 1971 and 1972, in the very early days of clinical legal education and student appearances set out to obtain information about how those involved in student practice perceived its educational value and adequacy of client representation.

Under categories of competence and ethical conduct, the researchers asked numerous questions about courtroom conduct to compare the student performance with both a "newly licensed attorney" and a "typical attorney of average experience".⁶¹ Their analysis of the responses revealed that "compared with newly licensed attorneys ... students were considered to provide a quality of representation that is equal to or better than that of such attorneys in all stages of litigation except cross-examination".⁶²

The authors' further analysis was that respondents related the effectiveness of the students' representation directly to the level of supervision. Supervision was seen by their respondents as the cornerstone of effective student representation.⁶³

Values and Legal Education (Aldershot: Dartmouth Publishing Company Limited, 1997).

59 M Noone, "Student Practice Rule – Is It Time?" (1992) 66 *Law Institute Journal* 504; S Smith, "Clinical Legal Education: The Case of Springvale Legal Service" in D Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972-1982* (Melbourne: Legal Service Bulletin Co-operative Ltd, 1984).

60 A J Wicks and D J Stanard, "Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study: A Study for the American Bar Foundation" (1973) 15 *William and Mary Law Review* 353.

61 *Id.*

62 *Id.* at 402.

63 *Id.* at 421.

This research does not appear to have been updated in the United States. It clearly has interesting implications for our research and is entirely consistent with the responses of our interviewees as set out below.

While the *Wicks* research focused on “in-court” student practice, the literature on supervision generally in clinical legal education extends beyond “in-court” work. It emphasises the pre-court preparation of the case and the supervisor-student interactions in this process.

Therefore, supervision continues to be the aspect of clinical legal education considered critical to achievement of program goals. Writers such as Kreiling⁶⁴ and Shalleck,⁶⁵ have focused on the supervision interactions as crucial to the way in which the student learns from experience and discuss the choices to be made in these interactions. Judith Dickson has linked the competence and ethical conduct of student advocates to the effectiveness of supervision, arguing that its presence distinguishes the clinical law student advocate from other non-lawyers protecting the public.⁶⁶

In the wider field of clinical supervision, there is a large body of literature.⁶⁷ In particular, the education of students in the health sciences relies on field supervision. While there may be differences in emphases between the health science and legal clinical programs, there are also similarities such as the introduction of students to their professional role and to the practical skills required of them in performing it. The practice of supervision in clinical legal education is firmly based on the same principles of experiential learning as in those other fields.⁶⁸ Boud and Pascoe⁶⁹ identified three critical criteria for experiential learning. The first was that the learning environment be as “real” as possible. The second was that the student be fully involved in the learning activity, not merely an onlooker. Thirdly, they believed that the student would only maximise their learning opportunity if they had some control over their experience.

64 K R Kreiling, “Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision” (1981) 40 *Maryland Law Review* 284.

65 A Shalleck, “Clinical Contexts, Theory & Practice in Law and Supervision” (1993) 20 *New York University Review of Law & Social Change* 109.

66 J Dickson, *supra* note 26.

67 D L Best and M L Franke, *Quality Supervision: Theory and Practice for Clinical Supervisors* (Victoria: La Trobe University, 1994).

68 Kreiling, *supra* note 65 at 289-306; Shalleck, *supra* note 66 at 152-161.

69 D Boud and J Pascoe, “What is Experiential Learning?” in J Higgs (ed), *Experience-based Learning* (Sydney: Australian Consortium on Experiential Learning, 1988).

Australian clinical legal education programs have traditionally satisfied these criteria. In the context of student advocacy, one can argue that where these conditions are present the educational experience for the student advocate is greatest. Achievement of the goal of competent client service depends on the balancing of student independence with supervision support.

The informal programs currently operating in Australian law schools are all based within the clinical legal education programs.⁷⁰ Where a student is approved to appear for their client in court, the clinical academic supervisor works with the student on the preparation of their court appearance (content, ethical conduct, presentation etc). The student is then supervised in court by either their clinical academic supervisor or another legal practitioner. The proposed scheme discussed in this article is founded on the requirement of this pre-court preparation.

Methodology

The specific aims of the project were to investigate the possibility of introducing a formal scheme of law student advocacy and, if it seemed feasible, to recommend the most effective means of implementing such a scheme. The context in which these aims were pursued was that of using student advocacy within legal education as a vehicle to provide students with a deep understanding of a lawyer's professional responsibility in the service of the community.

The method we chose was to ascertain the views of members of the judiciary and of the practising legal profession towards student advocacy. It was our view that unless relevant members of the judiciary and the practising profession were involved in the development of any formal regime of student advocacy, moves to introduce such a regime would be doomed to failure.

Five groups of people were identified to interview. These were:

1. Magistrates in the Melbourne metropolitan area before whom clinical students from Monash University had appeared or sought leave to appear. Of those magistrates who had granted leave to appear, we selected only those who

⁷⁰ *Supra* note 5. In these programs students, under the supervision of a clinical academic (who is also a qualified legal practitioner) provide legal services to disadvantaged members of the community.

had experienced student advocacy on at least two occasions to increase the likelihood of a considered opinion.

2. Practitioners who had acted as in-court supervisors for student advocates.
3. Chief judicial officers in Victoria. These were to include the Chief Justice of the Supreme Court, the Chief Judge of the County Court, the Chief Magistrate, the Judge Administrator – Southern Region of the Family Court of Australia and a former Chief Magistrate.
4. Members of the magistracy in the Newcastle area in New South Wales before whom University of Newcastle students had appeared.
5. Members of the judiciary and practitioners in Tasmania with experience of the operation of the limited right of audience for apprentices in that State.

The first two groups were the largest in number and their responses form the basis of the discussion in this article. However, information and insights gained from other interviewees, particularly the Tasmanian group, were helpful in contributing to an overall understanding of the potential for student advocacy.

A total of nine Victorian magistrates, 13 Victorian practitioners and nine judicial officers and practitioners in Tasmania were interviewed. A gap in the research data is the lack of response from magistrates who had refused permission for students to appear. All in this category declined to be interviewed. It is impossible to know whether these magistrates' decisions to refuse a student leave to appear before them were based on the principle that only qualified practitioners should have a right of audience in the courts or whether they had more specific concerns that could be addressed in a formal scheme.

The aim of the interviews with the Victorian interviewees was to ascertain their attitude in principle to law students appearing as advocates and to ascertain their opinions on specific aspects of representation, such as competence, supervision and the types of cases. Consistent with the project aims, it was also important to ask interviewees their views on formal recognition of student advocates by legislative amendment or court ruling.

The emphasis in Tasmania was different. Here, the primary aim was to obtain information and views from the interviewees about the operation and their personal experience of the limited right of audience contained in

provisions of the *Legal Profession Act*. A secondary aim in the Tasmanian interviews was to obtain interviewees' views as to the applicability of such a limited right of audience to law students.

The interview was primarily a structured interview. Questions were developed for each category of interviewee (differing only in minor aspects among categories) and the same questions were asked of each member of that category. (One example of the questions appears in Appendix C.) The questions were both general, such as first opinions, current opinions and why, role of the courts, role of supervisor, and specific, like the standard of advocacy in specific cases, types of suitable cases and appropriateness of legislation.

However, the interviews also included scope for a general discussion of student advocacy. Most interviews were of 30–45 minute duration and most were tape-recorded.

A draft legislative provision and “model rule” were developed for consideration by governments and courts (see Appendix B).

The remainder of this article sets out in detail the responses of the three main groups interviewed (Victorian magistrates and practitioners and Tasmanian interviewees) and discusses our conclusions regarding the development of a formal student advocacy scheme. As the responses show, such a program can be effective in providing competent and ethical client representation.

Responses – Magistrates

Magistrates' Initial Reactions to Student Appearances

Of the nine Victorian magistrates interviewed, five said that when approached with the idea, they had immediately thought the idea of law students doing appearance work was a good idea.

Of the remaining four magistrates, one said that he had had “no reaction one way or the other”. Two said they were initially cautious.

The final magistrate described his initial reaction as “mixed, positive mainly” with ethical concerns his focus.

Views after Experience

All the Victorian magistrates said that the experience of having law students appear before them had been positive

and that as a result of this experience they were supportive “in principle” of students appearing in their courts. The magistrates’ experience-based views were consistent with the two considerations that had influenced their initial reactions. These were: educational/training benefit to the student as a future practitioner and benefit to the client. One magistrate’s comments summarised these views:

[I]f it is going to be of some benefit to the student in their later life getting that experience ... it will be a benefit to them ... it will be a benefit to the community. It will be a benefit to the people who they are representing.

The magistrate who had initial concerns about ethical implications still had those concerns although he was “mainly positive” after his experience.

One magistrate who had expressed indifference to the idea at the outset went on to say that he did not have strong views “one way or the other” after his experiences. At the same time, he indicated in his answers to questions in the “competence” category that his experience of student advocates had been a positive one. In summary, his view was that “[i]t [student advocacy] can only assist the running of a court process when much of the case-work we do is without representation”.

It is also clear from the responses to this question that the magistrates’ views on student appearances were integrally related to the standard of advocacy displayed by the students who had appeared before them. This is to be expected.

Competence

In this part of the interview, we were interested in magistrates’ views on the actual performance of the student as advocate. The magistrates were asked how the students’ advocacy compared with that of very junior practitioners and to compare the efficiency of a student representation to that of an unrepresented litigant. Within these two general questions, magistrates were asked to consider issues of standard, time and efficiency.

Standard of Student Appearances Compared with Appearances by very Junior Practitioners

Magistrates were asked how the law students who had appeared before them compared with the average junior practitioner appearing in the same sort of cases. The significance

of this assessment lies in the fact that Magistrates' Courts are the traditional training ground for new practitioners, many of whom have had little or no advocacy experience before rising to their feet in their first case.

In comparing the standard of students' appearances with very junior practitioners, magistrates' comments varied. Some magistrates went on to comment on the students' performances in relation to experienced practitioners.

Four magistrates said that the students were just as good as very junior practitioners with "very little difference" between them in performance.

One of this group stated that the students were:

On par really [with very junior practitioners]. I think that they are very good and I have to say they are always much better prepared. I am often disappointed with some of the barristers, in particular, those who have been briefed to appear and seem to come along with one or two matters and don't really seem to be very well prepared at all. So at least I feel that the students, I am usually confident that they will be prepared and they know what they are doing.

Three magistrates, while generally happy with the standard of advocacy of the students, made the point that it was difficult to generalise because the standards of both students and practitioners vary.

One magistrate commented that: "The well-prepared student is as good ... as the rushed practitioner. A well-prepared practitioner who has been doing it for a while would probably be a lot better. That's purely because of experience."

One other comment made was that students often had unrealistic expectations of the sentencing outcome. Two magistrates commented that they saw it as a critical aspect of the supervisor's role to ensure that the student understood the likely sentencing options.

Time taken by student advocates was raised as an issue. Magistrates' Courts are very busy places. Valuable court time might be consumed by lengthy or irrelevant submissions. There was some difference of opinion and not all magistrates dealt with this question by comparing the student to junior (or other) practitioners. Some responded by considering the issue in relation to unrepresented persons. However, one magistrate was quite firm that students were "much faster than most practitioners".

Another magistrate thought that a student's plea was often longer than that of both an unrepresented person and a junior practitioner "because ... they are more thorough". He said that "I think junior practitioners very quickly learn when to stop, particularly if they are given an indication" and went on to say that "I think Magistrates who are quite comfortable with the program would allow a student to run the plea right through to the end".

This sympathy for a "trainee" was evinced by another magistrate who contrasted his habit of interrupting a plea by a practitioner (either to accede to a request or to clarify the submission), with his tendency to allow a student to continue to the end "because I think that's part of the training".

On the other hand, another magistrate recounted an experience with a student who had clearly prepared a lot of material and was determined to present it all, notwithstanding the very busy Mention List. Obviously, this could impact on the speed of throughput of cases.

This same magistrate went on to indicate that generally the students who had appeared before him showed a practical understanding of the pressures of the Mention List and tailored their submissions accordingly.

As with sentencing, it is clear from the responses that an understanding of time pressures and the need for relevance are issues to be dealt with in the student's preparation for their appearance.

Overall, in response to these questions regarding student competence in advocacy, only one magistrate thought that junior practitioners presented better appearances than students. He thought this was due to practitioners having completed their course and having "that little bit more 'wherewithal' than the students".

Comparison with Unrepresented Defendants

One obvious aspect of the informal student appearance programs currently operating is their provision of legal representation to people who would otherwise be unrepresented. Therefore, we were interested to ascertain the magistrates' views on whether the representation was valuable.

One frequently mentioned problem associated with unrepresented litigants or defendants is that they take up more of the court's time than if they were legally represented. This is because of the difficulty in elucidating relevant facts and the obligation felt by the presiding judicial officer to ensure

the person has some understanding of the legal process. We therefore asked magistrates to consider the efficiency aspect of students as advocates compared with dealing with an unrepresented litigant. Specifically, as in the comparison with junior practitioners, we asked them to comment on time.

Three magistrates stated in no uncertain terms that students were more efficient than unrepresented defendants. The students were said to be “super efficient”, “very much faster than unrepresented people” and “more efficient [due to their] training in law and [because] they are more articulate”.

These magistrates said it was often difficult to “extract” relevant information from unrepresented people and made the point that when confronted with an unrepresented person the magistrate often has to “enter the arena and conduct the whole thing” in order to achieve an appropriate outcome.

Three of the remaining four magistrates answered the “efficiency” question by considering time.

Two magistrates indicated that the student pleas took longer than that of an unrepresented person, but that this was because the student appearance was better prepared and provided the court with the relevant information necessary to make the appropriate determination.

Another magistrate took a different approach to the question. He thought that unrepresented people possibly took less time in court because the magistrate intervened to quickly obtain relevant information. On the other hand, he tended to “nurture” a student along, allowing them to follow their prepared path.

Yet another magistrate pointed out that there was a wide range of skills in unrepresented litigants/defendants, from the individual who is articulate and well prepared to those with disabilities including poor English skills. This magistrate emphasised a view expressed by all but one of the nine interviewed, that a defendant should be legally represented so as to enable the court to have all relevant information to proceed efficiently through its work.

We have dealt with responses on competence at some length as both the scheme of statutory regulation of advocacy and the courts’ exercise of discretion are built upon the view that restriction of audience to legally qualified persons ensures competent representation of litigants.

The following categories of interview questions sought to discover views on supervision and on the types of cases thought appropriate for student advocates. They sought to build a more specific picture of the extent of student “in

court" practice which interviewees considered would result in competent and ethical advocacy.

Supervision

We asked a number of questions in this category. Two questions dealt with the interviewee's own observations and experience of the student advocate's supervisor in court. A further two questions asked for their views on supervision generally and whether student appearances should only take place in the presence of a designated supervisor.

It is important to note that magistrates focused on "in-court" supervision. However, three did directly express the view that supervision was also essential for proper preparation of the court appearance. Among the Tasmanian interviewees pre-court supervision figured very highly in their concerns. Similarly, practitioner-supervisors held strong views on pre-court preparation. As discussed above, the relevant literature concentrates on supervision of the student in the whole course of their relationship with their client.

All but one magistrate placed importance on the supervision of student appearances. Magistrates stated that supervision was "important" and "essential"; that student appearances were "absolutely" and "obviously" dependent on supervision. One magistrate said that "the success or failure of this system [depends on] the quality of supervision. Quality in terms of practicality, people who know not just what the law is, but how it operates in practice".

Another magistrate said:

[I]t would concern me [if there was no supervision] because the only feed back that would be available, if magistrates or staff aren't involved, is the defendant, the client, and he or she isn't really in a position to assess whether the plea was done appropriately, whether all the information was put forward ... [it is important] as a safeguard and I think just as a credibility issue. I think if the program was allowing students to go unsupervised ... well, what is the purpose? You are actually allowing these people to appear in court. Surely you have a responsibility and a duty to ensure that not only are they doing it properly but also ... that they get the necessary tuition, guidance.

The dual purposes of the scheme to educate and provide legal services are clearly expressed in this view of supervision.

The magistrate who placed no importance on the supervision of student appearances said that there was no need for the supervisor to be in court because, as presiding judicial officer, he was able to ensure that all persons before his court were satisfactorily dealt with in the legal process.

The other magistrates had a number of different reasons to explain why they thought the role of the supervisor was important. Some of these magistrates were in fact focusing on supervision of the student's preparation.

In summary, all but one of the magistrates interviewed had a firm view that supervision was a critical component of any student advocacy scheme. They variously expressed their views in terms of the educational obligations (presumably of the university) to the student and of the ethical obligations to the client. In most cases, both considerations were present. While none had experience of the supervisor intervening in any significant way, the extent to which the magistrates themselves would intervene appeared to depend on their personal views as to their judicial role.

Types of Cases Thought to be Appropriate for Student Appearances

The existing schemes of student appearances are all based on clinical legal education programs within the law curriculum of universities. The types of cases in which students appear are generally restricted to minor criminal matters (pleas of guilty), adjournments and uncontested divorces.

In the United States of America, most student practice rules contain some limitations on the matters in which students may appear. Therefore, we were interested to discover whether our interviewees had any fixed views.

There was a consensus that it was appropriate for students to appear in minor criminal pleas. A number of magistrates' specified adjournments, minor thefts, first offender shop stealing and minor traffic offences as suitable cases and one expressed the range as "just about all matters where the person is a first offender". This was consistent with the views of several others that cases in which a gaol term may be considered should be excluded.

The rationale for this view was, as one magistrate expressed it:

Firstly, because that type of situation usually requires a far more extensive plea, and I think to do a good long plea

you have to be experienced. Secondly, I can see potential resentment in the client having a student if they are facing gaol.

Specific examples given of suitable matters were:

- Neighbourhood disputes
- Stalking
- Diversions
- Licence reapplications
- Consent bail applications
- Applications for a rehearing

Matters mentioned as being unsuitable for student appearances included burglaries, serious assaults and pleas which are “reasonably complicated”.

Against this, one magistrate acknowledged that an individual student may have particular skills and experience which would make them exceptionally qualified to appear in a complicated plea.

In other words, the question is whether there should be some flexibility in the range of permitted cases to allow for the expertise of individual students.

All magistrates thought that it would be inappropriate for students to appear in contested matters.

There was unanimity that students should only represent clients who had no access to legal representation other than the duty lawyer service run by the State legal aid organisation. This reflected the limits adopted by the programs experienced by the magistrates. This criterion operates to limit the types of cases in which students might appear, since clients are likely to be eligible for legal assistance in family violence cases and criminal cases where there is a real possibility of a gaol term being imposed.

Introduction of a Formal Limited Right of Audience

Finally, interviewees were asked their views of the creation of a limited right of audience for law students either by way of legislative amendment or court rule.

By unfortunate omission, the first two magistrates interviewed were not asked this question. However, of the remaining seven interviewed, six were in favour of some form of formal appearance rule. The seventh magistrate saw no necessity.

The main reason given by the Victorian magistrates for supporting the introduction of such a rule was that it would encourage more magistrates to allow students to appear as “some magistrates are incredibly legalistic”, taking the view that “we are creatures of statute, statute doesn’t allow us to do it therefore we won’t”.

Summary of Responses

While only small in number, the interview group discussed in this section is significant because of its members’ direct experience of student advocacy. It is clear from the responses that the magistrates had thought carefully about the program, its operation and possible limitations. Therefore, their views are important indicators of the likely issues requiring consideration in any movement to develop a formal scheme of student advocacy in Australia.

There was clear consensus on the general types of matters appropriate for student advocates. There was also agreement that students should only be representing clients otherwise unable to obtain legal representation (other than the legal aid duty lawyer).

The magistrates’ views appeared to reflect the dual purpose of the clinical legal education program which produced the students. These are education of law students and provision of legal representation to disadvantaged persons.

While there was general approval of the competence demonstrated by students, issues of sentencing and submission relevance were raised as needing attention.

Supervision emerged as clearly critical in the views of this group. The magistrates unanimously agreed that in court supervision must be provided to satisfy both educational and ethical responsibilities. Views of the role of the supervisor were varied. However, they can be summarised as either or both educational and protective of the client.

Perhaps because of their positive experiences with student advocacy, these magistrates were prepared to support the formalisation of a limited right of audience in order to introduce some certainty for students and clients.

Responses – Legal Practitioners

A total of 13 legal practitioners were interviewed. All had acted as in-court supervisors on at least two occasions for

student advocates from the Monash University clinical legal education program.

The format of the interview was essentially the same as that for the Victorian magistrates. The interviewees were asked about their initial reaction to the idea of student advocacy and then about their experience of it. Questions going to competence were then asked as previously. They were asked about their own experience as supervisors, their view of that role and to suggest the types of matters they thought suitable for student appearances. Finally, they were asked to consider legislative amendment or court rule introducing a formal limited right of audience.

We summarise the practitioners' views here and only those responses that differ in any significant way from the magistrates' are described.

Twelve practitioners said their first reaction to the concept of student advocacy was positive and they elaborated on the educational benefit of such a program.

Nine of the 13 considered that the students they had supervised or observed were of a standard equal to or better than junior practitioners or the overworked duty lawyers who might otherwise have appeared in these matters.

All the practitioners considered that the students' performance was more efficient than most unrepresented litigants and all considered that the presence of the in-court supervisors was necessary.

Practitioners generally agreed with the magistrates on the types of cases that were suitable for student appearances, except that they unanimously excluded family violence and Children's Court matters, whereas the magistrates' attitudes to these categories varied.

Eight practitioners supported that a formal right of audience should be introduced. The remainder were equivocal or thought that the issue should be left to the discretion of the court. In the latter group, some doubts were expressed about the burdens of supervision placed on practitioners in a formal scheme, raising questions of the obligations of the educational institution to provide qualified supervision. Cost clearly becomes an important issue in the conversion of a small and informal scheme to a formal regime, but this consideration is beyond the scope of this article.

The Tasmanian Experience of a Statutory Limited Right of Audience

As indicated earlier, our purpose in investigating the Tasmanian experience was to learn how a statutorily entrenched limited right of audience operated in practice. Did the interviewees' personal experiences highlight the same or different issues as those emerging from the Victorian experience? What were the interviewees' views as to the applicability of a limited right of audience to law students?

The Tasmanian legislation introduced in 1968 granted to articulated clerks a "limited right of audience" before the courts and gave them the same rights and obligations as a legal practitioner.⁷¹ This permitted them to appear unaccompanied in a wide range of matters before the (then) Court of Petty Sessions, Coroners Court, Supreme Court Chambers and Local Court. In 1971, this right was extended to apprentices at law when the post-degree practical training system was restructured. Further amendments were made in 1993. In this discussion, we use the term "apprentices".

Briefly, apprentices had the right to appear unaccompanied by a qualified practitioner in Supreme Court Chambers on enforcement matters and before the Master or before a judge in uncontested matters. They could also appear unsupervised in a Local Court (civil matters) and in criminal matters in the Court of Petty Sessions on bail, remand, adjournments, pleas of guilty in traffic matters and in the Coroners Court. Initially, there were limits placed on civil matters. However, in 1993 these were removed from the *Legal Profession Act*.

Under the legislation, apprentices could appear as junior counsel in the Supreme Court if accompanied by a qualified practitioner.⁷²

This is the scheme as set out in the legislation. However, in practice it was clear from the responses that apprentice advocacy occurred mainly in the lower courts, the Supreme Court Master's Chambers and before the Master of the Supreme Court.

An interesting aspect of the Tasmanian scheme is the focus on civil matters as an area open to apprentices. It was clear from the responses that apprentices regularly appeared in minor civil matters such as motor vehicle property damage cases. Several interviewees expressed the

71 Supra note 28.

72 Id and *Legal Practitioners Act 1993* s 46.

view that civil matters provided very useful training for apprentices because of the opportunities for negotiation and the requirements of procedural and evidentiary knowledge. However, it is important to note that the Tasmanian scheme operates as part of the post-degree practical legal training system. Therefore, the scheme was supported by the resources of the firm or government agency in which the apprentices worked. Resources of the kind necessary to conduct civil actions are generally not available in university clinical programs.

We interviewed nine people with experience of the Tasmanian scheme. These were:

- Two Supreme Court judges
- The current Supreme Court Master
- The Registrar of the Supreme Court
- A senior legal practitioner
- Director of the Legal Practice Course
- The former Supreme Court Master
- The first Director of the Legal Practice Course
- The Deputy Chief Magistrate

Within this group, two had been apprentices at law after the insertion of Pt IIA (limited right of audience) into the *Legal Practitioners Act 1968*. Therefore, they had personal experience of appearing as “apprentice advocates”.

Five (including these two) had experience of apprentices within their firms. The judges, Deputy Chief Magistrate, Registrar and former Master all had personal experience of apprentices appearing before them pursuant to the legislation.

Since the aim of investigating the Tasmanian experience was to provide a comparison with the recent law student programs, we take the approach of highlighting issues and themes arising in the interviews, rather than setting out a detailed analysis.

Responses to Questions Regarding Competence and Role of Supervision

We asked this group questions regarding competence, efficiency of apprentices and about the role of supervision. All interviewees viewed the scheme as a training scheme and so focused on that aspect of its operation.

Analysis of the responses revealed a very interesting similarity of views among this Tasmanian group with long experience of apprentice advocacy and the Victorian group of magistrates and practitioners with fairly recent experience of student advocacy.

In general, the view was that there was very little difference in competence between a well-prepared apprentice and a junior practitioner; apprentices were regarded as generally within an acceptable range of competence.

Several interviewees made the point that development of advocacy expertise was a continuum and there was "no magic moment".

All interviewees with experience of apprentice advocates in the lower courts agreed that their submissions took longer than those of experienced practitioners. This was because apprentices often had lists of questions to ask and lacked the experience to revise these on their feet. Another feature was the leading of irrelevant evidence. As one judicial officer asserted, there was often "a tendency to overkill" but he did not "necessarily see that as a fault", although it could "raise the ire of a magistrate who wants to finish a busy day".

Supervision was again a critical issue. The Tasmanian legislation does not require the presence of an in-court supervisor. In all cases the emphasis in the interviews was on the supervision of the apprentice's preparation.

All interviewees said that in their experience the conduct of the apprentice's principal in working with the apprentice on the client's file determined the standard of the apprentice's advocacy. Several interviewees were highly critical of a tendency they had detected among some practitioners to send an apprentice to court with no instruction or preparation.

In such a case, the responses indicated that in the Master's Chambers and the Magistrates' Court, the presiding officer regularly stood the matter down, calling for the apprentice's principal or other qualified practitioner who knew about the case to come to court.

One interviewee expressed concern that the system had allowed apprentices to appear without in-court supervision by someone familiar with the case. The interviewee recalled appearing alone in a defended property damage claim within a few weeks of commencing apprenticeship. In retrospect, while the interviewee thought the outcome for the client was satisfactory, the interviewee believed a qualified practitioner should have been supervising in court. This interviewee commented that the interviewee was fortunate in having

excellent supervision in the preparation of the cases in the office.

There was a consensus that lower court work was most suitable for apprentices. The following areas were mentioned as appropriate:

- Lower court civil matters. This interviewee was of the firm view that a monetary limit should be imposed on claims in which law students could appear.
- Prosecutions in health and other local council matters because of the experience in preparing a complete case.
- Minor criminal matters.
- Childrens' Court (Youth Court) matters because of the informality and flexibility of the jurisdiction.

The Tasmanian legislation expressly addresses the question of accountability by providing that the employer is responsible for the acts of the apprentice unless they were done without authority.⁷³ In the latter case, the Supreme Court had the authority to cancel the apprenticeship if it thought it necessary.

Not all interviewees addressed this question. One who had been involved in administering the professional disciplinary system could recall no instance of cancellation of apprenticeship. Another thought that one practitioner had been called to account for failure to adequately instruct their apprentice.

Both these interviewees thought that in developing a new scheme for law students, there must be an accountability structure built into the scheme. There were no specific suggestions as to the form this might take, although the experience in Tasmania of a scheme that nominated the employer as civilly and professionally responsible clearly influenced the approach.

In summary, responses raised the following issues:

- Variation in the extent of instruction of apprentices by principals, with some spending considerable time on both general education and specific files, while others appeared to treat the availability of the apprentices as a cheap alternative to qualified representation.
- Judicial officers generally held the principal accountable if the apprentice was unprepared and some took steps to remedy the effect on the client.
- Judicial officers, especially magistrates, were generally prepared to guide the apprentice in the representation in the interests of the client.

73 Introduced by the *Legal Practitioners Act 1993* s 46(4).

- Concern as to whether clients always realised that they were represented by an apprentice and not a qualified practitioner.
- Whether there should have been (and should be in any new scheme for law students) in-court supervision at all times in all cases.

It was significant that no interviewee opposed the idea of an advocacy scheme for law students. The key considerations were:

- proper provisions should be incorporated for supervision, both in court and pre-court;
- clear accountability structures;
- clear definition of areas of practice.

It is clear that the 30-year experience of limited right of audience for apprentices in Tasmania was generally a positive one. Despite the various concerns expressed about lack of supervision and preparation, the practitioners and judicial officers interviewed believed that clients had generally received satisfactory services and that the scheme had provided practical training in a structured way.

Conclusion

Our analysis of the applicable legislation and case law showed that the principal concern of both Parliament and the courts in restricting the right of audience to admitted practitioners is to ensure a minimum standard of competence and ethical conduct in advocates appearing before the courts. Competent representation and ethical conduct are the cornerstones of the legal profession's virtual monopoly over advocacy in the courts.

The academic literature on student practice (almost exclusively in the area of clinical legal education) has a strong focus on supervision as the key both to ensuring competent and ethical client representation and to challenging the students to think critically about the law and legal system. Tertiary legal education has repeatedly been the focus of attempts to improve the standard of legal practice and the operation of the legal system. Recent Australian and overseas inquiries have raised the question of how to inculcate a commitment among lawyers to high standards of skill and ethical practice.⁷⁴

Concern over competence and ethics was consistently reflected in the interview responses. All three groups, Victorian

74 *Supra* notes 7 and 8.

magistrates and practitioners and Tasmanian respondents, strongly supported the educational value to students of the program enabling them to appear, provided that the interests of clients are protected by appropriate safeguards.

The overwhelming majority of respondents considered that the student or apprentice advocacy they had observed did meet acceptable standards of competence and professionalism providing a valuable service to the community. On the basis of their experience, there was a generally positive attitude to the concept of introduction of legislation or model rules granting law students a limited right of audience.

Therefore, in this context it was critical that in formulating our recommendations we should design a scheme which ensured the protection of clients through the key issues identified in the research: supervision, limits on the types of cases in which students could appear and accountability. The model we developed includes both a statutory provision and court rules. Legislation establishes the right of audience and the status of the student advocate. We think it essential that the student advocate assume personal professional responsibility for their work and propose that they have “the same rights and privileges and [be] subject to the same duties and obligations as if that person were a legal practitioner”.⁷⁵ Court rules provide for eligibility of legal education programs and students, the types of cases in which students may appear, certification by the student’s academic (clinical) supervisor of the student’s competence, a requirement of an in-court supervisor (who may be the clinical supervisor) and for the client’s informed consent. In addition, these may ensure ownership by relevant judicial officers and provide some flexibility to individual courts.

The issue of civil liability is an important one. In our proposal, eligibility depends on the student being enrolled in a “certified legal education program”. The educational institution will need to have professional indemnity insurance to cover staff and students engaged in professional activities as part of the educational programs. On reflection, our proposed model legislation and rules could have included such a requirement. While the status of advocates’ immunity is uncertain in Australia, legislation creating a limited right of audience for law students could address civil liability for in-court negligence. In our view, the liability lies primarily with the educational institution and the student’s clinical supervisor, who will hold a current practising certificate.

⁷⁵ Proposed Model Student Advocate Legislative Provision (Appendix B).

However, where the student is placed with an outside legal agency, liability may properly lie with that organisation and the field supervisor.

As the ALRC and its predecessor inquiries insist, university legal education must combine the development of professional skills with a “deep appreciation of ethical standards and professional responsibility”.⁷⁶ The relationship between those in the world of legal practice and those in the legal academy must strengthen into a partnership committed to this goal. Based on the research reported in this article, a formal student advocacy program within academic legal education designed to operate within carefully defined limits with the support of the courts and a commitment to the interests of clients and students, offers the opportunity for students to learn and practise professional legal skills supported by systematic supervision.⁷⁷ Importantly, in view of prevailing concerns in Australia over access to justice and education in ethical practice, such a program could meet the requirements of legal education as described by the Australian Law Reform Commission:

Professional skills training should not be a narrow technical or vocational exercise. Rather it should be fully informed by theory, devoted to the refinement of the high order intellectual skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility.⁷⁸

76 ALRC, *supra* note 7, Recommendation 2 at 142.

77 In 1962, J M Morris, in a report to the Dean, Faculty of Law, University of Queensland entitled *Practical Training in Law Schools*, suggested a “clinical training” stage of academic legal education in which students had “supervised and systematic practical training”. His report was appended to Volume II of the Martin Report 71.

78 ALRC, *supra* note 8 at 140.

APPENDIX A

Recommendations

- (1) The Commonwealth Government proceed to implement a formal scheme of student advocacy by creation of a "limited right of audience".
- (2) This "limited right of audience" should be restricted to the Federal and Territory Magistrates' Courts and to the Family Court of Australia.
- (3) Introduction of the "limited right of audience" should be by a scheme of legislation and court rule.
- (4) Student advocacy should be restricted to representation of "indigent" clients.
- (5) Student advocacy should be restricted to minor criminal cases where there is little likelihood of a custodial sentence; minor civil cases and minor family law cases.
- (6) The legislation and rule creating the student advocate status should indicate types of cases but recognise the need for flexibility and continued exercise of the Court's discretion.
- (7) Student advocates should be supervised in court by a qualified legal practitioner.
- (8) Student advocates should be prohibited from receiving any "fee or reward" other than academic credit for the provision of advocacy services.
- (9) The limited right of audience should be restricted to law students in specified legal educational programs.
- (10) The Course Director or clinical supervisor should retain a discretion as to the competence of an individual student to appear for a client.
- (11) The Course Director or clinical supervisor must certify to the court that in their view a student is prepared and competent to appear in the particular case.
- (12) Student advocates appearing pursuant to the "limited right of audience" should have the same rights and privileges and be subject to the same duties and obligations as if they were a qualified legal practitioner. This should be set out in the legislation.

APPENDIX B

Model Legislation and Rules

Proposed Model Student Advocate Legislative Provision

[This provision is to be inserted initially into the *Family Law Act 1975* and the *Federal Magistrates Act 1999*. Subsequently it could be introduced into State legislation regulating either or both Court Practice and Procedure or the legal profession. As a Model Provision it could be inserted into the National Legal Profession Draft Model Bill.

Section 1 (or however numbered) Limited right of audience for student advocates

- (1) A law student who satisfies the criteria specified in Rules of Court relating to student advocacy has a limited right of audience before that Court in accordance with its Rule.
- (2) A law student who exercises a limited right of audience pursuant to subsection (1) has the same rights and privileges and is subject to the same duties and obligations as if that person were a legal practitioner.
- (3) A law student exercising a limited right of audience pursuant to subsection (1) shall not be entitled to be paid any fee or receive any reward for the advocacy services provided other than the award of academic credit by the institution in which the student is enrolled

Definition

Student advocate

A student advocate is a person exercising a limited right of audience before a Court pursuant to Section 1 (or however numbered) of this Act.

Proposed Model Student Advocate Rules

- 1 A student who is enrolled in a certified legal education program as defined in Rule 2 hereof (“an eligible student”), may appear before the Court on behalf of a party to proceedings before the Court of the kind described in Rule 3 hereof provided the requirements of Rules 4 and 5 are satisfied.
- 2 A certified legal education program means a program of legal education leading either to the award of the degree of Bachelor of Laws or to qualification for admission to practice which has been certified by the Dean or Director of the program in or to the effect of Form 1.

- 3 The proceedings in which an eligible student may appear include but are not restricted to:
 - Pleas of guilty in criminal proceedings
 - Uncontested bail applications
 - Adjournments in both the civil and criminal jurisdictions
 - Applications for re-hearing in both the criminal and civil matters
 - Victims of Crime compensation
 - Uncontested matters generally
 - Any other proceeding at the discretion of the Court
- 4 A student enrolled as aforesaid must have obtained from the party to be represented the party's consent in writing in or to the effect of Form 2 and such consent shall be filed with the Court.
- 5 A student seeking to appear before the Court must file with the Court a certificate from the student's academic supervisor in or to the effect of Form 3.
- 6 A student seeking to appear before the Court must arrange for a qualified legal practitioner holding a current practising certificate in the relevant jurisdiction to be present in Court at the time of the appearance, such practitioner to act as the student's supervisor.

APPENDIX C

Questions for Interviews with Magistrates

- Do you remember how you first heard about student appearances?
- When you first heard about the possibility of students appearing before you, what was your initial reaction? What were the reasons for your reaction?
- Since then approximately how many students have appeared before you?
- Now that students have appeared before you, what do you think about student appearances in principle? What are the reasons for your opinion?
- How would you compare the standard of students' presentation with that of very junior practitioners?
- How would you compare the efficiency of students appearing before you with the efficiency of unrepresented litigants? Do student appearances take more or less time, or about the same, as unrepresented litigants?
- What is your opinion of the role of the practitioner who acts as supervisor in court?
- Has the supervisor ever been required to step in or intervene in a case before you?
- Do you think student appearances are dependent on supervision and training?
- Do you think students should only appear under supervision?
- What types of cases do you regard as appropriate for student appearances?
 - Criminal pleas?
 - Adjournments?
 - Uncontested divorces?
 - Anything else?
- The *Legal Practice Act* or the Court Rules could be amended to give a limited right of audience to certain law students, eg, those in supervised clinical legal education programs (like the ones who have appeared before you). What is your view on that?
- Do you think there is a role for courts to play in legal education?

- Did you have direct contact with the students? For example directing them in their appearance or giving them a critique of their performance?
- Would you like to perform such a role?

A Model for the Integration of Legal Research into Australian Undergraduate Law Curricula

*Clare Cappa**

The marginalisation of the teaching and learning of legal research in the Australian law school curriculum is, in the author's experience, a condition common to many law schools. This is reflected in the reluctance of some law teachers to include legal research skills in the substantive law teaching schedule — often the result of unwillingness on the part of law school administrators to provide the resources necessary to ensure that such integration does not place a disproportionately heavy burden of assessment on those who are tempted. However, this may only be one of many reasons for the marginalisation of legal research in the law school experience. Rather than analyse the reasons for this marginalisation, this article deals with what needs to be done to rectify the situation, and to ensure that the teaching of legal research can be integrated into the law school curriculum in a meaningful way. This requires the use of teaching and learning theory which focuses on student-centred learning.

The adoption of legal research as an integral part of the Australian law school curriculum is outlined through the use of a normative model. This objective is predicated on the assumption that legal research is an essential skill for lawyers and law students alike, and therefore should be afforded more weight in the law school curriculum. The integration of legal research, not only into the objectives of law schools but also into the fabric of the teaching and learning program, is a fundamental requirement for the production of a superior law graduate.

The model of legal research which is outlined on the following pages is the result of many years of observation of the teaching of legal research, personal experience with the problems resulting from a misunderstanding of the teaching

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and learning process as it applies to legal research, and careful adaptation from ideas and suggestions embedded in the literature on the subject. It is, to a significant extent, an original model, which does not depend in any major way on any other of which the author is aware.¹ The proposed model incorporates five transparent “stages”, each of which is interdependent with each of the others, but each of which is important in its own right. The five stages can be summarised as: analysis; contextualisation; bibliographic skills; interpretation and assessment; and application. Their interdependence reflects the characterisation of legal research as a dynamic and holistic process.

Definition of Legal Research

A clear definition of legal research is pivotal to any discussion of its role and context. Over the course of the research conducted into this area it became obvious that one of the greatest causes of the lack of understanding about the appropriate role for legal research is ambiguity in the terminology of this area of knowledge. There are at least three identified categories of legal research. The first can be characterised as “client-centred” or doctrinal research² in that it is the type of research that underlies an attempt to formulate an answer to a specific legal question by applying legal doctrine to a factual situation. It is carried out using established bibliographic methodologies, that is, using primary legal sources supplemented by secondary legal resources, and is utilised in both a law school situation and in practitioner’s research.

The second type of legal research is reform-orientated research. The first stage of reform-orientated research involves doctrinal research to ascertain the state of the law, which is then followed by a critical analysis of the legal rules that have been discovered. The second stage of reform-orientated research revolves around questions such as, should the law be changed? And if so, how? It involves an evaluation of the law in relation to its objectives. This evaluation often involves both

1 I acknowledge the importance of the work of P Havemann and J Mackinnon, “Synergistic Literacies: Fostering Critical and Technological Literacies in Teaching a Legal Research Methods Course” (2002) 13(1) LER 65, where the authors also emphasise a five-step approach they call the 5 “Cs”; and T Hutchinson, *Researching and Writing in Law* (Sydney: Lawbook Co, 2001) who also uses the terms analysis, contextualisation, and interpreting.

2 This is the term adopted by Hutchinson, *supra* note 1, in her comparison of legal research methodologies, at 9.

theoretical and empirical investigations which go beyond the question of what is the law.

The third type of legal research is scholarly research, or what the Pearce Report termed theoretical research “which fosters a more complete understanding of the conceptual basis of the legal principles and of the combined effects of a range of rules and procedures which touch on a particular area of activity”.³ Scholarly research is a higher order of research activity, which relies heavily on both theoretical and empirical research, and often incorporates socio-legal methodology.

The definition of legal research which will be used throughout this article is an amalgam of all three of the aforementioned types of legal research, with a large component of doctrinal research, tempered with critical analysis and enlightened by socio-legal contextualisation. This combination is the one most likely to give undergraduate students confidence in their ability to efficiently and effectively research the law.

The Misconception about Legal Research

The major reason for the misconception about the importance of legal research in the law school curriculum is that many course planners adopt a constrained approach, believing that the more narrow definition of legal research, often termed bibliographic instruction, or library-based research, is all that is involved in the legal research process. On the contrary, legal research is an holistic process, made up of a number of distinct stages which combine to form a continuum. Each of the stages is important in itself, and some stages are more important than others, but it is only in its entirety that the real value of legal research becomes apparent.

The acceptance of such a narrow definition of legal research may partly explain the difficulty faced by many course planners who, assuming that it is a one-dimensional concept, fail to afford the legal research process the attention that it deserves. By not understanding that legal research has all of the manifestations of a rigorous academic subject, it is instead assumed that it is an easily learned skill that can be picked up by students along the way. Understandably, there is a reluctance to include space for it in the curriculum, as

3 D Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987) 311.

it is seen as a “trade school” skill, a form of data-collection, undeserving of the attentions of legal academics.

This definitional uncertainty may be one of the main reasons for the lack of support at institutional level, which, combined with some of the other factors considered below, helps to explain why the status of legal research has not been on the agenda for change.

A Model of Legal Research

Stage 1: Analysis

The first stage of the model involves analysis, which can be described as the process of formulating the problem from the facts that have been presented, and in light of the question being asked. Many suggested regimes for conducting legal research recognise analysis as a necessary first step in any research problem.⁴ Other authors use the term planning, or advocate using “strategy and technique” to identify the “situation”, identify the facts and identify the legal issues.⁵

This analysis of the situation, comprising factual analysis and characterisation of the facts presented, is an important initial step as often the analysis of the facts reveals that the situation is more complex than at first appears. An analysis of the situation will result in isolating the legal issues involved, including determining which facts are legally relevant. This step involves going beyond the information provided and asking questions about the way facts are presented. It may even involve being comfortable with questioning the context in which the facts have been presented, and testing the application of an alternative analysis to the facts. It certainly involves reading the facts carefully and with an open mind. In a seminal article on the failure of the legal research process as taught in (American) law schools, Jill and Christopher Wren have written:

In light of the integral character of reading in the legal research process, the failure of typical bibliographically oriented legal research instruction to teach about this step is incongruous. Perhaps the omission derives from a belief

4 C Cook et al write: “in most cases, commencing a search ... without first analysing the question that has been posed will both lead to bad research and result in much time being wasted”: *Laying Down the Law* (5th ed, Sydney: Butterworths, 2001) 275.

5 I Nemes and G Coss, *Effective Legal Research* (2nd ed, Sydney: Butterworths, 2001) 55.

that students' reading of the law in their substantive law courses addresses the skill adequately for legal research purposes. This belief misses the mark, however. Courses on substantive law focus students' attention on thinking about legal doctrines relating to specific subject matter; although the courses require students to engage in various techniques for reading the law, the instruction rarely, if ever, explains how to develop effective reading skills.⁶

This necessity of providing meaning and organisation to the facts and encouraging the researcher to go beyond the information given situates this initial stage in the legal research process well within the part of modern educationalist philosophy which is influenced by constructivist theory. This theory suggests that we "construct" knowledge by testing ideas and approaches based on prior knowledge and experience, applying these to a new situation, and integrating the new knowledge gained with pre-existing intellectual constructs.⁷ This theory has implications for how current "traditional" instruction is structured, fitting in as it does with several highly regarded educational trends, such as transforming the teacher's role from transmitter of knowledge to facilitator and coach; teaching "higher order" skills such as problem-solving, reasoning, and reflection; enabling learners to learn how to learn; providing more open-ended evaluation of learning outcomes; and, of course, fostering cooperative and collaborative learning skills.⁸

Constructivist learning is based on students' active participation in problem-solving and critical thinking regarding a learning activity that they find relevant and engaging. When a legal researcher is presented with a statement of facts, only some will be relevant to the legal research being undertaken. As part of the analysis stage, it is necessary to examine the relevance of the various facts, in terms of legally relevant and factually relevant, and in the light of prior knowledge. In order to provide meaning and organisation to the facts of the situation which has been presented to the legal researcher, it will be necessary for him or her to construct the meaning by reference to his or her current knowledge and socio-legal context.

6 C G Wren and J R Wren, "The Teaching of Legal Research" (1988) 80 *Law Librarians' Journal* 7 at 47.

7 Asynchronous Learning Networks, "What is Constructivism?" (1997) 1(1) *ALN Magazine* <<http://www.aln.org/alnweb/magazine/issue1/sener/constrct.htm>> (accessed 30 October 2001).

8 University of Colorado at Denver, School of Education, *Constructivism* <http://carbon.cudenver.edu/~mryder/itc_data/constructivism.html> (accessed 24 October 2001).

Stage 2: Contextualisation

This therefore segues neatly into the next stage, which encompasses contextualisation — that is, the placing of the legal facts and issues being worked with in to context. This requires assessing the legal and other associated environments in which the problem is situated, knowing how all the aspects of the relevant law fit together, assessing jurisdictional and statutory limitation issues, and also being aware of the resources and authorities which are available and which may be utilised. Olsen identifies this as the first step in the legal research process, and characterises it as finding an “overview — placing a legal issue in its doctrinal or historical context”.⁹ This process involves the ability to appreciate and situate the problem in the context of the role and function of law and legal institutions. This process is consistent with the belief that an understanding of the law cannot be acquired unless the subject matter is examined in close relationship to the social, economic and political contexts in which it is created, maintained and implemented.¹⁰

However, contextualisation of a legal problem is not always as easy to achieve as would be thought. Traditionally, legal problem-solving has been approached from the view that it is only necessary to find out which rules to apply. In law school, legal problems are situated squarely within the paradigm of the “block” of law currently being considered, and students are not encouraged to explore outside this paradigm for possible solutions or complications. As Bottomley and Parker remark, “[f]or many law students, immersion in the doctrinal intricacies of the courses they study can make it hard to distinguish the wood from the trees [and they need to be helped to] take a step back and be reminded of the larger picture.”¹¹

However, for those students who have an expanded conception of the field of legal practice that incorporates a critical and ethically-orientated understanding of how lawyers carry law and legal institutions into the community,¹² law is more than a set of rules. Understanding how the law operates in society, and how their practice of the law might affect it, are integral parts of a complete law school education.

9 K C Olsen, *Legal Information: How to Find It, How to Use It* (Phoenix, Ariz: Oryx Press, 1999) vii.

10 P Harris, *An Introduction to the Law* (6th ed, London: Butterworths, 2001) 5.

11 S Bottomley and S Parker, *Law in Context* (2nd ed, Annandale, NSW: Federation Press, 1997) 380.

12 C Parker and A Goldsmith, “Failed Sociologists’ in the Market Place: Law Schools in Australia” (1998) 25 *Journal of Law and Society* 33 at 47.

Contextualisation, as an interrelated part of legal research, also involves being aware of how the various aspects of the relevant law fit together, and being able to assess jurisdictional and statutory limitation issues. This is the placing of the legal problem within the context of the law as a whole. Is the law of the federal or state jurisdiction (or both) relevant? Does statute or case law have the greater significance? Is there an administrative law issue? This process is enhanced by making parallels between different parts of the law – for example, drawing an analogy from contract law to help in the solution of a statutory interpretation problem – and being aware of the different contexts within which the law exists.

Stage 3: Bibliographic Skills

The third, and arguably the most important, stage is bibliographic skills. This stage would commonly be recognised as the process of finding and ensuring the currency of the law which is relevant to the facts and issues in the problem being addressed by the researcher, and is variously referred to as doctrinal research or library-based research. This step in the legal research process is often mistakenly assumed to be all that is involved. Much has been written¹³ about library-based finding skills and about search strategies, although the emphasis is often on the detailed use of individual tools and resources¹⁴ rather than on an overall research strategy or methodology. This approach is now outdated. The *process* of that part of the legal research continuum which is concerned with bibliographic instruction has changed to accommodate the efficiencies brought about by technological innovation, although the impact on the overall methodology has been minimal.

In addition, the emphasis on bibliographic instruction within a larger framework of information literacy means that bibliographic instruction should focus on the nature of the documents and the ways in which they are indicative of disciplinary processes rather than focusing on an artificial

13 Some of the more recent and significant of which are: Cook et al, *supra* note 4 at chs 13-17; Nemes and Coss, *supra* note 5; R Watt, *Concise Legal Research* (4th ed, Annandale, NSW: Federation Press, 2001); AD Mitchell and T Voon, *Legal Research Manual* (Sydney: LBC Information Services, 2000); and some American counterparts: Olsen, *supra* note 9; RC Berring and EA Edinger, *Finding the Law* (11th ed, St Paul, Minn: West Group, 1999); C Edward, *Good Legal Research ... Without Losing Your Mind* (Charlottesville, Va: Wordstore, 1993); PA Hazelton, *Computer Assisted Legal Research: The Basics* (St Paul, Minn: West, 1993).

14 Mitchell and Voon, *supra* note 13; Nemes and Coss, *supra* note 13; Watt, *supra* note 13.

structure that does not reveal the processes. If electronic research is the norm, the skills of electronic research are critical to legal education. But they should be generic skills – not the skills required to search a particular database, but the search skills which will generate the best results over a range of electronic resources.

A crucial aspect of this third stage is an awareness of the range and interrelationship of the tools and resources available. There are basically two schools of thought about how best to introduce law students to the plethora of legal research materials available to them. The functional approach relies on introducing legal materials and their features in the order in which they are to be used in library-based research exercises. The bibliographic teaching approach relies on introducing the tools and their features in isolated units, pointing out the functions of the tools, the various methods for using them and the interrelationship of the resources for any future application. Debate persists as to which of these methods is the more efficient and effective and it has never been adequately resolved.¹⁵ If resources permit, an integrated approach, which combines the best aspects of both methods, would be optimal.¹⁶ To understand how to use law resources the student must be able to view them in context, in the information stream of time and place in which they are published. As Hicks suggests, “[i]t is possible to understand how to use the books only if one understands what they are, how they came to be created, and what their role is in the universe of other research material.”¹⁷ In a legal research class that is concentrating on library-based resources, students should be guided through an understanding of the origins and evolution of the legal research tools available to them; be given an opportunity to see how the various aspects of the law which they are assimilating from other classes fit into the overarching scheme; be expected to judge the impact of the publishing conglomerates on what is available and how

15 A summary of the various arguments and quotations from the major proponents of the two camps are summarised in D S Sears, “The Teaching of First-Year Legal Research Revisited: A Review and Synthesis of Methodologies” (2001) 19 (3&4) *Legal Reference Services Quarterly* 5, esp nn 7-12.

16 As advocated by F Hicks, “The Teaching of Legal Bibliography” (1918) 11 *Law Library Journal* 1 in his three phase approach – “legal bibliography proper” (the origin, history and description of the repositories of the law); a process-orientated phase; and the integration of legal writing, research and appellate advocacy.

17 R C Berring and K Vanden Heuvel, “Legal Research: Should Students Learn It or Wing It?” (1989) 81 *Law Library Journal* 431, paraphrasing Hicks, id at 433.

it can be used; and should learn how to find and evaluate information within this context.

Stage 4: Interpretation and Assessment

The fourth stage is interpreting and assessing the results of the process so far. This is a crucial step in the legal research process, but one that is rarely emphasised in any of the practical literature. Too often the focus is on finding “an” answer, instead of finding the correct *or best* answer, and too often quantity is preferred over quality. This fourth stage is a complex step which relates in part to the process of contextualisation but which also has an extra unique dimension that relates to the nature of secondary legal resources. In today’s environment of easy access to huge quantities of information, one of the most important skills a legal researcher can develop is to understand the differences among information resources and how to make judgments about the value and appropriateness of the information found. The advent of technology has meant that a different emphasis needs to be placed on what Robert Berring has termed “cognitive authority”, which he defines as “the act by which one confers trust upon a source”.¹⁸ As he says:

the way authority is used has changed; the way authority is defined is changing. The search for cognitive authority in legal sources in the new world of information is a major task.¹⁹

Berring postulates that despite the centrality of legal information to the legal culture, there has never been a serious attempt to question the authority of legal information. One of the reasons for this is that traditional legal information resources have rarely failed to provide the information required, and the “cornerstone tools of legal information have been established as unquestioned oracles”.²⁰ Researchers can no longer assume that every legal research tool is authoritative and reliable. Today’s plethora of easily accessed and seemingly inexpensive databases of competing legal authorities mean that every legal researcher needs to be informed about legal information – what constitutes it, who controls it and how it is changing – and most importantly, how that impacts on the legal research process.

18 R C Berring, “Legal Information and the Search for Cognitive Authority” (2000) 88 *California Law Review* 1673 at 1676.

19 *Id* at 1674.

20 *Id* at 1676.

A further aspect of the interpretation and assessment of results is the necessity of assessing the results in the light of the research question. Previous emphasis on library-based research, and what the Americans term the “treasure-hunt” exercise, where students are asked to find a particular resource, has created a mindset that there is one correct answer and that once it has been located, the research process is at an end. It was pointed out, in criticism of the teaching and learning of legal research in the British context, that:

It appears that undergraduate legal training inculcates little or no research ability, to the extent that many students are incapable of organizing and analysing facts, while those who can research the law have no confidence that they have found the *right* answer – an assumption being that there must be a right answer rather than a range of answers.²¹

The assessment and interpretation stage may often be the stage which prompts further research efforts, as interpreting the results in the light of the research question may reveal that there are other avenues to be followed.

Stage 5: Application

The final step is application of the results of the research to the fact situation as presented. This step is nearly always mentioned in accepted legal research schemas although in undergraduate research exercises this process of applying the findings to the problem is often overlooked in the task-orientated teaching that predominates in today’s law school environment. Students who are conducting legal research with the sole aim of finding the “right” answer are often working within a constricted paradigm of legal knowledge – what is commonly known in American legal research and writing programs as a “closed universe” problem, meaning that the resources and solutions have been deliberately limited. However, such exercises have obvious limitations when legal research is being taught as an holistic, life-long skill. It is essential that the legal research process is completed by attempting to apply the solution to the problem. It will often be the case that there will be a lack of fit, in which case the process becomes circular and needs to be embarked upon again, with perhaps a slightly different emphasis or a change in understanding of what the problem was in the first place.

21 P Kilpin, “Skills Teaching on the Legal Practice Course” in J Webb and C Maughan (eds), *Teaching Lawyers’ Skills* (London: Butterworths, 1996) 248.

The recent adoption of legal clinic programs by some Australian law schools²² is fertile ground for this type of interaction to take place. A student undertaking a clinical program is required to research the law in terms of both substance and procedure, with the emphasis being on the ability to recognise issues, ask the right questions and discover the possible answers. As Grimes has said, “[i]t is this process of formulating and re-formulating the research questions that makes a clinical input so valuable.”²³ Practice in applying the results of the research process in a “real world” situation, or even an artificially simulated real world situation, is invaluable for the student legal researcher.

Reflection is also an important part of the final step in the research process. Drawing on Schön’s concept of “reflective practice”,²⁴ a primary aim of the educative process should be to produce the reflective student. This is a student who can understand the connections between the methods employed and the results achieved, and who can step back from the result and analyse what has taken place in terms of the learning experience. Beyond teaching students to “think like a lawyer”, academic training should aim to train students to “think about what it is to think like a lawyer”.²⁵ Bringing the research process to fulfilment requires assessing the “fit” between the problem and the solution, reflecting on the possibilities which have arisen along the way, and ensuring that the process has been completed as far as possible.

To summarise so far, it is necessary to consider all five elements of the proposed model as a continuum in the whole process, or as inextricably linked parts of an holistic process, in order to gain the full benefits of the proposed model. Although the research model is capable of being adopted and adapted to any research paradigm, in order for the research process to be fully functional within the law school environment, legal research needs to be incorporated as much as possible into the normal learning paradigms which the student is experiencing. The mechanics of the integration of the legal research model will be dealt with in the rest of this article.

22 *Clinical Legal Education Guide 2003-2004* (Kensington, NSW: Kingsford Legal Centre, 2004) gives a figure of 16 programs in 2003.

23 R Grimes, “Locating the Clinic within the Curriculum” (1998) 7(1) *Griffith Law Review* 62 at 66-67.

24 D Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987).

25 C Sampford and D Wood, “Theoretical Dimensions of Legal Education” in J Goldring, C Sampford and R Simmonds, *New Foundations in Legal Education* (Avalon, NSW: Cavendish, 1998) 100.

The Mechanics of Integrating Legal Research into the Law Curriculum

To coordinate the analysis of the five-stage model and the underlying pedagogical theory with the principle of integration of legal research into the law school curriculum requires a consideration of general subject-design issues. These issues include: the objectives of the whole program; the ideal sequencing which allows for the building-up of skills and knowledge over the years; the issue of alignment of assessment with the teaching objectives; and some suggested methods of instruction.

Just as the law is not self-contained and autonomous but is embedded in a social and political context, research into the law cannot be isolated or taught separately from the law. Mere acquisition of legal knowledge is of little value once outside the ambit of the final year examination, because it is likely to be partial, superficially understood, insufficiently appreciated, rarely usable in the form in which it was learned, and often out of date.²⁶ Therefore, the student should be pursuing a problem or activity by applying approaches he or she already knows, and integrating those approaches with alternatives presented by research sources, experience, knowledge, or other team members. Through trial and error, the student then balances pre-existing views and approaches with new experiences to construct a new level of understanding. The theory of instruction which underlies such activity should recognise: the student's predisposition towards learning; the ways in which a body of knowledge can be structured so that it can be most readily grasped by the learner; the most effective sequences in which to present material; and the nature and pacing of rewards and incentives.²⁷ It is proposed that the best way to structure the presentation of legal research knowledge is by integration into the substantive law curriculum, which has the advantage of providing the scope for analysis, manipulation of information, and synthesis.

26 W Twining, "Preparing Lawyers for the Twenty-First Century" (1991) Jan-Apr *Commonwealth Legal Education Association Newsletter* 115, quoting P Wesley-Smith's arguments against the acquisition of knowledge out of context.

27 Based on the work of J Bruner, *Toward a Theory of Instruction* (Cambridge, MA: Harvard University Press, 1966).

The Challenges

The mechanics of the integration of legal research into the law school curriculum poses two challenges. The first challenge relates to the integration of problem-based instruction into the whole of the law school curriculum, so that students are exposed to ways of thinking and learning that encourage them to approach the problem-solving process from an holistic point of view. This should be a fairly straightforward process, which is aided by teaching and learning methodologies concentrating on student-centred learning and relational theories of learning,²⁸ and which is prompted by a culture of instructional design with this type of learning in mind. As Moust says: “[n]owadays, there seems to be a growing consensus that general problem-solving skills and context specific knowledge should be synthesised in the design of instruction.”²⁹

The second challenge confronting integration is more problematic, as it involves integrating a particular aspect of the problem-solving methodology, namely legal research, into the substantive law being taught. The basis of the principle of integration is that the modern legal education curriculum should include problem-solving skills (incorporating initiative, self-directed learning, critical thinking skills and other higher-level cognitive skills) and that legal research is a perfect example of such skills.

There is little doubt that the time is opportune for incorporating this more exciting form of learning, which goes beyond reading and understanding what is read and heard in class, into the modern law school curriculum. Student-centred learning, as opposed to the more traditional lecture format, has been diluted over the years, as a more formalistic and teacher-centred approach to learning has found its way into the nation’s law schools.³⁰ The reasons for this trend can largely be found in resource issues, with the teacher-centred model being more efficient in dealing with the increased enrolments experienced by law schools over the recent past. However, teacher-centred learning, with its emphasis on specialised

28 As adopted by the relational or phenomenographical school of P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) and M Prosser and K Trigwell, *Understanding Learning and Teaching: The Experience in Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1999).

29 J H C Moust, “The Problem-Based Education Approach at the Maastricht Law School” (1998) 32(1) *Law Teacher* 5 at 9.

30 M Le Brun and R Johnstone, *The Quiet (R)evolution: Improving Student Learning In Law* (Sydney: Law Book Company, 1994) 21.

subject matter and coherent arrangement of that subject matter, engenders passivity in students, rather than active involvement in the learning tasks, and an overall orientation to teaching rather than learning.³¹ Students who are engaged in the learning process participate actively in and are responsible for their learning. The change of emphasis to process rather than content, on knowing why and how, rather than what is, should be reflected in the objectives of the program.

Therefore, although it is still argued in some circles that the role of a law school is to teach students the substance of the law for future use, it is also recognised that it is necessary for them to learn the skills of analysis and self-instruction. The law changes all the time, and the amount of information contained in what is termed “the law” increases all the time, as new areas and additional jurisdictions become relevant. As her Honour, Justice Atkinson recently said, the challenge for legal education for the twenty-first century is:

how to combine training in analytical and “body of knowledge” based thinking both with the creative, lateral, theoretical thinking often more highly regarded in disciplines other than law, and with a sense of how the policy decisions embedded in the law affect ordinary people.³²

Integrated models emphasise the encouragement of critical thinking and larger understanding, and seek more than the transmission of technical expertise. However, as Simpson observed, discussions of the implications of such models frequently also support the idea of “active learning” and other activity-based forms of teaching most appropriate to the imparting of technical skills.³³ It is convenient to teach skills within defined core areas, and a strong argument for doing so is that it is often necessary to isolate a skill to teach it and in so doing to provide opportunities for feedback and assessment. The need to understand a skill at a basic level has been the rationale behind foundation courses where students are introduced to basic-level skills within a limited legal context. To achieve this balance, it may be necessary to have multiple levels of objectives – one level for the overall legal research

31 S Nathanson, “Changing Culture to Teach Problem-Solving Skills” (1996) 14(2) *Journal of Professional Legal Education* 143.

32 R Atkinson, “Legal Education in the Twenty-First Century” (2001) 9(1) *Griffith Law Review* 1 at 2.

33 A E Simpson, “Information Finding and the Education of Scholars: Teaching Electronic Access in Disciplinary Context” (1998) 1(2) *Behavioral and Social Sciences Librarian* 1 at 6.

skills, and another level for the individual years where the students are exposed to the particular skills – or, as Toohey puts it, there should be “laid out for students ... a map or learning hierarchy [showing] how enabling objectives build upon each other and contribute to the final skilled performance”.³⁴

The Objective of Integration

The overall objective for the teaching of legal research in the undergraduate curriculum must accord with the broad educational purpose of the undergraduate law degree. Therefore, it could be argued that the general objective is that of developing critical thinking and problem-solving strategies within the broad educational goals of being able to think “sceptically, logically, analytically and creatively”.³⁵ However, it is also necessary to align objectives with teaching methods and with assessment, so that an objective for every stage in the process, and every module in the learning schema, is defined. The aims and objectives dictate the activity in the classroom – both the activity of the teacher and the activity of the students, and contain direct implications for particular kinds of assessment.³⁶

A suitable objective for a legal research course would read as follows:

By the end of the law degree, the student should be able to find, analyse, apply, synthesise and critically evaluate cases, legislation, secondary legal material, books and journal articles, using both manual and electronic legal research methods.

The aim, with which the assessment must be aligned, is not to help the student to find the solution so much as to help him or her discover what he or she needs to know to work towards a solution. The achievement of that objective will require sequencing of each section of the process, or each part of the learning hierarchy, which is tailored to the individual resources used in that section. This has been trialled at the University of Western Australia Law School³⁷ where the key strategies of determining the areas and levels of skill competency of the students, and identifying the year levels in which research

34 S Toohey, *Designing Courses For Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1999) 53.

35 *Id* at 132-133.

36 *Id*.

37 R Carroll and H Wallace, “An Integrated Approach to Information Literacy in Legal Education” (2002) 13(2) LER 133.

skills might be taught, were identified³⁸ and aligned with the overall objectives of the program.

Ideally, law students should be exposed to legal research skills over all the years of the law school curriculum. The preferred model for teaching legal research in Australian law schools would be based upon an introduction in the first few weeks of first year, where the needs of new students are best served by having an intensive introduction to the background and ground rules of the process. Because first year students have as yet learned very little substantive law, the teaching of legal research in these first weeks tends to be in isolation, without the benefit of integration with mainstream subjects. This separation between the substance and the procedure of legal research results in a further problem. As most legal research is not required until later in the degree, it is likely that the procedures learned in previous years have either been forgotten or have become outmoded because of the evolution of legal research method. Bearing this in mind, the objectives for this section of the learning hierarchy should be simple and straightforward – an understanding of the Australian legal system and how its intricacies impact on the legal publishing industry, and what that means in terms of choices and quality of legal research materials. This instruction could take place as part of the first year introductory course, so that students are exposed to legal research resources as an interconnected part of the legal system, and learn to bring to them the same questioning assessment and analytical criticism that they are learning to bring to the legal structures of our society. Over the next three to four years, depending on the structure of the law degree, modules of specialised skills training should be offered to enable students to develop a deeper understanding of legal research methodology, commensurate with their expanding knowledge of the law generally.³⁹

To achieve the integration of skills within the core legal subjects as well as the isolation of certain skills to enhance learning, one option may be to fragment mainstream sessions with short excursions into skills to highlight important issues, get practice, and gain feedback on the specific skills used to solve the legal problem or task. However, it is essential to maintain the confluence between skills and the substantive law by incorporating socio-legal research theory and offering students a wider understanding of the intellectual choices

38 Id at 143.

39 A table, which describes in detail the proposed sequencing and relationships between the particular mechanics of doctrinal research which can be incorporated, is available from the author on request.

about content and format which have such an impact on legal scholarship and on the research tools which are available to them.

The teaching method should be based on the “learning-by-doing” method, whereby students are regularly set a research problem. The problems would increase in difficulty as the students are exposed to more and more legal research tools, until by the end of the period they have become familiar with, and have used, the whole range of legal research tools. The exercises will require a critical evaluation of the tools, comparisons where appropriate, and a demonstrated understanding of the intellectual underpinnings of the structure of legal research tools. The final exercise will be an “open-universe” problem where students are required to demonstrate their ability to understand the holistic nature of legal research and how the tools work together, or why a certain type of information is found through the application of certain types of research tools. Hutchinson and Martin⁴⁰ advocate the use of a multi-modal delivery approach to teaching legal research skills as it “can assist students in developing their own strategies for dealing with changes in the legal research process ... and assists in the development of independent lifelong learning”.⁴¹

Assessment of Legal Research Skills

Assessment must reflect the teaching and learning goals of the subject. Therefore, the emphasis should be on methods of assessment that test students’ capacity to think logically, critically and creatively and to evaluate and analyse legal problems, as identified in the learning objectives. To learn skills effectively, students must be given the opportunity to practise them. This indicates that problems and exercises should be drafted in terms of real legal problems (that is, problem-based), which would require students to utilise the five steps of legal research (that is, analysis, contextualisation, bibliographic skills, interpretation and application), and to be aware of the connection between the stages. Learning is then assessed through performance-based projects rather than through the more traditional examination method. This offers a solution to the dilemma posed by evaluations of the effect of different methods of assessment, which

40 T Hutchinson and F Martin, “Multi-Modal Delivery Approaches in Teaching Postgraduate Legal Research Courses” (1997) 15(2) *Journal of Professional Legal Education* 137.

41 *Id* at 152.

reveal a tendency toward surface approaches to learning by students enrolled in a theoretically-based subject.⁴² When assessment relies on the ability of a student to recall, from memory, a large amount of information and isolated facts, the knowledge process is truncated and subverted into an exercise in regurgitation of hastily skimmed lecture notes. In contrast, “learning-by-doing” and its corresponding method of performance-based assessment encourage the deeper approach to learning.

Incorporation of the assessment of the research skills component of the substantive course is an ideal which can, in reality, rarely be achieved. This is often related to work loads, in consequence of which the teacher of the substantive subject feels unable to take on the extra marking required to assess the students’ papers in light of their research efforts. A workbook or journal option is often the most workable solution, which, although it does not totally free the teacher from marking, can substantially lessen the load. This is especially so if it is emphasised that the workbook is being kept by the student, for the student – in line with the principles of student-centred learning where it is the process that matters rather than the content. The workbook objectives should describe the interrelationships between the concepts and the learning process, and give the students a measurable standard against which to assess their progress. Although the workbook could ideally fill the role of a formative assessment task, in that it is an ongoing, diagnostic assessment of the student’s increasing competence in the area,⁴³ enhanced by feedback from the teacher about alternative methods or resources, it would not be necessary for the workbook to be marked on a regular or comprehensive basis, as long as students are aware that it may be.

The workbook could take the form of a journal which enables students to keep completed exercises and handouts pertaining to particular tools in one place for repeated referral. This is a method that is used with some success in Advanced Legal Research classes in the United States.⁴⁴ The structure of the workbook will reflect the modularised structure of the research skills course. These modules would build on the

42 E Marchetti, “The Influence of Assessment in a Law Program on the Adoption of a Deep Approach to Learning” (1997) 15(2) *Journal of Professional Legal Education* 203 at 211.

43 R Johnstone, J Patterson and K Rubenstein, *Improving Criteria & Feedback in Student Assessment in Law* (Avalon, NSW: Cavendish, 1998) 6.

44 L A Silecchia, “Designing and Teaching Advanced Legal Research and Writing Courses” (1995) 33 *Duquesne Law Review* 203.

information and knowledge previously gained, and continue to offer familiarity with more sophisticated and specialised legal research tools as time goes on. This builds on both the relational and reflective learning skills with which the students are familiar, and also provides the opportunity to expand their knowledge base as more recently developed tools become available. Comparative exercises will also be included, requiring the students to critically evaluate particular resources in terms of how effectively they were able to use them for a stated purpose.

Ideally, the workbook will be produced to reflect the matrix-like structure of the research skills course, so that it will have both vertical and horizontal components. The vertical component will reflect the gradually increasing sophistication of the resources used, building on the information and knowledge previously gained, and continue to offer familiarity with more sophisticated and specialised legal research tools, as time goes on. The vertical component will reflect the move from basic to sophisticated levels of familiarity with tools, with columns headed Case Law 1, Case Law 2 and so on. This also gives the students the opportunity to become familiar with research tools which have been recently developed, a current phenomenon in legal research which is unlikely to be short-lived. The horizontal component, which may sometimes become iterative, will reflect the vitality and open-ended development that characterises the five-stage legal research process. The horizontal component will involve five rows, labelled according to the five-stage process, to encourage students to work through these steps in logical order as they utilise each skill and tool.

This form of assessment deftly relates to the objectives and aims of the course, in that it will make clear to the student his or her progress in being able to find, analyse, apply, synthesise and critically evaluate cases, legislation, secondary legal material, books and journal articles, using both manual and electronic legal research methods.

Conclusion

In respect of legal research teaching, it should be possible to examine teaching methodologies in the light of established knowledge about the way students learn best. Teachers who adopt a conceptual change or student-focused approach to teaching are more likely to produce students who adopt a deep approach to their learning, while teachers who adopt an information transmission or teacher-focused approach to

teaching are more likely to produce students who adopt surface approaches to their study. Previous teacher-centred teaching methods operated on the assumption that legal research was an easily obtained “lower-order” skill that could be picked up virtually by osmosis.⁴⁵ The themes, which have emerged from this treatment of the teaching and learning of legal research, are unsurprising. Ultimately, information retrieval is a problem-solving process in which students need to develop the ability to articulate their information needs and discover how to meet those needs. Essentially, teachers involved in legal research need to be able to design courses in which legal research skills are integrated into the substantive law courses. Such courses will encourage students to undertake a deep approach to their learning. And they will allow teachers to move away from being the expert who provides the information which students need, and to move towards being a supporter and facilitator of the open-textured and sometimes indeterminate but rewarding process of legal research.

The conclusion drawn is essentially that a change in the way legal research is approached in the undergraduate law school curriculum would be beneficial. An overhaul of the teaching methods used throughout the law school is an ambitious goal that challenges the inherent conservatism of much of the teaching profession. A change of teaching emphasis may cause insecurity and a concern to protect the academic respectability of legal study against attack from vocationalism or the influence of a training ethos which undermines academic goals. However, this should not prevent an attempt to more fully integrate the teaching of legal research into the undergraduate law school curriculum. Researching the law cannot be a process that occurs separately from considering the law. The symbiosis between legal research and the legal principles involved is necessary for a complete and thorough legal research process. Therefore, the teaching and learning of legal research must be incorporated into the substantive law curriculum and the instructional design of the curriculum will need to reflect this necessity. The fact that this will necessarily involve a re-evaluation of resources, especially in the assessment area, is an inevitable consequence of a shift in the paradigm of thinking, but will ultimately result in a more experienced and competent law graduate.

45 This term is used by S Christensen and S Kift in their article, “Graduate Attributes and Legal Skills: Integration or Disintegration?” (2000) 11(2) LER 207 at 213, when they say, in reference to the reluctance of academics to include skills in the curriculum (while recognising that they are necessary to complete a law degree): “[t]he simultaneous (though inconsistent) expectation is, however, that the student will acquire the skill more by osmosis than by instruction”.

Where to Now? The 2002 Australasian Research Skills Training Survey

*Terry Hutchinson**

A. Introduction

Legal research is a fundamental “lawyering” skill, and as such its importance in legal education has had more recognition than other discipline-specific attributes.¹ However, in 1988, when an initial review of research skills training in Australasian law schools was completed,² the predominant philosophy appeared to be that the skill would be developed via a process of “osmosis”.³ Since then, a transformation of sorts has occurred. Legal research training has become an integral part of the curriculum of most law courses offered within the Australian region. At the same time, skills generally have gained increasing importance in the tertiary sector and especially in the law school curriculum. Within this context, some law schools have instigated reviews of their overall skills training, and this has had a flow-on effect on legal research training. This current Australian legal tertiary framework of enhanced importance for skills training and an increased use of technology for teaching, forms the backdrop for the 2002 survey.

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1 See various studies including D Pearce et al, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987), Vol 1; F Zemans and V Rosenblum, “Preparation for the Practice of Law – The Views of the Practicing Bar” (1980) 1 *American Bar Foundation Research Journal* 1 at 3.

2 T Hutchinson, “Legal Research Courses: The 1991 Survey” (1992) 110 *ALLG Newsletter* 87.

3 S Christensen and S Kift, “Graduate Attributes and Legal Skills: Integration or Disintegration?” (2000) 11 (2) *Legal Education Review* 207 at 213.

This paper firstly reviews the developments taking place within higher education as reflected in the various government reports. It then outlines the relevant literature on literacy competency within information sciences. Also pertinent is the law schools' response to doctrinal research skills training. Previous surveys of legal research teaching in Australia are summarised. The paper then examines the outcomes of the 2002 survey and makes some conclusions and recommendations based on the analysis of results taking into account the challenges identified for the tertiary education sector in Australia.

B. High Level Reviews of Legal and Generic Skills

Reviewing Higher Education

Several reviews of the Australian higher education sector have taken place and these reports have reinforced the need for universities to reconsider the generic skills and personal attributes of the graduates they produce. They also provide a helpful context for understanding the importance of research skills training in legal education. An early review of generic skills was carried out by the Mayer Committee established by the Australian Education Council and Ministers of Vocational Education, Employment and Training.⁴ The Mayer Report in 1992 set out seven basic generic competencies including the following three:

- *Collecting, analysing and organising information.* The capacity to locate, sift and sort information in order to select what is required and present it in a useful way, evaluate both the information itself and the sources and methods used to obtain it.
- *Communicating ideas and information.* The capacity to communicate effectively with others using the range of spoken, written, graphic and other non-verbal means of expression.
- *Using technology.* The capacity to apply technology, combining the physical and sensory skills needed to operate equipment with the understanding of scientific and technological principles needed to explore and adapt systems.⁵

4 Mayer Committee, *Employment-related Competencies: A Proposal for Consultation* (Melbourne: Owen King, 1992); Mayer Committee, *Putting General Education to Work: The Key Competencies Report* (Melbourne: Australian Education Council and Ministers of Vocational Education, Employment and Training, 1992).

5 Id at 14.

Following this, the West Review produced a useful framework for Australian graduate outcomes, by stipulating that, ideally, every graduate with a first degree should have acquired the following attributes:

- the capacity for critical, conceptual and reflective thinking in all aspects of intellectual and practical activity;
- technical competence and an understanding of the broad conceptual and theoretical elements of his or her fields of specialisation;
- intellectual openness and curiosity, and an appreciation of the interconnectedness and areas of uncertainty in current human knowledge;
- effective communication skills in all domains (reading, writing, speaking and listening);
- research, discovery and information retrieval skills, and a general capacity to use information;
- multifaceted problem solving skills and the capacity for team work; and
- high ethical standards in personal and professional life, underpinned by a capacity for self-directed activity.⁶

In 1999, the Commonwealth green paper, *New Knowledge, New Opportunities*⁷ and the later white paper, *Knowledge and Innovation*⁸ looked at research and research training at a broad level within universities. The green paper stated that postgraduate research training “represents one of the most significant areas of national investment in research”.⁹ The policies being put forward sought to move funding for research and research training to a performance-based system where funding is based on outcomes and the quality of the research being produced in the university. The objective of this strategy was to produce graduates who are more attractive to employers outside the universities and research institutes.¹⁰ Again in 2000, the then Minister for Education,

6 The Review Committee on Higher Education Financing and Policy (Chair Roderick West), *Learning for Life* (1998) 47; see <http://www.dest.gov.au/archive/highered/hereview/toc.htm> (viewed 7 October 2004).

7 Dr D Kemp, *New Knowledge, New Opportunities: A Discussion Paper on Higher Education Research and Research Training* (Canberra: Commonwealth Department of Education, Science and Training, June 1999); see <http://www.dest.gov.au/archive/highered/otherpub/greenpaper/index.htm> (viewed 7 October 2004).

8 Dr D Kemp, *Knowledge and Innovation: A Policy Statement on Research and Research Training* (Canberra: Commonwealth Department of Education Science and Training, 1999); see <http://www.dest.gov.au/archive/highered/whitepaper/default.asp> (7 October 2004).

9 *New Knowledge, New Opportunities*, supra note 7 at 6.1.

10 M Gallagher, “The Challenges Facing Higher Education Research Training” in M Kiley and G Mullins (eds), *Quality in Postgraduate Research: Making*

Training and Youth Affairs, Dr David Kemp, emphasised the strategic importance of the “encouragement of universities to ensure that their graduates enter the workforce with the competencies needed, including information literacy skills and lifelong learning skills”.¹¹ In addition, the Commonwealth Government was considering ways of testing the development of generic capabilities or attributes using the Graduate Skills Assessment across all universities. This was Commissioned by the then Department of Education, Training and Youth Affairs and introduced in 1999.¹² There was some recognition that the current environment, especially involving developments in technology, can lead to dynamic change and therefore there is a need for graduates to have the skills to stay abreast of knowledge shifts in their fields.

For a comparative viewpoint, the 2001 National Centre for Vocational Education Research’s *Generic Skills for the New Economy* noted the way sets of key competencies/key skills have been developed in Britain, the United States and Australia.¹³ The NCVER Review of Australian and international literature and research on generic skills noted the changes that had taken place since the Mayer report and especially the effects of globalisation, competitive economies and the technological revolution. It found this had changed the needs of employers and requirements for workers’ competencies. It also noted that the shift to active learning techniques is needed to develop generic skills throughout a working life.¹⁴

The 2002 Review of Higher Education, initiated by the Minister for Education, Science and Technology, Dr Brendan Nelson,¹⁵ has prompted further debate concerning all aspects

Ends Meet (Proceedings of the 2000 Quality in Postgraduate Research Conference, Adelaide, April 13-14) 9 at 10 (as presented by J Gordon).

- 11 Commonwealth Department of Science Education and Training, *Learning for the Knowledge Society: An Education and Training Action Plan for the Information Economy* (Australian National Training Authority, 2000) 82; see <http://www.dest.gov.au/schools/publications/2000/learning.pdf> (viewed 7 October 2004).
- 12 Commonwealth Department of Education Science and Training, “Higher Education at the Crossroads: A Review of Australian Higher Education”, Higher Education Review Process: Issues Paper, Striving for Quality Learning, Teaching and Scholarship (Canberra: Department of Education Science and Training, 2002) 31; see <http://www.backingaustraliasfuture.gov.au/review.htm> (viewed 7 October 2004).
- 13 P Kearns, *NCVER Generic Skills for the New Economy: Review of Research* (Canberra: Australian National Training Authority, 2001); see <http://www.ncver.edu.au/publications/602.html> (viewed 7 October 2004).
- 14 Kearns, id at 76.
- 15 Dr B Nelson, *Higher Education at the Crossroads: A Review of Australian Higher Education* (Canberra: Commonwealth Department of Education Science and Training, 2002); see <http://www.backingaustraliasfuture.gov.au/review.htm> (viewed 7 October 2004).

of university education in Australia. Relevant to our discussion is the following statement regarding the purpose of tertiary education:

Higher education fulfils significant functions in our society. It values learning throughout life. It promotes the pursuit, preservation and transmission of knowledge. It extols the value of research, both “curiosity-driven” and “use-inspired”. It enables personal intellectual autonomy and development. It provides skills formation and educational qualifications to prepare individuals for the workforce. It helps position Australia internationally.¹⁶

Therefore, once again, the themes of lifelong learning and autonomous learning, along with the importance of research and skills are being emphasised at higher government policy levels.

Developments in Information Literacy Competency Standards

Within the tertiary library community, heightened awareness has centred on the issue of information literacy. The United States Association of College and Research Libraries¹⁷ defined information literacy as a set of abilities requiring individuals to “recognize when information is needed and have the ability to locate, evaluate, and use effectively the needed information”.¹⁸ This report identified five standards as being:

- 1 The information literate student determines the nature and extent of the information needed.
- 2 The information literate student accesses needed information effectively and efficiently.
- 3 The information literate student evaluates information and its sources critically and incorporates selected information into his or her knowledge base and value system.
- 4 The information literate student, individually or as a member of a group, uses information effectively to accomplish a specific purpose.

¹⁶ Id at 1.

¹⁷ *Information Literacy Competency Standards for Higher Education* (Chicago: Association of College and Research Libraries, 2000); see <http://www.ala.org/ala/acrl/acrlstandards/informationliteracycompetency.htm> (viewed 7 October 2004).

¹⁸ Definition from American Library Association, *Presidential Committee on Information Literacy Final Report* (Chicago: American Library Association, 1989); see <http://www.ala.org/ala/acrl/acrlpubs/whitepapers/presidential.htm> (viewed 7 October 2004).

5. The information literate student understands many of the economic, legal, and social issues surrounding the use of information and accesses and uses information ethically and legally.

These standards were published post-Boyer,¹⁹ and were certainly influenced by the ideas espoused in that report, particularly the “Ten Ways to Change Undergraduate Education”:

- make research-based learning the standard
- construct an inquiry-based freshman year
- build on the freshman foundation
- remove barriers to interdisciplinary education
- link communication skills and course work
- use information technology creatively
- culminate with a capstone experience
- educate graduate students as apprentice teachers
- change faculty reward systems
- cultivate a sense of community.

The Council of Australian University Librarians (CAUL) published a list of core standards based largely on the US list in 2001. A revised Australian list was published in 2003 after an exhaustive consultation process. The new Standard Four includes an ability to “record information and its sources” and to organise this information.²⁰ It states: “The information literate person manages information collected or generated.” Standard Five states that the information literate person “applies prior and new information to construct concepts or create new understandings”.²¹

Information literacy has been considered to provide a pedagogical or theoretical teaching framework for legal research practice.²² Christine Bruce’s theory on information literacy places reader education or research training

19 The Boyer Commission on Educating Undergraduates in the Research University, *Reinventing Undergraduate Education: A Blueprint for America’s Research Universities* (Stony Brook: State University of New York, 1998); see <http://naples.cc.sunysb.edu/Pres/boyer.nsf/> (viewed 7 October 2004).

20 A Bundy (ed), *Australian and New Zealand Information Literacy Framework: Principles, Standards and Practice* (2nd ed, Adelaide: Australian and New Zealand Institute for Information Literacy, 2004) 18; see <http://www.caul.edu.au/info-literacy/InfoLiteracyFramework.pdf> (viewed 7 October 2004).

21 Id at 20.

22 N Cuffe, “Information Literacy and Legal Research” (1999) 7(1) *Australian Law Librarian* 57.

development in an historical framework and so demonstrates an interesting parallel to the developments in legal research skills training. She notes that the “bibliographic” movement was the prominent focus in libraries in the 1980s.²³ This was so in legal research training circles as well, until it was replaced by the Wrens’ push towards teaching legal research as a process.²⁴ More recently, interdisciplinary research incorporating empirical methodologies and additional theoretical, policy and reform aspects have been included in the curricula.²⁵ These connections between information literacy and the theory behind research skills teaching are very important to the overall development of reflective practice and scholarship in this area. Fitzgerald identified the lack of “theory-based research on skills” in 1996 as being one of the main reasons why skills had been slow to enter the law school curriculum.²⁶

The Law Schools’ Response

Legal research is a traditional legal skill. However, the various reports on legal education documented the slow rate of change in relation to skills training. Beginning with the 1987 Pearce report,²⁷ and the subsequent McInnis and Margison report in 1994,²⁸ there was recognition that “any movement towards skills development within law schools had been slow”.²⁹ In the United States, the 1992 McCrate Report on legal education had identified a list of fundamental lawyering skills. Of course, legal research figured in that list.³⁰ Given these developments, it is not surprising that the Australian Law Reform Commission, in its 1999 report on managing justice, called for legal education to focus on “what lawyers need to be able to do” rather than “what lawyers need to

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- 23 C Bruce, *The Seven Faces of Information Literacy* (Adelaide: Auslib, 1997) 7.
 24 C Wren and J Wren, “Reviving Legal Research: A Reply to Berring and Vanden Heuvel” (1990) 82 *Law Library Journal* 463.
 25 T Hutchinson, *Researching and Writing in Law* (Sydney: Lawbook Co, 2002).
 26 M Fitzgerald, “What’s Wrong with Legal Research and Writing? Problems and Solutions” (1996) 88(2) *Law Library Journal* 247 at 271.
 27 Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987).
 28 C McInnis and S Margison, *Australian Law Schools after the 1987 Pearce Report* (Canberra: AGPS, 1994).
 29 S Christensen and S Kift, *supra* note 3 at 208.
 30 American Bar Association, *Legal Education and Professional Development – An Educational Continuum* (Chicago: ABA, 1992).
 31 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (Canberra: AGPS, 1999) at para 2.21; see <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/> (viewed 7 October 2004).

know”.³¹ By 2003, Johnstone and Vignaendras’ “stocktake” of legal education in Australia reported that “arguably the most significant of all of the developments in Australian legal education in the past decade is the focus on teaching legal skills within the undergraduate curriculum”.³²

One school, for example, has developed a framework to develop “graduate attributes”.³³ The school identified the six attributes of a law graduate. A graduate who possesses the nominated attributes will generally be able to demonstrate a variety of skills.³⁴ There are 26 skills, which have been broadly categorised as attitudinal (including reflective practice), cognitive (including legal research and IT literacy), communicative (including oral and written communication), and relational skills (time/project management). The skills have been integrated with the content of the compulsory units within the undergraduate LLB and incrementally developed up through the degree in three broad levels of skill progression, which move from generic to more legally specific and ultimately more complex applications. Thus, legal research has been integrated into the law degree through three levels over the four years of the degree.³⁵ There is also an advanced level available through the Research Project unit elective, which is offered to later year students who may want to research and write on a specific topic under academic supervision. This is merely an example of one school’s approach to integrating skills in the curriculum.

Previous Surveys of Legal Research Training

In order to chart the development and challenges of teaching legal research skills, it is useful to be reminded about the results of previous surveys. An initial scan and informal

32 R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)* (Canberra: Department of Higher Education, Science and Training, January 2003) 133; see http://www.autc.gov.au/projects/completed/loutcomes_law/split_pdf.htm (viewed 7 October 2004).

33 N Cuffe, “Embedding Graduate Attributes in Law: Reflections of a Law Librarian Seconded to a Teaching and Learning Grant Project” (2001) 9(4) *Australian Law Librarian* 314 at 315; and see Queensland University of Technology, *Manual of Policies and Procedures*, Chapter C1.3 Graduate capabilities; see http://www.qut.edu.au/admin/mopp/C/C_01_03.html (viewed 7 October 2004); S Christensen and N Cuffe, “What Lawyers Need to Know v What Lawyers Need to Do (2002) Jan/Feb *Proctor* 18; Christensen and Kift, *supra* note 3.

34 Cuffe, *supra* note 33 at 318.

35 Christensen and Cuffe, *supra* note 33 at 19.

survey in 1988 demonstrated that very few law schools were “attempting to teach legal research in a formal manner”.³⁶ By 1991, the scene was changing. Thirteen of the universities surveyed had introduced research training since 1988, three in 1990 and six in 1991. Perceived weaknesses in the courses resulted from inadequate staffing, inadequate facilities and the corresponding lack of motivation seen in the students.³⁷

The 1995 survey covered 30 Australian, New Zealand and Papua New Guinea Law schools in June 1995. The survey generally covered the issues of orientation courses for first year students, the provision of undergraduate and postgraduate research courses, and the inclusion of legal writing in the curriculum. Some emphasis was placed on the issue of computer-assisted research and the inclusion of this in the courses. Respondents were asked whether social science and empirical research methods were included in the units. Respondents were also asked to rank some of the main difficulties encountered in the courses.

Nineteen responses were received as was reported at the inaugural meeting of the Legal Research Communications Group at the Australasian Law Teachers Association (ALTA) Conference at Flinders in 1995.³⁸ At that stage, the survey demonstrated that most law schools were offering some form of legal research training, mainly at undergraduate level. However, some were also conducting orientation courses for first year, and about half had some training schedule for postgraduates.

The majority of the schools therefore were offering first year courses and three were offering an integrated skills program. At that point, seven reported a compulsory separate subject dealing with research in first year. Another eight reported research being taught as a segment of a compulsory first year subject, which was a very positive development, although in most of these units, the research training segment was limited to 20 hours or less of a full year unit.

Most of the research units included some writing instruction. This basically consisted of assignment writing, with less

36 T Hutchinson, “Legal Research Courses: The 1991 Survey” (1992) 110 *ALLG Newsletter* 87.

37 *Id.* These issues are still being highlighted by the respondents to the most recent survey in 2002.

38 E Barnett, “Legal Research Skills Training in Australasian Law Faculties: A Basic Overview. The Issues” (Paper presented at the 50th Anniversary Conference of the Australasian Law Teachers Association 1995); see <http://www.austlii.edu.au/cgi-bin/disp.pl/au/special/alta/alta95/barnett.html> (viewed 7 October 2004).

emphasis being given to a broader range of pertinent writing genres such as barrister's opinions, briefs to counsel, case notes, letters to clients, internal office research memorandums and journal articles.

The main method of assessment was, not surprisingly, through assignments and seminar performance. However, it was disappointing to note that a few were still using the standard law school examinations, even though this is certainly not the most effective way to assess research. Perhaps this was indicative of staffing levels available for the units because less staff time is normally required to mark one exam than to mark a longer research assignment.

Although the teaching teams consisted principally of academics, there were many instances reported of combined academic and librarian teaching teams. However, overall the teaching teams seemed to be very small, which suggested very high staff/student ratios. When asked about the problems being encountered with the units, it is not surprising that this response was most prevalent, the others being resource problems and motivating students. So the difficulties that had been raised in the 1991 survey were highlighted once more, and these seem not to have disappeared, judging by the most recent survey responses.

The 2002 Survey of the Teaching of Research Skills

Survey Methodology

The 2002 survey instrument was based on the previous surveys in order to allow for some comparison. Survey forms were sent to the Deans of all law schools for distribution to their legal research teaching staff. Forms were also sent to the law librarians at all law schools in Australia (30) and those in New Zealand (5). In addition, the survey was distributed through the ALTARESCOM email discussion list. This list consists of those within the Australasian Law Teachers Association Legal Research and Communications Interest Group, and includes many of the legal research teachers in Australian law schools.³⁹ Other teachers were identified from the web unit outlines and surveys were sent directly to their email addresses.

This resulted in 31 surveys being returned, with respondents from all six States and the Australian Capital Territory. There were more responses received from New South Wales and

³⁹ Subscribe to this list by emailing the Interest Group Convenor at t.hutchinson@qut.edu.au.

Queensland than other jurisdictions. The respondents included all academic levels from Professor to Associate Lecturer as well as law librarians. In all, 25 institutions were represented.

In the modern context, most law schools have a web presence. A detailed examination of these websites was undertaken as part of this project. Research unit details that were available were analysed and some comments are directed to the information provided there.

The 2002 survey responses were anonymous, in conformity with university ethics requirements. As a result, confidentiality was assured. However, it was also the case that more than one response was received from some law schools, with individual respondents simply addressing the specific units they were involved in teaching. The figures in the following analysis indicate numbers of institutional responses and where all individual respondents are included, this is clearly indicated.

These survey questions also assumed that electronic research methods would be covered in some detail given the changed context in the last seven years brought about by the widespread use of the Internet. In the interests of brevity, there was less emphasis on asking for detailed information about the curriculum, given the increasing number of research texts published for this market. Teaching methods were not surveyed. At the time of the earlier surveys, some schools were still trying to teach research using a lecture format, but it was thought that such crude ways of teaching skills would no longer prevail in the current climate.⁴⁰

Thus, although the survey asked how many students were enrolled overall in the units for each year, the question was not asked how these students were taught. Was the material delivered in small groups, and if so what was the usual size of these groups? Was the material delivered with a mixture of lectures and workshops? How long were the workshops? These questions were not asked but consideration will be given to including them in the next survey.

The Threshold Question

The initial question was directed at actual research training for the bulk of the student body. The survey asked whether the law school offered subjects teaching research skills at the

⁴⁰ However, it is never wise to assume that hard-earned expertise will prevail against economic rationalism so this should be included in future surveys.

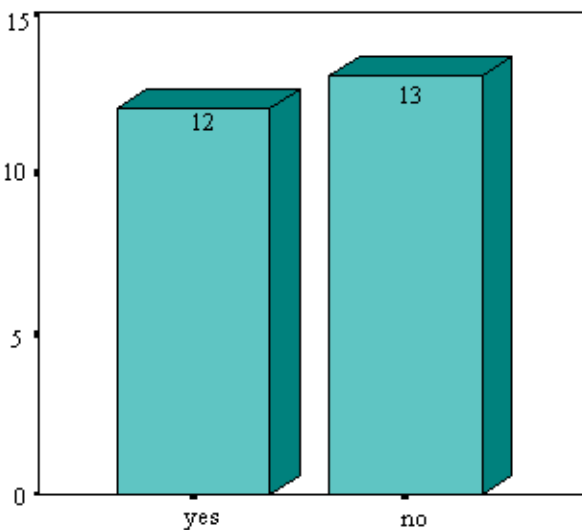
undergraduate level. There was one negative response to this question.

A scan of the websites for the universities also revealed that nearly all the faculties include the advanced elective, research project unit in their degrees. The research projects are often only encouraged where the students are in the final semesters of their degree and have proven themselves to be high achievers and competent to produce a publishable quality paper on a topic of their own choosing with minimal guidance from an academic expert in their chosen topic area. This is traditionally an opportunity offered to brighter students who may be considering further study and an academic career. These supervised research projects tend not to include any formal research training as envisaged by the terms of this survey question. It is very unlikely that there was any misunderstanding of the question so that respondents covered this unit in their reply.

Initial Orientation and Introduction

Respondents were asked whether their law faculty offered a traditional Orientation program and tour for first year students in which legal research skills were included. The responses were fairly evenly divided on this.

Figure 1
Does the Law Faculty offer an Orientation Course to first
year students in which legal research skills are taught?
(n = 25)



If formal courses have been introduced then the schools who are in that category may judge that it is not necessary to pour resources into the traditional introduction and tour of the Law Library, the lecture on “how to write a case note” and the short guide to citation and how to find cases and legislation. This is debatable. One side of the debate would say that students are overwhelmed if they are force-fed information about legal sources in the first week of their degree and it tends to “go over their heads” anyway. There is considerable support for the theory that skills in particular are mastered best at the point of need. Some would argue that this is the reason why hands-on incremental skills’ teaching was introduced in the first place. Perhaps, for these schools, this orientation aspect is now being left to the law library’s organisation of voluntary tours during Orientation Week. The counter argument is that a scaled-down bare-bones introduction is necessary in any case in order to help the students through the first weeks – at least until they begin formal instruction in the intricacies of using legal resources within their research units.

Undergraduate Research Teaching

The next series of questions tried to “tease out” some basic aspects of the undergraduate courses being offered. There are several methods of introducing research skills training into the curriculum. The schools seem to fall into categories based on four main issues:

- a) whether the research units are compulsory;
- b) whether the units are separate, or research training is included as part of a larger compulsory foundation unit;
- c) whether the research skills training is only included in an elective unit; and
- d) whether there is anything offered beyond first year leading to “capstone” experiences prior to graduation.

A recent government paper on higher education has noted the importance of “capstone subjects” which build on skills acquired in earlier courses and emphasise situations and challenges that exist in the “real world”.⁴¹ The study points to the need to “cap” the student’s learning experiences to ensure that the necessary skills and knowledge have been acquired and can be demonstrated.⁴² The importance of reinforcement

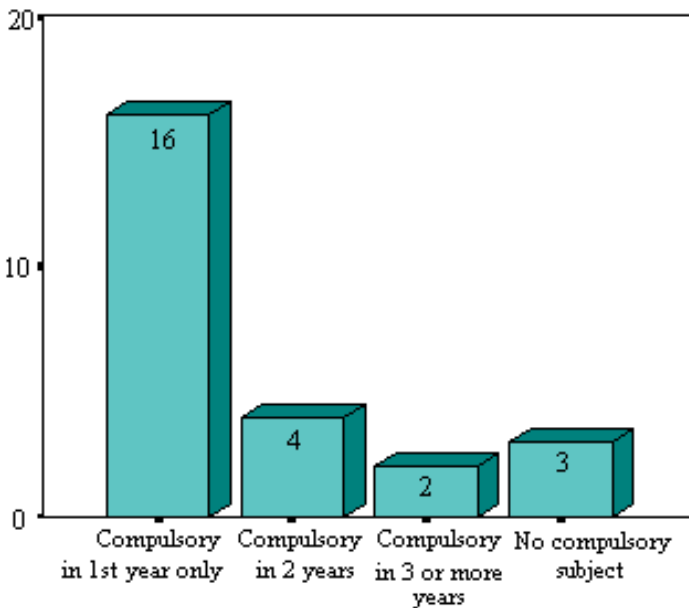
41 DEST, *supra* note 12 at 48.

42 *Id.*

of research skills training is receiving some support, judging by the responses on the unit organisation questions.

Dealing first with the compulsory nature of the units, it was evident that most law schools had compulsory courses in the first year only. Figure 2 demonstrates that four of the 25 schools reported a compulsory unit being offered at least twice in the degree. Two schools were providing compulsory training in three or more years. Another three responses included those schools where there was no compulsory research subject offering formal training or where research training was only offered as an elective unit.

Figure 2
To what extent is the legal research unit compulsory?⁴³



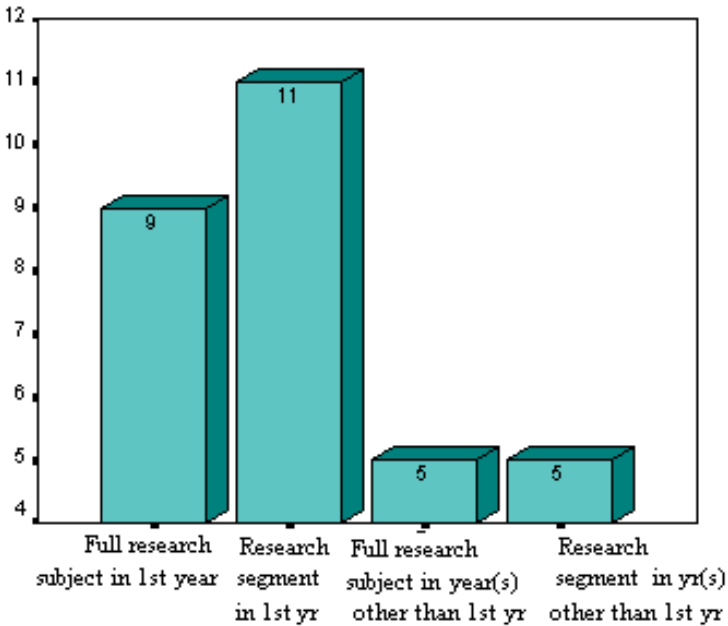
How is the research segment integrated into the curriculum? Is the introductory research training offered as a separate unit or is it merely a segment of another larger foundation unit? Is there a difference between the approach in first year and later years? From Figure 3, it is evident that five responses noted that there were separate research units in later years and the others said these were segments of other year units. It is evident that the main research training is taking place in first year with nine stating there is a discrete research

⁴³ Includes "separate compulsory subject" plus "segment of a compulsory subject".

unit in first year and another 11 stating that research is merely a segment of a first year introductory course. This compares favourably to the 1995 result with a slight increase from the seven reporting a separate subject and eight reporting research taught as a segment of a compulsory first year subject. This demonstrates an overall improvement in the take-up between 1995 where there were 15 universities reporting a first year research unit compared to 20 in 2002.

Figure 3

When is the legal research unit offered?⁴⁴



Another question sought to discover whether the unit was taught over one or two semesters. This issue was more important prior to the overall move to semesterise all units in most law schools, largely because of the introduction of summer semester teaching. Full year units are not prevalent in most law courses now, and not surprisingly all respondents reported one-semester courses.

Questions were directed to determining the relative importance of the legal research training segment based on the number of hours of instruction on research as against other content in the unit. This was especially revealing where legal research was simply a segment of a substantive course. The questions posed were “How many teaching hours are there in the subject?” and “How many teaching hours are dedicated

⁴⁴ Some universities have more than one subject included.

to teaching research in the subject?" Questions were also directed to the number of hours for legal writing instruction and non-doctrinal methodologies instruction in the units. The following tables represent the responses where the legal research unit was compulsory. Some of the results, especially those in Table 1 stating that very few hours are spent on research within the compulsory units, appear contradictory, which seems to suggest that they were misclassified by the respondents.

Table 1
Time spent on research training in compulsory units⁴⁵

Training Time	Frequency
Less than 10 hours	4
11 – 15 hours	3
16 – 20 hours	2
More than 20 hours	6
Total	15

Table 2
Time spent on writing training in compulsory research units⁴⁶

Training Time	Frequency
Less than 5 hours	8
6 – 10 hours	2
More than 20 hours	2
Total	12

It would seem from these responses that writing skills are being included in the research skills units but writing is a relatively minor aspect within the whole. It tends to be relegated to five or less teaching hours. Only in a couple of instances was there an even division of research and writing in the content, despite these courses often being referred to as "research and writing" units.

Where research training is only a part of a larger unit the figures demonstrate, not surprisingly, that fewer hours are allocated to the research segment. The total hours devoted to legal research skills training are very much reduced where research is taught within other units, with six responses noting

45 Not all respondents answered this question.

46 Not all respondents answered this question.

less than five hours and another six reporting under ten. None had more than 15 hours. From this it is possible to conclude that this aspect of the curriculum will be under pressure with arguably insufficient time being allocated because of the need to fit in other curriculum material. This means that students in some schools are receiving more than 20 hours training in research while students in other schools are receiving less than five hours. There can thus be quite a disparity in emphasis and likely skills development and outcomes for the students at different universities.

Table 3
Time spent on research training where a segment of a compulsory unit⁴⁷

Training Time	Frequency
Less than 5 hours	6
6 – 10 hours	6
11 – 15 hours	4
Total	16

Table 4
Time spent on writing training where a segment of a compulsory unit⁴⁸

Training Time	Frequency
None	12
Less than 5 hours	6
Total	18

Where research is a segment of another unit, then understandably the hours listed for teaching writing are also less. There were 18 responses to this question and the majority reported that legal writing was allocated no time. If there was legal writing training it was absolutely minimal, being less than five hours. Where the unit was a compulsory separate subject then all reported having a little writing training – but once again, the majority reported less than five hours.

Respondents were asked whether social science or empirical methodologies were covered in the research units. Fourteen respondents replied that there was no social science methods segment in the undergraduate subjects. Only five said that it was taught in the undergraduate degree units. Three respondents stated that there were separate elective

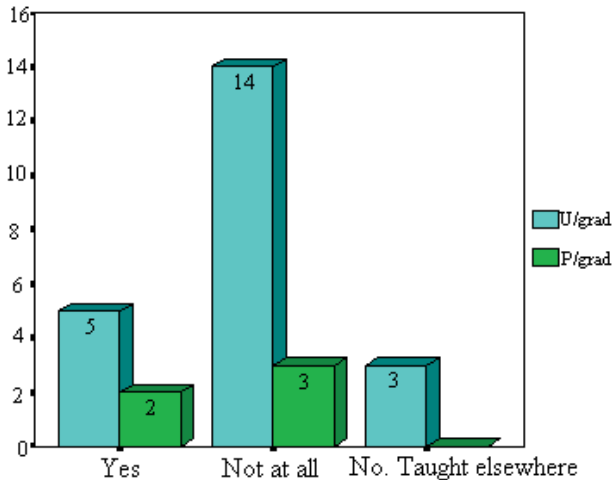
47 Not all respondents answered this question.

48 Not all respondents answered this question.

units covering these issues. One respondent said such issues were preliminary aspects dealt with for students undertaking an undergraduate research project or essay unit. Only two of the postgraduate units had this training included.

Figure 4

Is there a social science methods segment in the subject?⁴⁹



Interdisciplinary methodologies are increasingly important in the current general tertiary framework and it would seem that this is an area that will eventually receive some recognition in the research courses. It is not apparently a common curricula inclusion judging from this survey result. Determining just how to deal with the issue of training law students in these methodologies is more troublesome. This is not an aspect that can be covered in even five hours! Perhaps the best method for approaching the teaching of empirical methodologies within the undergraduate law degree is to provide sufficient exposure to the relevant issues in the compulsory units so that the importance of understanding research using non-doctrinal research methodologies is highlighted. A follow-up elective might also be tailored to legal practitioners' needs.

Postgraduate Research

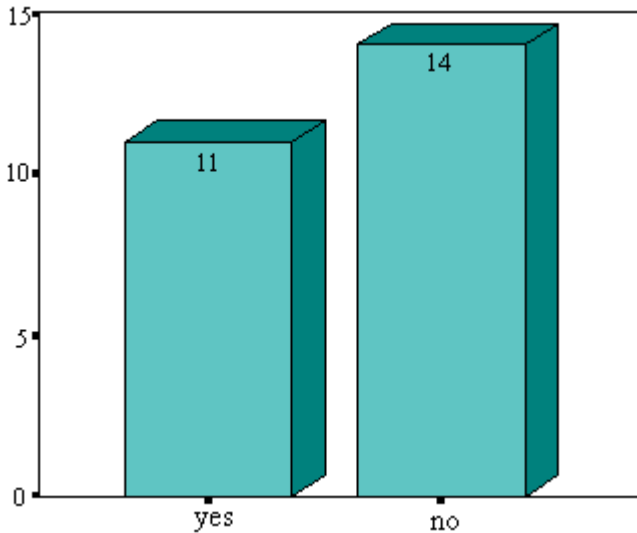
Only 11 of the respondents reported that postgraduate research training courses were being offered for this cohort. The remaining 14 said that there were no such courses. Nine universities were offering postgraduate courses according to the 1995 survey so the situation has only improved slightly.

⁴⁹ Respondents from the 25 universities identified 27 subjects for the purposes of this question.

This response is particularly disappointing given the emphasis being placed by government policy on research training needs and completions.

Figure 5

Does the Law Faculty offer subjects teaching legal research at a postgraduate level?



Some respondents commented that postgraduate units were designated compulsory for some students. Other responses indicated that the courses were electives or simply informal instruction. Research training is essential for those postgraduate students who completed their undergraduate degree some years earlier; for international students unused to common law research; for non-law graduates; and for students undertaking large research projects for the first time, such as Masters by research, PhDs and professional doctorates. The units are excellent updates for the bulk of postgraduates, but they should be compulsory for the groups mentioned because some of these students will not have the basic research training provided at undergraduate levels. In addition, those undertaking larger research projects have different needs from undergraduates, in particular, writing research proposals, refining hypotheses and research management training.

Teaching Staff

As is evident from the figure below, staff from all academic levels, including Professors and Associate Professors, coordinate the research courses. These units therefore are

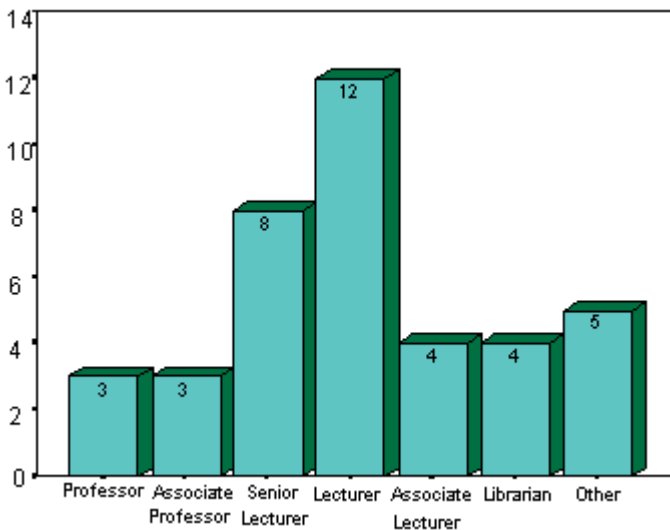
certainly not universally perceived as of a status to be relegated to lower level or part-time academic staff.

Five units were reported as being jointly coordinated by academics and law librarians. This constitutes the “other” column in Figure 6. This factor might be interpreted in two ways. On the one hand, it might point to the faculties’ commitment to ensuring that the students have the best of both sources of instruction, that is, more technical expertise from the law library staff together with more end-user substantive critique from the academics. It also ensures that the units are viewed as being of similar status to the substantive units. On the other hand, less positive interpretations might be placed on the arrangements, such as:

- academics seeking assistance so as to reduce the inordinately heavy preparation loads involved in the units;
- academics seeking assistance because of the logistics of teaching skills to large numbers of first year students;
- academics seeking ways to lighten the teaching load in such units because they are not substantive subjects and therefore less likely to lead to productive personal research and publications.

Figure 6

Who is co-ordinating the legal research subject?⁵⁰

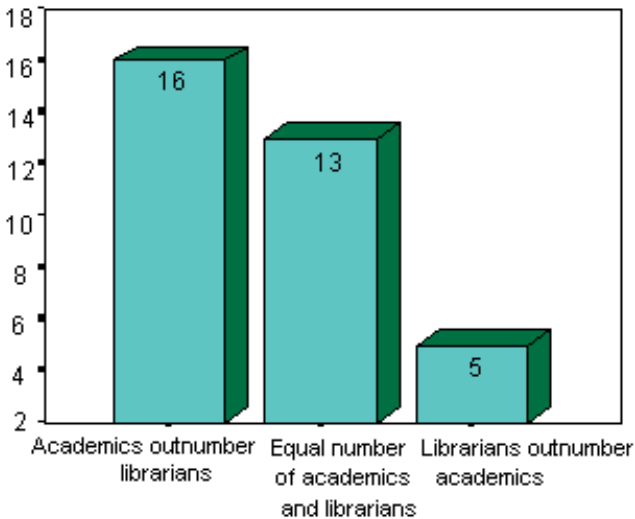


Academic staff outnumber librarians in the teaching of the first year students. This is perhaps because of some very large first year intakes, together with the likelihood that most

⁵⁰ All subjects over all universities. Each subject or unit counted once.

classes take place in seminar groups of up to 20 students. Some first year intakes are as high as 750 and many later year units number over 300. This results in a great number of seminar classes, which need to be offered each week and also teaching staff who need to be involved. Several of the web outlines were noting that the teaching hours were divided into a one-hour lecture and a one-hour seminar. A variation on this is the 1.5 hour lecture and 1.5 hour seminar each week. These adjustments acknowledge the special aspect of skills teaching and the need for interactive workshops where students are encouraged in active learning or learning by doing. If it is not efficient to learn to ride a bike sitting in a lecture theatre, it is not a useful enterprise to lecture students on how to research. They must actively learn the skill and this normally takes longer than a one-hour seminar timeframe. It is unlikely that law library staff could cope with this type of teaching load. Law libraries can utilise their resources more efficiently by providing technical expertise and training for academics taking first year classes and concentrating on allocating more teaching time to later year units if required.

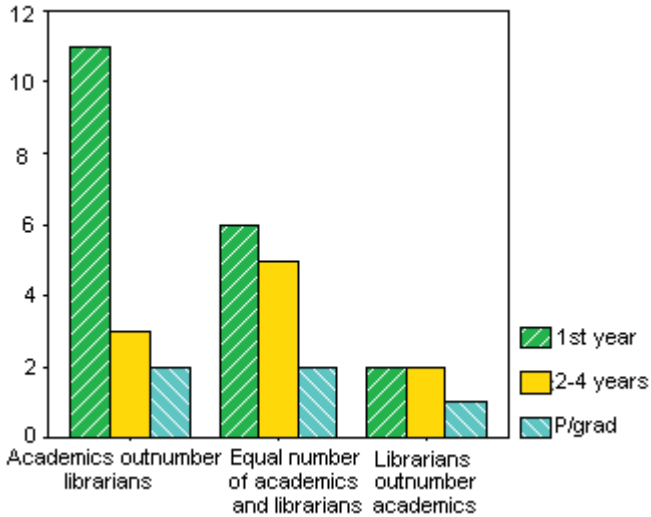
Figure 7
The number of academics compared to the number of librarians in the teaching team for all the legal research subjects⁵¹
(Covers all year levels)



⁵¹ Each subject or unit counted once (n=34 units/subjects).

The teaching team figures tend to be different in the later years when it may be that the academics and law librarians are more likely to take a team approach wherever possible.

Figure 8
The number of academics compared to the number of librarians in the teaching teams for all the legal research subjects
(Breakdown of year levels)



It is gratifying to note the links being forged between law librarians and academic staff through team teaching because this provides the students with both substantive and technical expertise. A computer laboratory skills group requires two trainers to cope efficiently with the individual variation in abilities within a group of 20 students. A librarian/academic team approach should present the students with excellent outcomes in terms of technical knowledge and application to the subject area.

Assessment Methods

Table 5 demonstrates the array of assessment methods favoured in the research units. However, the majority tended to base their assessment on assignment work alone or in a combination of assignments, class performance and an exam. A glance at the web outlines for these various units suggests a mixed assessment regime including a series of exercises, assignments, research assignment, final exam, exercises, small group presentation, class participation, skills assignment

(includes computer exercises throughout the year), research assignment, final exam, reflective essay, research essay, class assessment, ethics, teamwork exercise, group research topic, oral presentation, class tests, assignment and short presentation.

Table 5
What methods of assessment are used in the research training component?

Method	Frequency
Assignment only	20
Quizzes only	1
Examination only	1
Assignment and examination	7
Class performance	2
Assignment and class performance	5
Quizzes and exam	1
Total	37

Skills levels are notoriously difficult to examine. It is also very difficult to differentiate between student skills levels. It would have been useful to have received more information from the survey regarding this aspect of the courses. Most respondents are favouring assessment based on assignments only. This is an ideal way to examine research outcomes but, unfortunately, it can be open to abuse through over-collaboration amongst students. It also does not necessarily effectively examine research methodology or process. On the other hand, exams are extremely awkward methods for gauging skills levels, although there has been some experimentation with practical research exams in the past. Combinations of methods would seem to address some of the more “thorny” issues regarding both these approaches.

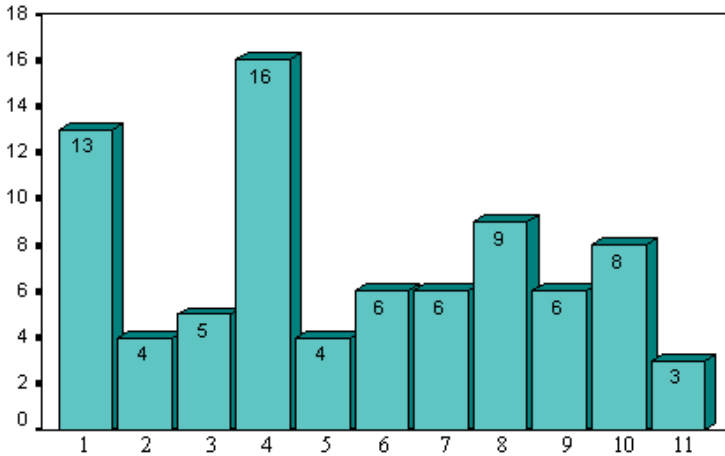
Difficulties with Teaching the Units

There have always been difficulties associated with implementing the research units. Figures 9 and 10 set out the teaching staff responses. In regard to undergraduate units, teachers identify difficulties in motivating students and in high teacher-student ratios. Time needed for preparation of research exercises (including library research exercises) and

workbooks, and for constant updating of these resources for workshops can prove difficult, as can dealing with varying competency rates amongst students in the one class. The responses demonstrate that the last two factors are the ones most likely to prove challenging for those teaching the postgraduate cohorts.

Figure 9

What do you perceive to be the three main difficulties associated with teaching legal research to undergraduates?

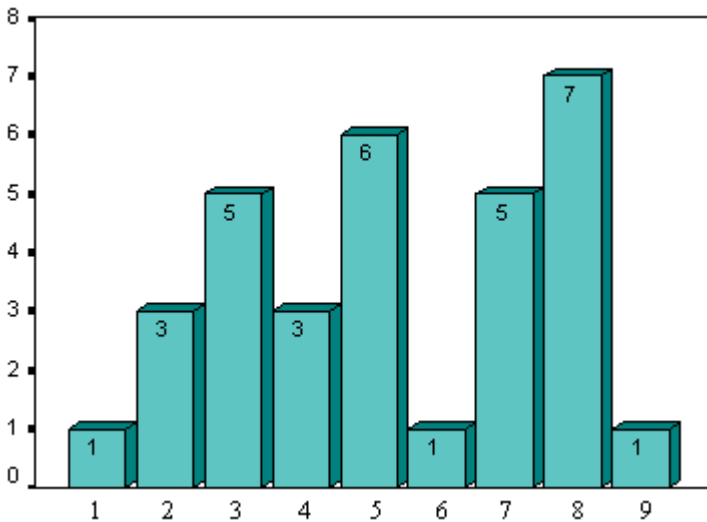


Key:

- 1 – motivating students
- 2 – gaining faculty support
- 3 – attracting qualified staff
- 4 – teacher-student ratios
- 5 – lack suitable teaching areas
- 6 – lack hardcopy resources
- 7 – lack computers
- 8 – preparation and updating time for workshops
- 9 – constant changes to electronic resources
- 10 – varying competency rates amongst students
- 11 – other

Database licensing problems were included as a choice for this question, but no respondents placed this as one of the three main difficulties encountered in teaching the research subjects.

Figure 10
 What do you perceive to be the three main difficulties associated with teaching legal research to postgraduates?



Key:

- 1 – teacher-student ratios
- 2 – lack teaching areas
- 3 – lack hard copy resources
- 4 – lack computers
- 5 – preparation and updating time for workshops
- 6 – database licensing problems
- 7 – constant changes to electronic resources
- 8 – varying competency rates amongst students
- 9 – other

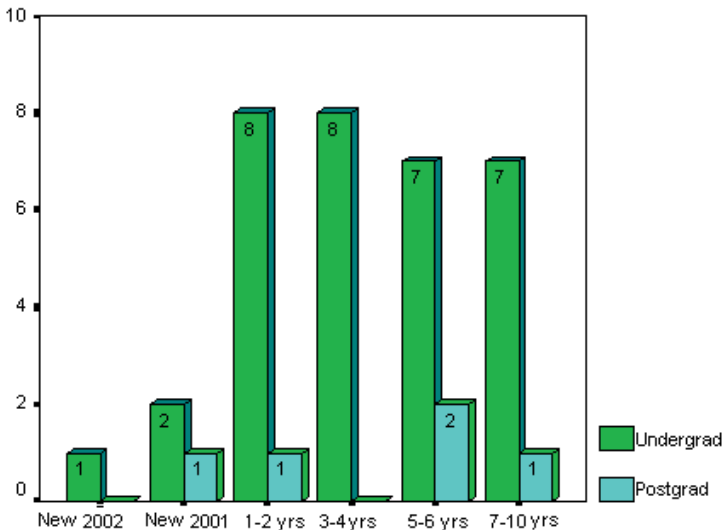
The responses to the questions in Figures 9 and 10 relate well to another question on the survey. This asked whether the respondents would like to see specific improvements to the courses. The responses seemed to fall into a few categories. One group expressed the need for better resources, particularly in terms of a designated computer teaching laboratory and better teaching resources. They felt that the library could be better utilised for research teaching and a more hands-on approach taken to the unit. Another theme was the nature of the teaching workload with the research units. One respondent commented on the need for “[f]aculty recognition of labour-intensive nature of these units. Harder than teaching content unit.” Another commented that “[s]tudents need feedback on performance. More teaching credit [should be] allowed.”

There was also recognition of the need for integration and reinforcement of the skills at a later year level: "Greater integration of techniques taught into other courses, or else the skills atrophy" and "Need research in all 4 yrs of degree". Thus the themes of adequate resourcing of the units, heavy teaching workloads and the need for reinforcement and capstone units throughout the degree are recurring.

Changes in the Courses

One difficulty identified in previous surveys was the tendency for research units to be changed constantly, with a consequential additional preparation time burden on those teaching them. Legal research materials tend to change every year in any case, so any change in format doubles the time taken to prepare materials. The results for this aspect of the survey were very encouraging in that they suggest that the courses are "settling down" and becoming more established parts of the curriculum. Despite this, the respondents are still commenting on the heavy preparation and updating times for the workshops as being major difficulties associated with the units.

Figure 11
How long has this subject been offered in its present format?



At least seven respondents reported that more changes were being considered for 2003. These included new teaching techniques, particularly as regards electronic delivery; new

later year compulsory units; and integration of research skills training with other first year units.

Conclusions and Recommendations

Not surprisingly, there has been a gradual recognition of a need for skills reinforcement later in the law degree. This is reflected in the survey responses. So, as well as the compulsory first year research curriculum, six schools reported that research was compulsory in two or more years. This development makes good sense considering the rate of change in legal research sources over the years of the law degree in addition to the need for a “capstone” course to reinforce earlier skills training. It would make excellent sense to see this trend towards the inclusion of later year research skills updating and development units continue.

Aligned with any change such as this is the need for a coordinated approach to the inclusion of research skills in the degree. This is to ensure minimal duplication and ensure incremental skills development. As an example of ways of approaching this issue, QUT law school appointed a Director of Legal Research and Writing in courses in the mid 90s. The situation has now changed again and the Assistant Dean, Teaching and Learning has an umbrella role in relation to the embedding of all skills in the law degree. Other schools are also aware of this need for coordination.⁵²

Unfortunately, there seems to be only a modest recognition of the need for non-doctrinal research methodologies being included in research training. How should this be accommodated? The options at present are a social science elective within the curriculum or the addition of basic segments to the present research courses. The difficulty lies in the total number and extent of possible options available for those students wishing to engage in non-doctrinal research methodologies. These of course include policy research, but also all the individual methodologies encompassed within the broader areas of qualitative and quantitative research. As well, there are the various electronic research packages to master, including, for example, EndNote, NVivo and SPSSX. Any such course still may not cover methodological research issues

52 A coordinator’s position was certainly within the plans being put forward at the University of Western Australia in 1999; M Flynn, “Legal Research Skills: What are they? When should they be taught? How can they be taught? And what about the other 34 skills that law graduates frequently use?” (paper presented at the ALTA Conference Legal Research and Communications Interest Group, NZ, 1999).

raised in the current interplay of medical research, DNA, bioethics and the law. All that can reasonably be accomplished in a compulsory course is to introduce the recognised non-doctrinal methodologies at a basic level. This certainly needs to occur by the time the students complete the upper level and postgraduate courses.

When combined with research, legal writing skills do not seem to be achieving the required number of teaching hours commensurate with the importance of excellent communication skills for lawyers. This is especially the case where legal research is merely a component of another compulsory unit. In this instance, the emphasis necessarily becomes an attempt to cover all the required research techniques and therefore communication misses out. Of course, the survey results do not take account of legal drafting units being offered in the degrees, or indeed of writing components in other units. However, the common view among law teachers would seem to be that the students should have good language and writing skills when they begin a law degree. If so, then the law curriculum should only need to focus on encouraging adherence to set citation styles and to teaching legal writing forms specific to the discipline such as letters to clients, barristers' opinions, client newsletter articles or internal office research memorandums. Formative assessment can encourage good writing style. Bad writing can be penalised in a minor way through summative assessment criteria included within research assignments, for example. Unfortunately, this may not be sufficient. Perhaps there may be a case for more rigorous testing early in the degree to gauge competence. These issues are necessarily very sensitive because of the numbers of international students enrolled in law degrees and the great diversity of the current student body including the equity special entry cohort.⁵³

Overall, there has been a transformation in the curriculum response to legal research in the last fifteen years in Australia. However, the impetus for change seems to have slowed in the last five years and there is still need for improvement. Teaching is uneven between the various law schools. Many schools have not taken notice of the real need for inculcating research and updating skills in their graduates especially when taking account of government agendas and the electronic revolution affecting research methods. There are also still reports of

53 This view on legal writing is in contrast to that demonstrated in the US legal education context where heavy emphasis seems to be placed on writing at the expense of research in the Legal "Writing" courses. This difference could arguably be based on the different legal contexts and especially on the prevalence of use of written briefs in the US courts.

fundamental difficulties such as student motivation, high teacher student ratios and wide disparities in capabilities in the student population, especially at the postgraduate level. These are the same issues that were raised in 1991. This all points to a need for better understanding by the law school administrators of the heavy load that skills' teaching places on academics. This includes extra preparation time, updating and marking of continuous assessment tasks. If we are looking for a blueprint for the future, we must endeavour to direct attention to these areas, along with the need for incremental skills training, recognition of the importance of understanding non-doctrinal methodologies and the ever-present need to nurture communication skills in law students.

[P]lucky Jane et al: Ideal Types in the Legal Academy?

*John Carmichael**

Introduction

This article started as a response to a decision by Deakin University's Law School late last year to embark upon a major recruitment of new staff.¹ That decision caused the writer to wonder what published sources of advice were available to assist aspiring legal academics in choosing and shaping a career. To date it would seem that whilst there is no dearth of sources about what law schools should teach,² or on the content and structure of the curriculum,³ research on the selection and formation of academics is somewhat less common. This is changing. In 2003 a short biographical study of six law teachers, based on structured interviews, was published⁴

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1 Nineteen academic appointments were made in one round – a significant addition to the pre-existing base of 27 academic staff in the Deakin Law School. Deakin University School of Law Semester 1, 2004 *Student News*, 11-12.

2 On the vexed issue of whether or not legal skills should be included in the undergraduate legal curriculum, and on the alternative ways in which this might be accomplished, see L Taylor, "Skills-Kind, Inclusion and Learning in Law School" (2001) 3 *University of Technology Sydney Law Review* (special edition – Legal Education in Australia Current Issues and Developments) 85.

3 See M Le Brun and R Johnstone, *The Quiet (R)evolution* (Sydney: The Law Book Company, 1994) 381-383.

4 E Mytton, in "Lived Experiences of the Law Teacher" (2003) 37 *Law Teacher* 1 concluded, on the basis of a biographical study of six law teachers using thematic interviews, that they generally felt devalued and identified more with the legal profession than with more general academic culture and norms.

and in 2004, a major study of the identity of 54 law teachers became available.⁵ There have also been significant studies on the particular issues encountered by female academics in the legal academy.⁶

In this article, the writer attempts a different approach to the interview studies referred to above. Through the construction of “ideal types”⁷ of legal academics, an attempt is made to convey a range of experiences and contributions to the legal academy. In this respect the writer dares to emulate, at the “micro” level, the exercises in imaginative ethnography of William Twining, whose studies of the University of Rutland’s law school and report on legal education in Xanadu are simultaneously enlightening, disturbing and profoundly witty.⁸

A cautionary comment about this approach is in order. It may very well be that an attempt to canvass significant issues in the formation and practices of legal academics by means of a purported acquaintance between the author and the ideal types selected makes for an uneasy mix between the fictional personal and the overriding abstractional intent. There is an inherent possibility of shifting the authorial voice between establishing the biographical details of the (fictional) legal academics and discussing the range of different issues in legal education that their “careers” illustrate. However, the effort

- 5 In F Cownie, *Legal Academics Culture and Identities* (Oxford: Hart Publishing, 2004), the author interviewed 54 legal academics in an attempt to both find out more about a profession “that has hitherto been subject to remarkably little scrutiny” (1) and, “in doing so, to find out more about the discipline of law itself”.
- 6 One of the eight chapters in M Thornton, *Dissonance and Distrust; Women in the Legal Profession* (Melbourne: OUP, 1996) discusses women legal academics and F Cownie, “Women Legal Academics – A New Research Agenda” (1998) 25 *Journal of Law and Society* 102, provides both an outline of relevant sources and a discussion of the potential for further research in this area.
- 7 The term “ideal type” derives from Max Weber, who used it to refer to the deliberately exaggerated abstract constructs devised by social scientists against which real world examples could be evaluated – eg the concepts of bureaucracy and the “pure competitive market”; see B S Turner, *For Weber: Essays on the Sociology of Fate* (2nd ed, London: Sage Publications, 1996).
- 8 See W Twining, *Blackstone’s Tower: The English Law School* (London: Stevens & Sons/Sweet and Maxwell, 1994) and W Twining, “Thinking About Law Schools: Rutland Revisited” (1998) 25 *Journal of Law and Society* 1. In *Blackstone’s Tower*, Twining (at 79) laments that “law schools are almost invisible in English campus novels”, and claims that even the lawyer Lewis Elliott, “the leisured foreground observer [in CP Snow’s Oxbridge novels] is a failed practitioner put out to grass in Cambridge by kind friends” (at 25) and, in college, “was treated like a resident man-of-affairs, rather than as an academic: he was not expected to do research or to publish” (at 123).

will be worth that risk should more recent arrivals to the legal academy find that the ideal types encountered here raise, in hopefully an accessible way, a range of issues confronting them in their new careers. It is often difficult for neophyte legal academics just coming to grips with demanding and often concurrent teaching, administration and research tasks to also become readily familiar with the major debates in legal education and pedagogy. For this reason at least some attempted distillation and contextualisation of those debates and the major issues they raise may be timely. Additionally, of course, the writer hopes that readers more familiar with the specific issues of professional formation, legal pedagogy and education raised here will nevertheless find the attempt to imbed such discussions within the context of an exercise in imaginative ethnography an opportunity for rejuvenation and fresh reflections.

The three archetypal law teachers chosen include a dedicated and successful career academic, an early career changer who became a practising lawyer for a time and then an experienced law teacher, and a retired judge who has had a long commitment to legal education and who now has the time, as well as the inclination, to do something about it. The integrated references to research about aspects of legal education should help readers evaluate the extent to which the legal academics presented here are representative figures from the legal academy. Although the writer purports to know (in the sense of personal acquaintance) the types of legal academics introduced in this article, his colleagues, past and present, as well as his former law teachers, are all sincerely assured that the Weberian process of constructing ideal types ensures any resemblance to a given individual is at most a matter of coincidence and conjecture. In any case, the depiction of the types of legal academic presented here and their contributions to the legal academy, is arguably more flattering than Becher's conclusions as to how legal academics in England are perceived by their colleagues in other disciplines. Becher writes that:

[T]he predominant notion of academic lawyers is that they are not really academic ... [but are] ... "arcane, distant and alien: an appendage to the academic world" ... Their scholarly activities are thought to be unexciting and uncreative, comprising a series of intellectual puzzles scattered among "large areas of description".⁹

9 A Becher, *Academic Tribes and Territories: Intellectual Enquiry and the Cultures of Disciplines* (Milton Keynes: Open University Press, 1989) 30, cited in Twining (1994) supra note 8 at 201.

Readers should be forewarned that the application of Weber's term "ideal types" in the current context is not unproblematic. The extent to which an ideal type is more than a composite result derived from "the one sided accentuation of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent individual phenomena" is a matter of some debate amongst scholars of Weber's work.¹⁰ Resolution of that debate is beyond the confines of this article, but the debate as to what constitutes an ideal type is acknowledged by the interrogatory conclusion to the title of this article. What is clear, though, from the learned commentary about Weber's concept is that the sampling of reality extracted to form composite or ideal types will depend on the values and experiences of the individual researcher. Indeed, Weber contended that the constructs he called "ideal types" were justified so long as the special purposes of such constructions were clearly stated.¹¹

Following Weber's structure in this regard, it should be said then that the ideal types presented here deliberately emphasise, both the differing formative experiences and careers of a producer of voluminous doctrinal research, a committed teacher but only occasional publisher and an adjunct appointee exempted from any research obligations. Such exaggerations, for polemical purposes will admittedly contrast with the concurrent research, administration and teaching realities that are more often the contemporary norm. Ideally though, the approach adopted will serve to both emphasise the deliberate idealisation of the types advanced here and to suggest alternative possibilities for configuring the roles of legal academics. Consequently, no attempt is made to claim comprehensiveness in terms of the ideal types selected. Rather the justification of the types selected are that they are abstractions drawn from the writer's experience, but then much modified by imaginative extensions, conflation and distortions to advance a discussion of significant issues in the formation of legal academics and the issues in legal education with which they contend and advance.¹²

10 See, eg, F Parkin, *Max Weber* (London: Tavistock, 1982) 26-37; R Bendix, *Max Weber – An Intellectual Portrait* (London: Methuen, 1959) 271-281; E Shils and H Finch (eds), *Max Weber on the Methodology of the Social Sciences* (New York: The Free Press, 1949) and L Coser, *Masters of Sociological Thought Ideas in Historical and Sociological Context* (2nd ed, Prospect Heights, Illinois: Waveland Press, 1977) 223-224.

11 Bendix, *id* at 274.

12 For a wide-ranging combination of more general advice about developing and enhancing an academic career that effectively combines epistolary

Jane Smythe – Career Academic

After graduating from a selective girl's high school, Jane Smythe attended Melbourne University in the late 1970s, graduating LLB (Hons) and BA. Jane completed a double degree before this was common.¹³ Her double degree was a compromise to please Jane's father, a bank manager. Jane's real interests were in French and German but her father told her there was no "real money" to be made there. Despite her mediocre results in first year law, one of her professors saw Jane's potential and took a keen interest in her progress. From her second year onwards, Jane achieved outstanding results and especially enjoyed electives in media law and anything with an international dimension.

Jane soon realised she wished to be an academic. However, her mentor advised her to do her Articles and to be admitted to the Bar as he had always regretted only being academically qualified in law. Jane took her Articles at a major commercial law firm. I met her at that time. We were paired together in the Mystery Mixed doubles at the Mildura Easter Tennis Tournament and ended as runners-up in the event. Our styles complemented each other quite well. Jane is a strong, aggressive "crash or crash through" player whilst my game is a more subtle, one of placement and tactics. We got on well off the court too and have kept in occasional contact since that time.

Following her Articles, Jane decided to study overseas. Following her professor's advice she took an LLM at Harvard. Jane was able to go to Harvard because of a scholarship supplemented by money her parents had invested in an endowment policy from the fees they saved from Jane not attending a private school. Although offered admission to other prestigious law schools, Jane chose Harvard because its program was both broad and assessed mainly by a "mini-thesis" style research paper in each subject. This suited Jane's interests in research. Jane diligently revised these research papers, presented them at conferences and had them published in prestigious refereed journals. She realised quite early the importance of relentless recycling in becoming a successful academic. By the time she was 25 Jane had an enviable record of publications.

and exhortory approaches, see D R Sadler, *Managing Your Academic Career Strategies for Success* (St Leonards, NSW: Allen and Unwin, 1999).

13 See D E Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987 [Pearce Report], 5 vols) para 25; supra note 5.

Back in Australia, in 1984, Jane was appointed to a tenured lecturing position in an established law school. She taught a basic torts course and a very popular elective in her speciality, comparative media law. In recent years, Jane has added telecommunications law and transnational law as areas of expertise. All these areas allowed Jane to use her languages in her research and gave her frequent opportunities to travel to Europe on study leave and for conferences.

Jane taught her subjects effectively, albeit always from a prepared script which over the years she efficiently updated to the extent required by recent developments. She once described the attributes of a good law teacher as being someone with the capacity to explain the law clearly and comprehensively and who on occasion might be interesting and amusing.¹⁴ She showed interest in bright students, even inviting them for coffee to discuss their progress and career plans. This caused some discontent and even rumours about the nature of her relationships with some of the favoured students which Jane (“stuff them”) ignored. For four years, she served as editor of the Law School’s journal, which again involved her working closely with the students on the editorial committee.

However, Jane put her real efforts into research, university committee work and outside consultancies. She stated that if she had really wanted to teach she would have opted for an easy life and become a school teacher. Once the teaching terms finished, Jane was rarely to be found at university and even during term her office hours were quite limited. The convenor of a women’s careers seminar she attended at Harvard had advised her on the need to be “strategic” and “focused” in her career progress. Following this advice, Jane made sure she

14 In doing so, Jane closely echoes the deliberately “down to earth” advice of G McGinley in “Teaching the Law” in J Corkery (ed), *A Career in Law* (2nd ed, Sydney: Federation Press, 1989) 130. That “the law” can be so conveniently cabined, cribbed and defined (to adapt Shakespeare’s *Macbeth*, III, Sc 4, l 24) is a breathtakingly huge assumption. As M Davies, *Asking the Law Question: The Dissolution of Legal Theory* (2nd ed, Sydney: Lawbook Co., 2002) writes (at 33): “It is not just that different systems have different rules, doctrines, or principles, or even totally different systems of classifying substantive law: there are ways of understanding law which simply cannot be explained in the terms of modern Western theory.” As Davies indicates more generally in her work, even within Western theory there are different understandings that appear not to be encompassed in Jane’s doctrinal approach to the understanding of law. That understanding, Davies explains, is based on the fallacy that “there is something inherently necessary and right about the process of legal reasoning which emerges in decided cases” (Davies, *id* at 44). See also her discussions, *inter alia*, of “Critical Legal Studies” (166-195) and “Feminism and Gender in Legal Theory” (197-256).

got on to key committees and then developed a “knack” for only attending when significant items were being discussed. She was always careful to avoid the more routine and time consuming aspects of serving on committees and in getting “bogged down” in administration. However, unlike many law academics, Jane also put energy into working for the general interests of the university and developed good university-wide contacts. Unless behind on her self-imposed research deadlines, she was in regular attendance on Friday afternoons at the Staff Club as well as at lunch there once or twice a week during term.¹⁵

Jane’s real priority was her research. Jane’s work ethic was prodigious. She claims to have been at her desk by 5 am six days a week to ensure at least three or four hours of research was accomplished before any other task could intervene. In addition to publishing more articles and working on her PhD, Jane was a particularly prominent co-author of some well regarded case books. Jane enjoyed this form of work because most of the tedious tasks were done by her research assistants whilst, for the equivalent of about 15 pages of continuous text, she got her name before the legal, academic and student community. Consultancies, including a stint over five years as a part time Law Reform Commissioner, ensured she was well known and generally well regarded by the wider academic community. In 1992 Jane completed her PhD with the title of “From *Zollverein* to a Unitary Legal Regime: The Resolution of Core Legal Issues in the Formation of the European Economic Community”.

After finishing her PhD and, quite exceptionally for her, Jane delivered two papers outside her areas of expertise. She claims she felt it was time for “a little frivolity” and, in that mood, delivered a paper called “The Tyranny of DEET’s Stance” to the Australian Society of Tertiary Administrators (ASTA). Her paper was both a blistering attack on the Dawkins reforms and an obvious play on the title of a popular work by a subsequently controversial historian.¹⁶ The paper

15 L Ponoroff, “Law School/Central University Relations: Sleeping with the Enemy” (2002) 34 U Tol L Rev 147 contends that many law schools’ faculty feel misunderstood and under-appreciated by the central administration of universities on such matters as salaries being below market forces. Consequently, according to Ponoroff, legal academics are prone to seek extra-mural gratification by means of legal practice or consulting or other forms of community service. Ponoroff counsels law deans to avoid this isolationist mentality in favour of a mutually constructive relationship with the central administration because no law school can shine if embedded in a lousy university.

16 The work referred to is G Blainey, *The Tyranny of Distance: How Distance Shaped Australia’s History* (Melbourne: Sun Books, 1966) published to great acclaim in 1966 and subsequently reissued on many occasions. Jane claims

went down so well that the following year she was invited to give the ASTA's key-note address. Her paper, the "Great Training Robbery", was a savage yet humorous attack upon the aspirations of TAFE colleges to grant degrees and abandon their traditional role of attracting and training apprentices for the trades. Her prediction of a consequential shortage of skilled tradespeople due to an over-promotion of "university places for all" is now commonplace. At the time, though, it was remarkably prescient, at least for those unfamiliar with the unacknowledged derivations in her paper from a series of articles in *Le Monde* predicting similar shortages in France. Jane, though, has assured me that lack of originality is no "insuperable handicap" to being a successful legal academic.

These two conference papers with their provocative titles and subsequent reproduction in the wider Higher Education press, helped make 1994 a big year for Jane. By then, she had worked her way through the academic ranks to the position of Reader in Law. In that year, following her wider acclaim, she was appointed Foundation Professor and Dean of a new law school, established in defiance of the Pearce Report's conclusion that the undergraduate legal education market was already adequately supplied.¹⁷ In the same year Jane also married Hamish, an Anglican Vicar she met on a skiing holiday. Hamish went part time the following year to care for their baby, Joshua. Jane's academic career scarcely missed a beat. She sought to make "my law school" different from the start. She resolved to use modern technology to minimise the need for lectures. Within a few years lectures were an exception in foundation law subjects. She had established a consortium with other law schools to establish self-paced instructional packages based on a common curriculum shared by the participating law schools.¹⁸ These self-instruction packages

that "Geoff" expressed himself as "quite delighted" by both her title and the sentiments expressed in her paper. The reference to "Dawkins" is to the Hon John Dawkins, who as Minister of the Department of Employment, Education and Training (DEET) from 1987 to 1991 in the Hawke Labor Government, introduced to less than universal acclaim, a series of far reaching reforms in tertiary education that formally abolished the pre-existing binary system of universities and advanced colleges.

17 The Pearce Report, *supra* note 13, para 15.4, stated that in what it predicted to be an emerging period of consolidation, there was no need for another law school in Australia, apart from perhaps an additional one in Queensland.

18 The members of the consortium satisfied the Trade Practices Commission (the predecessor to the ACCC) that the public interest in resource efficiencies justified authorisation under the provisions of Pt VII of the *Trade Practices Act 1974* (Cth). On the application of the TPA to the activities of universities generally, see P Clarke, "University Marketing and the Law: Applying the Trade Practices Act to Universities' Marketing and Promotional Activities" (2003) 8 *Deakin Law Review* 304.

included CDs and video clips, power point slides and so forth. Jane then interested one of the major law publishers in taking over the publishing of the material. This ensured the materials were produced to a high standard and many of the production costs were transferred away from the university's in-house learning services units to the students. More recently, much of the content of these packages is delivered over the Internet. Students check their understanding by computer mediated and assessed tutorials and weekly live Socratic seminars¹⁹ in small groups of 15 to 20. Students may only attend these Socratic seminars once they have a print out showing they have satisfactorily completed the appropriate computer mediated "pre-seminar" preparation. Jane refers to this on-line delivery and testing of material as RAP – the Readiness Assurance Process. She claims that this approach enhances the educational value of seminars with lecturers reporting much less need to use the seminars to give extra lectures and with increases in both the amount and quality of student contributions in seminars suggesting a shift to deep rather than surface learning.²⁰

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- 19 On the use of Socratic seminars in the teaching of law to enhance independent thought, analysis and the ability to apply legal rules, see Le Brun and Johnstone, *supra* note 3, at 283-284, and for criticisms about and adaptations of the model, 285-288. Feminist writings that suggest the Socratic method, at least as practised in many law schools, may tend to disparage and silence many female students, are cited at 396, n 55. Evidently, the effect of Socratic style inquisitions is less discriminatory in French law schools, as the icy formality commonly adopted by law teachers in France causes apprehension to male and female students alike. See A Nollent, "Legal Education in France and England: A Comparative Study" (2002) 36 *Law Teacher* 277.
- 20 The terms "deep" and "surface" learning are discussed, with particular reference to higher education, in P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) and more succinctly, in Le Brun and Johnstone, *supra* note 3 at 59-63. Essentially, deep learners aspire to the personal understanding and integration of new material into an holistic framework. The surface learner is more likely to engage in rote learning to reproduce information learnt and is primarily motivated by a desire to avoid failure. Surface learning is often, then, a strategic response in situations where students are overloaded, when assessment criteria are unduly stressful and/or unduly reward the recall of trivial information. P Baron, in "Deep and Surface Learning: Can Teachers Really Control Student Approaches to Learning in the Law?" (2002) 36 *The Law Teacher* 123 argues that the curriculum should be constructed to enhance deep learning but that those who wish to engage in more passive learning should be left to do so. Halstead et al report that removing the "lucky dip" from examinations by a prior disclosure of examination topics, but not the actual questions, encourages a greater research and deep learning orientation amongst cohorts of globally dispersed off-campus law students: P Halstead, J Evans, B Mitchell and S Williams, "Deep or Shallow Approaches Taken by Undergraduate Distance Learning Law Students of the University of Wolverhampton" (2002) 36 *The Law Teacher*

Jane's heavy emphasis on technology for what she calls "transmission" or "informational teaching" has met with mixed responses. This system is resource efficient and has many supporters, particularly amongst mature age students who appreciate the time-shifting flexibility of self-paced learning.²¹ Many younger students and some of Jane's staff find it too mechanistic. Students complain that it adds to their experience of finding their time at law school alienating and gives the impression that law academics seem generally "uncaring". Jane confronts any criticism with the mantra of "blame that bloody Dawkins" and says that we need to do something to bring law schools up to date. She claims that efficient teaching of large classes of first year subjects allows more resources to be placed into valuable electives in later years that have lower student numbers.²² She also makes it clear that she wants "my staff" to do more research and thinks that adequate teaching

184. These findings support Ramsden's (1992, above) contention that "from our students' point of view, assessment always defines the actual curriculum" (at 187).

- 21 Taking transmission-type teaching out of the classroom to preserve precious class time for face to face interaction is practised and endorsed by P Wangerin in "Technology in the Service of Tradition: Electronic Lectures and Live-class Teaching" (2003) 53 *Journal of Legal Education* 213. The danger that computer-based teaching of law may be more suited to teaching jaded doctrinal "black letter law" rather than critical socio-legal approaches is explored in P Alldridge and A Mumford, "Gazing into the Future Through a VDU: Communications, Information Technology, and Law Teaching" in A Bradney and F Cownie (eds), *Transformative Visions of Legal Education* (1998); 25 *Journal of Law and Society* 116. The need to implement any computer-mediated system with care and to provide students with support and direction is stressed by B Richards in "Alice Comes to Law School: The Internet as a Teaching Tool" (2003-4) 14 *Legal Education Review* 115. The author documents the hard-won acceptance of the Adelaide Law School Intranet for Collaborative Education (ALICE), which initially it seems, could be characterised, if somewhat obviously, as ALICE in Blunderland. Perseverance and the appointment of a specialist staff member to deal with on-line issues seem, however, to have paid off and gradually won over a culture of entrenched student opposition to the innovation.
- 22 The value of placing disproportionate resources in later level elective courses with small numbers is debatable. M Gulati, R Sander and R Sockloskie in "The Happy Charade: An Empirical Examination of the Third Year of Law School" (2001) 51 *Journal of Legal Education* 235 report a high level of disengagement at third year level despite the high proportion of resources channelled into that stage, and thus argue that the final year in law school is not really serving as the culmination of legal training. Further research is probably needed as to whether or not that experience in the USA, where three years of full time law school comes after the completion of an undergraduate general degree, is similar in Australian law schools.

is “good enough” as “over-servicing” students can be harmful to an academic’s promotion prospects.

Jane is also opposed to too much teaching of legal procedure in universities. This is perhaps not surprising given her own professional formation was at a time when Australian law schools had shifted from an apprenticeship model to a view that the study of law should be a form of liberal education.²³ However, as a dean, Jane was forced to concede that there should be some place for a concurrent skills program but thinks this should be limited to the development of generic skills that will best prepare students to adequately and flexibly respond to the many “generalist” career opportunities open to law graduates. Jane is adamant that much legal practice in the future will take place in MDPs²⁴ and that, in any case, for half of her school’s graduates, a law degree serves the function of an arts degree but with a wider vocational appeal to employers.²⁵ In addition, Jane claims employers rarely consider the legal skills issue, concentrating more on an applicant’s grades, the prestige of the law school attended and the general impression applicants give of their ability to “fit in”. She also recalls reading a comment from an IBM executive that his firm prefers to recruit graduates from any discipline who have first class minds and then do their own in-house IT training and she believes the large law firms echo this view.

Although Jane denies it, it is possible that her opposition to extensive concurrent skills training in undergraduate legal education also has a commercial basis. Soon after Jane became dean, her law school became part of a consortium of three law schools in different States that offer a full fee-paying post-graduate diploma of legal practice as an alternative to taking Articles for admission as a legal practitioner. Most of the diploma is taught on-line and has become popular with law graduates seeking admission to practice and also promises to be lucrative for the members of the consortium once the high start-up costs are recovered over the anticipated six-year life-span of the core curricula materials. Against the charge of

23 L Taylor, *supra* note 2, citing D Chesterman and D Weisbrot, “Legal Scholarship in Australia” (1987) 50 *Modern Law Review* 709. See also the Pearce Report, *supra* note 13, para 25.2, noting that until 20 years ago most law lecturing was done on a part-time basis by practising legal practitioners.

24 Multi-disciplinary practices: Jane’s conversation is peppered with acronyms.

25 Jane’s figures agree with those of Sir Anthony Mason in “Universities and the Role of Law in Society” in J Goldring, C Sampford and R Simmonds (eds), *New Foundations in Legal Education* (Sydney: Cavendish (Aust), 1998) ix.

market opportunism,²⁶ Jane points to her long standing view that, at most, only generic skills should be taught within the LLB degree, especially as many graduates are destined to work in multiple jurisdictions within and beyond Australia. She maintains that the realities of the global market for legal services means that no longer can an Australian law school think of itself as merely fulfilling the narrowly conceived professional concerns of the local law society. Rather, given the resource constraints on law schools, she is quite adamant that, all things considered, “efficiency criteria” dictate that the more specialised and resource intensive legal skills should be taught only to those who at that stage of their legal education have made a considered decision to start to practice in a particular jurisdiction.²⁷

Fundamentally, Jane agrees with the recommendation of the Ormrod enquiry in the United Kingdom in 1971,²⁸ that legal education should be constructed as a continuum between the academic, vocational and professional with the role of undergraduate legal education being mainly concerned with the academic part of this continuum. In practice, as a law dean, Jane has been forced to adopt the greater integration or overlap in this continuum advocated by the subsequent

26 That there is a market is indisputable. A survey undertaken in the UK by V Bermingham and J Hodgson, “What Lawyers Want from their Recruits” (2001) 35 *The Law Teacher* 1 at 29 found that 78% of law students intend to take some form of practical training to qualify for admission after completing their LLB. The authors conclude that although only 50% of law graduates actually practice at some time or other, that may say more about the unexpected difficulty of entering the profession than changes in the desire of students to practice.

27 On this matter Jane has allies. Twining (1994), *supra* note 8 at 74 claims that in the United Kingdom, at least, a legal education market crowded with new entrants means that only 30-40% of law graduates will have even the chance to qualify for admission to legal practice. In A Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-first Century* (Oxford: Hart Publishing, 2003), the author points out the lack of homogeneity in the legal profession and the consequent difficulty in providing a comprehensive legal skills program as part of the LLB curriculum. Not only is there a gulf between the work and training needs of legal aid solicitors in the provinces compared to solicitors working for big corporates in the city, but within those large city firms themselves, internal departments with their specialisations make for very different law jobs. Bradney writes (at 102) that the division of legal labour becomes ever more minute, so that “within those London firms, jobs are more and more focussed on particular areas of legal work, ‘in the Energy Group, but only on gas projects (and then only off-shore gas)’, so that to say ... that this disparate group of workers ... are all solicitors indicates little more than a formal as opposed to substantive similarity in the work that they do”.

28 Cited in L Taylor, *supra* note 2 at 91.

ACLEC report in that country.²⁹ Jane concedes that the issue of concurrent skills training during the LLB has been enduringly controversial and suggests extra electives could be provided for those students who wish to “head off in that direction”.³⁰ In fairness, it should be acknowledged that Jane’s grudging, gradualist and generic approach to legal skills in the undergraduate law curriculum is both popular with her colleagues and is not without influential support from legal scholars.³¹

At the personal level, Jane readily admits she is ambitious but claims to have a good sense of humour and an ability to not take herself too seriously. These latter and self-proclaimed qualities are not always easy to discern. Within a year or so of becoming a law dean, Jane was furious that she was listed as a 100/1 outside chance to obtain an appointment to a vacancy on the Supreme Court in her State. What upset Jane was not so much these long odds in themselves, but that the State’s Attorney General, a person whose legal ability she despised, was quoted at 50/1 for the position. As neither Jane nor the Attorney General had practised at the Bar, the exercise was of purely theoretical interest, but Jane nevertheless took umbrage at the disparity in their rankings.

Still, there was another chance of high office awaiting Jane. Two years ago, following her innovative and resource maximising work as a law dean, Jane was appointed Vice Chancellor at an interstate university. Judging by the reports in her former university’s newsletter, which also included an edited account of her address, Jane’s valedictory oration was a major occasion, attended by many prominent members of the legal profession as well as an unusually high number of people from the university community and the general public.

29 Id. ACLEC is the acronym for The Lord Chancellor’s Advisory Committee on Legal Education and Conduct.

30 C McInnes and S Marginson, *Australian Law Schools After the 1987 Pearce Report* (Canberra: AGPS, 1994) 159-160 cite a report of a survey of Australian Law Schools by a NSW Curriculum Committee in 1992 that shows the compulsory core of the law curriculum for double degree students ranged from 54% at Melbourne to a high of 88% at QUT.

31 For a recent sustained argument as to why vocational concerns should be eschewed in the undergraduate law curriculum, see A Bradney, *supra* note 27. Bradney advocates, both generally, but especially at 101-104, that there should be no core legal curriculum and that technical legal information should not be acquired for its own ends. He contends that a general or liberal law school curriculum avoids the limitations inherent in a vocational curriculum because it puts students in a position to address a wide range of tasks. This in turn is more likely to develop transferable knowledge and skills. He counsels against excessive deference to top legal firms and the profession generally because “stakeholders” tend to conceptualise legal education in vocational terms.

Much of Jane's address was conventional, recording the sense of privilege she felt at being the law school's foundation dean. However, she then turned to the issue of the implications of her career for other female academics, both in law schools and more generally. In a remarkably frank and public apology, Jane regretted that in many respects she had failed to show an appropriate degree of "sisterly solidarity" with her female colleagues. In part, this was due to having only one child and then only after "climbing the career ladder" and with a husband "doing a magnificent job" as her child's primary carer. Not for her, Jane said was the incessant juggling of career and family, the anxious glance at a watch and abrupt departures from meetings for a hurried trip to the Child Care Centre at the end of the day and all the diminished opportunities for the networking that Jane asserted, is a sine qua non for major academic advancement.

In her defence, Jane claimed that as a first generation modern feminist, she had no choice but to play by the "boys' rules" at a time when very few female academics in any discipline in the country got to even senior lecturer. Male mentors had made her aware of what counted for academic advancement and she admitted that she had consciously avoided becoming enmeshed in "academic housekeeping tasks" such as student support and organising collegial activities. Jane concluded her address by acknowledging that whilst much remains to be done to counter generations of entrenched discrimination against women in both academia and the legal profession, at least she and other pioneers of her generation had dared to participate in male dominated professions rather than try like earlier feminists to forge separate professional identities by "professionalising the domestic".³²

32 In her address Jane explained that she used this term to refer to the "turn of the century" (ie early 1900s) professionalisation of fields such as nursing, kindergarten teaching and the general domestic science movement that gathered momentum as part of a middle-class feminist mission to rescue the working classes from squalor and to ensure that the country's social and legal fabric was not endangered by a decline in the size of middle-class families. Jane referred to K Rieger, *The Disenchantment of the Home: Modernizing the Australian Family, 1880-1940* (Carlton: MUP, 1985), in support of this thesis. As to Jane's admission that much remains to be done to promote the careers of female academics, it appears this is still the case in the United States after a decade or more of affirmative action and family-friendly policies. See D L Rhode, "Midcourse Corrections: Women in Legal Education" (2003) 53(4) *Journal of Legal Education* 475, who observes (at 475) that in the USA until the early 1970s only 3% of law students were women and that whilst the figure is now 50%, women faculty are still clustered in the least influential and least secure roles in the law school, with both their disproportionate family responsibilities and academic "housekeeping" work impacting on research, teaching and committee obligations (at 482-483).

Jane's career continues to be one of negotiating contradictions. Ironically, given her earlier stance on the Dawkins reforms, the university Jane now heads was created from an amalgamation of a number of former colleges of advanced education following the implementation of those very reforms. Jane is quite untroubled by this and explains that "one has to be adaptable". Her husband, Hamish wryly comments that if Jane should ever tire of being a Vice Chancellor, she could always seek ordination in the Anglican Church and apply for the post of Vicar of Bray.³³ Jane, quite unfazed, seems to regard this observation as a compliment.

As Vice Chancellor Jane has recently announced cuts to the teaching budget of her new university because of savings achieved by introducing "Open University" style on-line video and computer teaching in large core first year subjects such as economics, psychology and in law subjects of torts and contract. She sees universities of the future employing less tenured teaching staff. These staff will be "outcome facilitators and managers" who will organise the work of sessional staff, including many from the professions. She cites in support of this her own teaching experience where she organised visits from members of the profession in the mediation legal skills unit she was obliged to teach, which she supplemented by playing a few videos and devoting a half of a lecture to preparing students for a mediation simulation. She once admitted to me that much of this organisation could have been done by any competent "admin person" but doing it that way rather than teaching aspects of mediation herself left her time to "get on with the things that really count". Jane predicts that within a few years tenured law staff will be more involved in income generation by way of consultancies, compliance work and the like with the "more mundane teaching tasks" left to junior and sessional staff.

I recently accepted an invitation to visit that Jane issued in response to my congratulatory note when her appointment as Vice Chancellor was announced. We played tennis on the private court attached to the university house that comes with her job. Her "kick" serve is as venomous as ever but her game generally is a bit rusty – one of the many sacrifices, she says, of her "rise to the top" – a recurrent phrase with her. She laments that she has many "contacts" but far fewer friends, and thinks she will give the job "everything" for "5–8 years" and then become a semi-retired "law and higher education consultant" and also

³³ Hamish is referring to the once popular ballad of that name lampooning the Vicar of Bray's self-interested zeal for each new form of established religion from Charles II to George I to ensure he retained his living.

put some time into “quality relationships”. In the meantime she thinks her \$400,000 plus annual salary “somewhat” makes up for the fact that for some years her former students, who went to the Bar or into the “corporates”, earned far more than she, even after she topped up her “academic pittance” by some 20% or so with consultancies. Currently she and Hamish intend to take some “luxury if short” holidays and just after Christmas are off for a fortnight’s skiing in Colorado. She remains grateful for her father’s insistence that she had a “vocationally solid” qualification, without which she believes she would have ended up like some of her BA uni “mates” with PhDs in French or German teaching TAFE conversational courses to “bored housewives” and “redundant executives”.

Rick Palmer – Dedicated Teacher

Rick Palmer has just turned 50 and is a senior lecturer in a law school that also teaches business law to commerce students. I met him at an ALTA³⁴ conference in Christchurch in the early 1990s and after discovering a shared interest in things Hispanic,³⁵ had some good late night chats. We kept in touch and I have seen him quite often since moving to Melbourne seven years ago. Rick’s name was originally Ricardo de Palma, but on coming to Australia from Galicia, in the north of Spain after the Civil War (1936-39), Rick’s parents changed their name to Palmer in the early 1950s because they found it hard to stomach the “new Australian” jibes on top of their persecution under that “bastard” Franco. As editor of the regional socialist newspaper *El Trabajero*, Rick’s father had experienced some especially “rough treatment” before the family left Spain.

Working in factories, Rick’s parents could not afford to pay the high university fees that were still in place at the end of the Menzies era. Instead, Rick got a university education (BA, Dip Ed) with majors in history and psychology through the Education Department scholarships that paid the fees, a book and small living allowance in return for bonding students to teach for three years. Rick actually stayed four, teaching history, doing some counselling and taking a few law subjects part-time in the last two years. Recently married, he then quit his teaching post, even though he enjoyed it, because he had always wanted to study law. His wife of three years worked as a kindergarten director to put him through and Rick did some

34 Australasian Law Teachers Association.

35 The writer, on a Rotary Post-Graduate scholarship in 1976-77, was an *Investigador Visitante* (Visiting Researcher) at *El Colegio de Mexico*, a centre for postgraduate research in the social sciences in Mexico City.

part-time TAFE teaching. Whilst teaching, Rick had a close friendship with an ex-Jesuit priest who, to Rick's surprise, aroused his interest in issues such as liberation theology and contextual approaches to studying the Bible advocated and advanced by such theologians as Kierkegaard and Bultmann.³⁶ These discussions were to greatly influence Rick's philosophy of teaching when he became a law teacher. At the time Rick was very grateful for these conversations as they helped him to escape the tedium of staff room conversations about misbehaving students and, during winter, football.³⁷

However, Rick's arrival in the legal academy was still some way off. As a law student, Rick's academic record was somewhat patchy. As a part-time student for his first two years, he put his effort and limited time into those subjects that interested him – constitutional, family and child welfare law. After Articles (a year of "boozing, gossiping and photocopying") that convinced Rick that a course in the systematic training of legal skills should replace the "hopelessly outmoded" apprenticeship model for those seeking admission to the Bar, Rick joined a practice belonging to an elderly practitioner in a regional town some 110 kms from Melbourne. After two years, Rick bought the practice and worked in it for another six years. He and Mandy, his wife, had two children. The stresses of running a growing general legal practice saw them separate after Rick's brief affair with one of the family law clients. Rick, something of a perfectionist, was often frustrated by the multiple demands involved in running a legal practice and felt there was never enough time to research legal points adequately. Along the way, he took a few LLM coursework subjects, deliberately choosing those subjects with examinations as the sole or at least major form of assessment, so that he could cram desperately towards the end of the semester.

36 Whilst I understood Rick's reference to liberation theology and its strong social justice impulse, his reference to the two theologians rather "stumped me". It seems that Soren Kierkegaard (1813-55) developed a form of "existential dialectics" that led him to the position of denying the possibility of an objective system of doctrinal truths. Rudolph Bultman (1884-1976) pioneered a program of de-mythologising the stories in the New Testament, urging that the events narrated there had to be understood in their "life-context" (*Sitz im Leben*). (See the appropriate alphabetical entries in F L Cross, *The Oxford Dictionary of the Christian Church* (2nd ed, 1978).) Were they in law faculties today, both men would undoubtedly be at the forefront of the view that law faculties should teach and reflect socio-legal approaches to the law and would reject what they would see as a pernicious and artificial doctrinal approach.

37 Rick, reared in an intellectual family where food and debate were both part of a meal, scathingly refers to "S'portugeese" as the lingua franca of Aussie men.

Rick did well enough in his LLM so that, combined with his practical legal experience and teacher training, he was appointed at the age of 37 to a new “post-Dawkins” law school. After finishing his LLM two years later and self-publishing a “plain English” textbook, “Business Law – The Essentials”, he was appointed senior lecturer at 41 and is now at the top of the scale, earning over \$70,000 pa. He accepts that many of his students will earn more than he does, although he thinks that some of his complaining academic colleagues fail to take into account the benefits of various leave entitlements, comparative job security and autonomy, employer superannuation, an office and some administrative support.

During his forties, Rick was quite active on some university committees, especially the Staff Association and some committees directly benefiting students. He also kept long office hours and was regarded by students as someone always available for a chat. Rick believed that many law students found the study of law, and law school itself, alienating, and thought that “any true teacher” should do what they could to redress these issues.³⁸ Strangely amongst law teachers, Rick also regarded his teaching of business law students as of equal importance to teaching LLB students and rejected the tag of “service teaching” often applied to this activity.³⁹ His view is that the number of students studying business law greatly exceeds those studying a law degree and teaching them what he calls legal awareness is an important and educationally challenging part of his job. Besides, at Rick’s university

38 On how dangerous law school can be to self-esteem, see G Hess, “Heads and Hearts: The Teaching and Learning Environment in Law School” (2002) 52 *Journal of Legal Education* 75 and L Krieger, “Institutional Denial about the Dark Side of Law School and Fresh Empirical Guidance for Constructively Breaking the Silence” (2002) 52 *Journal of Legal Education* 112. Krieger attributes much of the problem to the failing paradigms on which many law school curricula and practices are constructed. These include (at 117) “the top ten-percent tenet; the contingent-worth paradigm [one’s place in the hierarchy is all important]; the American dream and thinking ‘like a lawyer’.” The obsession with this last paradigm, Krieger claims (at 117), is “fundamentally negative; it is critical, pessimistic, and depersonalising. It is a damaging paradigm in law schools because it is usually conveyed, and understood as a new and superior way of thinking, rather than an important but strictly limited legal tool”. Krieger cites, inter alia, A Maslow’s, *Motivation and Personality* (2nd ed, New York: Harper and Row, 1970) and C Roger, *On Becoming a Person: A Therapist’s View of Psychotherapy* (Boston: Houghton-Mifflin, 1995) to argue that many of the pernicious consequences of the contingent worth paradigms can be overcome by adopting humanistic approaches to the teaching of law. Hess also gives practical examples of how this can be accomplished.

39 Twining, supra note 8 at 40 refers to this term as “derogatory” and as indicative of an attitude that has led to the offering sin business law often being “rather unimaginative”.

students enrolled in business law units subsidise the otherwise unviable law school.

Rick's teaching duties over the last few years seem to have stabilised and consist of being Unit Coordinator of a first year semester-length Introduction to Business Law unit, taking one of the two-hour weekly seminars for the contract law subject that spans the entire academic year and teaching an advanced semester-length elective unit called "Perspectives on Family and Child Welfare Law". Last year Rick invited me to sit in on some of his classes to write a report as one of his university's three nominees for a national teaching excellence award. Rick won his own university's teaching excellence award in 1994 and was then nominated for a national CAUT⁴⁰ teaching award. He attended an interview held in a meeting room at Sydney airport. This did not go well. Rick had assumed he was there to talk about his teaching practices and philosophies. Instead, he found the members of the panel, who had no recent classroom teaching duties, were far more interested in what research project he would undertake if he won the award!

Rick sees his role as the coordinator of the foundation business law subject as giving good lectures (he gives about 60% of the lectures) and to manage a team consisting of one other tenured staff member, a team of tutors and an administration officer attached on a 0.3 basis to the unit due to the large numbers of students enrolled in it. Rick prefers to take extra teaching rather than be bogged down in administration and processing results. He sees these tasks as important but recognises that he is not efficient in discharging such detailed work and does not see being involved in those tasks as the best use of his time and talents. Enrolments in the unit range between 900 and 1,200 students, including between 150 and 200 off-campus students and others, not counted in these numbers, are those enrolled in various off-shore partnership agreements or in articulation programs with TAFE colleges.

In his business law lectures, Rick uses powerpoint slides, posted in advance on the intranet program used by his university. He has a reputation for giving good lectures, with plenty of use of both verbal and visual humour, repeats major points in at least three different ways, gives clear overviews of new material, good summaries of what has been covered and arranges his timetable to have time after lectures to answer any immediate questions students have. Rick is not on campus on Mondays and Tuesdays but rosters senior law students to be in his office to provide support for any students

40 Committee of Australian University Teaching.

who may need additional help to that provided in tutorials. These senior law students are known as “duty-tutors”. Rick also runs the off-campus mode himself and has prepared a CD ROM containing lecture equivalents with accompanying powerpoints. Additional material, including detailed explanations about assessment, a unit calendar, FAQs⁴¹ and a Study Guide are provided to all students in the unit over the intranet. Sample answers to nominated tutorial questions are pre-programmed by Rick at the start of the unit and, like an educational equivalent of “pop-up” sprinklers, appear a week after tutorials on that topic and disappear after five days to encourage students to keep up. Rick also posts audio-recorded “fireside chats” of some 10-15 minutes to the intranet to help off-campus students feel more included by means of “up-dates” to subject development.⁴² Overall Rick believes the key to running this large unit is to be well organised whilst being sufficiently flexible to provide some spontaneity. Rick also thinks his teaching in this legal overview unit is rated so highly because it overlaps with the more in-depth teaching he is involved with in taking two of the full year contract law seminar streams for first year LLB students.⁴³

The law school Rick teaches at has only one hour of lectures a week in contract law. The remainder of the subject is taught in a two-hour seminar with groups of between 30 and 40 students. The subject runs throughout first year, includes both the common law of contract and statutory reforms, especially Pt V of the *Trade Practices Act 1974* (Cth). Students have a commercially published casebook, Study Guide and a detailed outline of the topics. Readings and other preparation required for each seminar, together with some lecturer-initiated guidance, are provided through the WebCT intranet used at Rick’s university. The expectation is that in the seminars the predominant methods used will be small group collaborative activities and the Socratic method.⁴⁴

41 Frequently asked questions.

42 Rick flatteringly claims he got this idea after reading the writer’s report of using a voicemail system to promote inclusivity for off-campus students: see J Carmichael, “Voice Mail and the Telephone: A New Student Support Strategy in the Teaching of Law by Distance Education” (1995) 16 *Distance Education* 7.

43 N Hativa, in “Teaching Large Law Classes Well” (2000) 50 *Journal of Legal Education* 95, maintains the key factors for success with large classes are clarity, good organisation, an ability to stimulate interest and engagement and to generally promote a positive classroom environment. It seems Rick does quite well when assessed against these criteria.

44 On the Socratic method, see M Le Brun and R Johnstone, *supra* note 14. Attempts to promote collaborative learning using small groups are not for the faint hearted and may encounter opposition from academically

Rick's two seminar groups are invariably rated highly by students. Perhaps cannily, he always takes the unpopular timeslots of 6-8 pm on Wednesday and Friday evenings and, consequently, has a large number of mature age students in his seminar. Rick's explanation for taking these times is that it reduces problems that arose in earlier years of students seeking to transfer into his seminar groups. These timeslots also enable Rick to hold his seminars in the Nursing building rather than the law school. Rick's reasoning is that his law school, reflecting an outmoded "chalk and talk" pedagogy that makes law a cheap discipline to run, consists only of lecture rooms with fixed seating.⁴⁵ By contrast, the new Nursing building has flexible seating in rooms designed for seminars. This makes it easier to move to and from small group to whole class discussions. Having attended some of these seminars, I am impressed by Rick's ability to achieve a climate favouring genuine discussion and education rather than instruction.⁴⁶ After the Friday evening seminar many students and Rick go off to the campus pub to continue their discussion. Rick claims that both this seminar group and the advanced elective he teaches, convince him it's still possible for students and staff to have "a real university experience" despite the *best practice* efforts of the bean counters, PVCs and deans to impose a "drearily instructional regime" on staff and students. In the current climate of political correctness in universities, however,

successful students who prefer learning and assessment regimes that give them a chance to excel and not be held back by less able group members. For an ultimately successful attempt to teach constitutional law using small group collaboration, see M Israel, E Handsley and G Davis, "It's the Vibe: Fostering Student Collaborative Learning in Constitutional Law in Australia" (2004) 38 *The Law Teacher* 1.

- 45 In fairness to legal academics it should be appreciated that the funding authorities have traditionally funded law as a "talk and chalk" discipline. See the review of funding patterns in L McCrimmon, "Mandating a Culture of Service: Pro Bono in the Law School Curriculum" (2003-4) 14 *Legal Education Review* 53 at 68-70. McCrimmon sees this historical underfunding of law schools as a major impediment to curricula reforms such as the mandatory exposure of students to pro-bono activities that he recommends.
- 46 The importance of educationally appropriate architecture is recognised in T Booth, "Learning Environments, Economic Rationalism and Criminal Law: Towards Quality Teaching and Learning Outcomes" (2001) *UTS Law Review* (special edition – *Legal Education in Australia Current Issues and Developments* 3 at 17), where it appears that conducting seminars in multi-tiered lecturing rooms leads to student passivity and obliges tutors to effectively give an additional lecture. In his seminars Rick is initially criticised by some students for spending time on introducing them to techniques for successful group work rather than getting down to the "nitty gritty" of contract law. Israel et al, *supra* note 44 stress, however, that students need to be prepared for successful small group collaborative learning.

Rick may need to be careful about his inclination to minimise boundaries between staff and students. There are enduring rumours of his “closeness” with some female students but “Roving Rick” (as some students call him) shrugs these off as an “occupational hazard”.⁴⁷

Rick continues his use of a seminar approach in the semester-length advanced elective he teaches called “Perspectives on Family Law”. This is a multi-listed elective because it is available to law, social work and nursing students who have completed at least two-thirds of their degree. Numbers are restricted to 40 students with roughly equal numbers from each of the subject areas. Rick puts up legal and sociological background material on the intranet to overcome any particular disadvantage in having students from different disciplines.⁴⁸ Students must also sign an undertaking that they understand that the unit is taught by seminars using an adult learning model that involves students sharing the teaching and learning roles.⁴⁹ Rick’s direct input is usually limited to an impromptu lecture for some 15 minutes at the end of the

47 See S Kanazawa and M Still, “Teaching Could be Hazardous to Your Marriage”, reviewed in Higher Education Supplement (HES), *The Australian* (18 October, 2000) 30. The students may indeed have some cause for suspicion. Last year Rick took me to a Tasca (ie a pub) in the Spanish section of Johnston Street, Collingwood – an inner-city suburb of Melbourne. After consuming several glasses of cider, poured from a bottle at shoulder height into a glass held at or below waist level, Rick grabbed a guitar from one of the musos and started serenading, in Flamenco style, a striking darkhaired young woman. Rick’s improvised song proclaimed himself to be “El Rey de la Fronterra” (“King of the Frontier”) (between Spain and Portugal). To my surprise, everyone seemed to encourage this performance and the subject of the serenade seemed especially responsive. Why Rick, from the north of Spain, should have affected an Andalusian style was beyond me, but perhaps folkloric authenticity was not his priority at the time. Unaccustomed to the alcoholic cider, I fell asleep at that point.

48 Rick claims the essentials of the legal system can be taught to mature and interested students, at least, within an hour or so by reference to the properties of a triangle. It is often thought that combining students from different disciplinary backgrounds is either a recipe for either dumbing down the content or leaving some students bewildered, but Rick is optimistic that, with appropriate methods, materials and guidance, law can be sufficiently demystified to be available for inter-disciplinary study. Similar optimism is to be found in N Sargent, “Labouring in the Shadow of the Law: A Canadian Perspective on the Possibilities and Perils of Legal Studies” and B Cassidy, “Above the Law or Beside the Point: Reflections on the Content of Legal Studies” in I Duncanson (ed), “Legal Education and Legal Knowledge” (1991) 9(2) *Law in Context: A Socio-legal Journal* at 65 and 87 respectively.

49 Rick has an already well-thumbed edition of M Knowles, E Holton and R Swanson, *The Adult Learner: The Definitive Classic in Adult Education and Human Resource Development* (5th ed, Houston: Gulf Pub Co, 1998) on his bookshelf.

seminar on those aspects that may need further clarification or coverage. The reading list for the unit is wide-ranging and, in addition to more theoretical legal literature on the law relating to families and children, contains a mixture of historical and sociological texts.⁵⁰ Rick admits the unit is not to everyone's taste and that many law students are happy to call their study of family law issues "quits" after taking the basic, procedurally oriented unit run by a colleague. Even so, Rick claims he is never short of takers.

Rick's current teaching load is below the average for his faculty. This is because earlier this year Rick accepted the position of Chair of the faculty's Student Progress Committee. Rick's willingness to take this on was quite a surprise to his colleagues, as this position is usually seen as attractive to those fleeing the demands of teaching and/or research in favour of a more bureaucratic job in the faculty's administration. However, Rick's intention in accepting the job was, depending on one's point of view, either subversive or transformative. He keeps the Progress Committee meetings he convenes as informal as possible and regards the application of university regulations as very much a last resort if counselling and negotiation with students "at risk" should prove unavailing. More generally, within six months of taking the position, Rick has largely transformed the role into one of pro-active academic and personal counselling. With the support of two young female colleagues (the only volunteers) and three senior students, Rick has commenced fortnightly voluntary "transition tutorials" for first year law students, supplemented by an occasional seminar program that includes guest speakers from the university's Student Services Department and Human Resources officers from major law firms. Rick is himself preparing a seminar presentation on "Emotional Intelligence: A Legal Curriculum Imperative". Rick intends also giving this as a staff development seminar in the hope of convincing the faculty to incorporate activities and emphasis in the legal skills component of the course to help students enhance this capacity.⁵¹ Although an entirely voluntary program, Rick

50 Rick's reading list includes titles such as P Aries, *Centuries of Childhood: A Social History of Family Life* (Harmondsworth: Penguin, 1979); E Shorter, *The Making of the Modern Family* (London: Fontana, 1977); Neil Postman's iconoclastic *The Disappearance of Childhood* (New York: Delacorte Press, 1982); and M Gilding, *The Making and Breaking of the Australian Family* (Sydney: Allen & Unwin, 1991) alongside more conventional fare such as H Finlay, R Bailey-Harris and M Otlowski, *Family Law in Australia* (5th ed, Sydney: Butterworths, 1997).

51 The term "emotional intelligence" was popularised in D Goleman, *Emotional Intelligence* (New York: Bantam Books, 1995), but Rick proposes using P Merlevede, D Bridoux and R Vandamme, *7 Steps To Emotional*

reports that nearly half first year students regularly attend the transition sessions. Rick concludes that this suggests that Orientation is far too important to confine to Orientation weeks.

Overall, it is hard pin down with any precision just what makes Rick a good teacher. He is passionate about his subjects, is genuinely interested in his students, sets high standards but gives clear guidance and personal assistance. Even in his business law survey course, he encourages students to look for the logic and meaning behind various topics so that then the detail will look after itself. He makes essential reading clear and tries to keep it to a minimum to discourage students adopting “surface learning survivalist strategies”. Rick is especially proud of the fact that since he became Unit Coordinator of Business Law 101 five years ago, there has been a 70% increase in students going on to take business law elective units, in addition to the other compulsory units in corporations and tax law.

Rick is especially aware of the importance of demonstrating an interest in his students. He has recently replaced his old Polaroid camera with a digital camera to take photographs of the members of each new seminar group he teaches and he aims to know all students’ names within three weeks. He keeps at least six advertised office hours a week during the semester and increases these before exam time to provide extra support to students. He also has a knack of knowing when there are likely to be major movements of students through the corridors and quadrangles and goes to check his mail box or engage in other errands at such times. Rick believes the importance of the seemingly casual encounter and the quick chats that arise from being so visible cannot be over-rated, and he thinks all law teachers should be especially concerned at reports of poor self-esteem and mental health amongst law students. A fan of the work of the pioneer sociologist Durkheim,⁵² Rick is

Intelligence (Carmarthen, Wales: Crown House Publishing, 2001) because of its practical focus with lots of exercises for students to work through. Although Merlevede et al shy away from a precise definition of emotional intelligence, they refer (at p 8) to it as a cluster of intra and interpersonal intelligences, self-awareness and empathy, beliefs and values “which allows someone to successfully realise their vision and mission”. An early attempt at incorporation of emotional intelligence into the law school curriculum is discussed in P Cain, “A First Step Toward Introducing Emotional Intelligence into the Law School Curriculum: The ‘Emotional Intelligence and the Clinic Student’ Class” (2003-4) 14(1) *Legal Education Review* 1.

52 Emile Durkheim (1858-1917) is widely regarded as the founder of modern sociology and wrote especially of the “anomic” (alienating) consequences of a breakdown in the “conscience collective”, and of the increased

especially concerned about the alienating effect on law students due to the fragmentation of the curriculum into “little boxes”, but has had little success in convincing colleagues to give up their specialised approaches in favour of a more integrated curriculum. The havoc it will wreak on their research is usually cited as the clinching argument to restructuring the curriculum. My own observations of Rick’s teaching rates him highly on the seven principles of effective tertiary teaching developed in the USA during the 1980s, although in Rick’s case these seem to derive naturally from his commitment and own prior teacher education courses rather than through any deliberate adoption of a “concerned teacher” template.⁵³

Recently Rick has cut back a bit on his work commitments because he has re-partnered and has two young children. He is keen not to make the same “mistakes” of “long working hours away from the family” the second time around. His partner is a former student of Rick’s. This caused him to have to appear before the dean, who read him the “riot act” on staff-student liaisons. Possibly the fact that this partner (now 34) was a mature age student and that they “waited” until she no longer studied Rick’s subjects saved him. Rick suspects that the admonishment was a pretext due to his dean’s concern that he does not do enough “serious research”. Rick disdains this emphasis on “pedantic scribbling” buried in obscure journals that are read by very few. Rick contends that his two textbooks that synthesise and make accessible to students core issues and cases in his subjects, and other high quality teaching materials he prepares, are equally valid forms of scholarly teaching. In fact, Rick has published, in addition to his textbooks, some well received articles on differences in Australian and New Zealand approaches to matrimonial property disputes, the law of privacy and confidentiality in the counselling context, and a new article titled “Letters of Comfort – Substance and Illusion in Commercial Law”. However, he only publishes when he has both the time and something original to say. He is concerned that a preference for esoteric research ignores the high fees paid by students and the importance of teaching

likelihood of this where labour tasks are excessively specialised; see A Giddens, *Emile Durkheim* (New York: Penguin Books, 1979).

53 See A Chickering and Z Gamson, “Seven Principles for Good Practice in Undergraduate Education”, *AAHE Bull* (March 1987), 3 cited in Hess, *supra* note 38 at 84-86. The seven principles are: encourages student-faculty contact; encourages cooperation among students; encourages active learning; gives prompt feedback; emphasises time on task; communicates high expectations; respects diverse talents and ways of learning. The application of these principles to legal education was considered in the special issue (1999) 49 *Journal of Legal Education*.

them in interesting, committed ways. Rick's enthusiasm for his subjects, his ability to integrate and to relate a wide range of reading in a lively manner, and his genuine interest in students, make him a generally popular lecturer. However, student surveys also indicate that a few of his students find him both a bit too "blokey" and "leftist" for their taste.

Rick tries to give priority in teaching for deep and active learning rather than a surface approach to learning.⁵⁴ He regards teaching law as a form of applied history and argues passionately that we should teach the logic of the law and the context in which it arose. Perhaps these views show the influence of his old friend, the ex-Jesuit priest he taught with and whom Rick regards as his intellectual mentor. At times Rick is very disparaging of the "Salami-slicing" of cases into narrow and minute propositional points – a view that once again does nothing to endear him to his dean, the senior author of a casebook in that vogue. In contrast, Rick constantly urges his students to "lift their eyes unto the hills"⁵⁵ to see the bigger picture, the connections between law and other disciplines and developments. He thinks some modern casebooks, "consisting almost entirely of appellate court decisions", don't help in this respect as they segment cases and scatter the segments throughout the book so much that students lose perspective on what the case was about and even who "won and why".⁵⁶ Rick also thinks law students sometimes need encouragement and help with motivation. He recalls reading a survey some years ago that rated student satisfaction amongst law students as the second lowest out of 15 disciplines.⁵⁷ Rick's explanation for such a low ranking for law is that many law undergraduates are now taking concurrent double degrees. The other degree, in Rick's view is more likely to be taken for reasons of intrinsic interest, whilst the LLB is added as "job insurance".

It should be mentioned that Rick has another grievance against his dean. Until three years ago, Rick and a colleague team taught a compulsory legal history and philosophy unit.

54 These terms were discussed in *supra* note 20, above.

55 Again this perhaps shows the influence of his ex-Jesuit mentor, as Rick here is using the image of the psalmist – see Psalm 121, v 1 to urge his students to see the bigger picture.

56 Similar criticisms are voiced by A Watson, "Introduction to Law for 2nd Year Students" (1996) 46 *Journal of Legal Education* 430, who compares this approach of using "disconnected scraps" (at 436) to teaching physics by means of "a few isolated experiments" (at 442). Twining, *supra* note 8 at 106 observes, giving examples, that "the law reports contain a massive collection of artificially selected and truncated slices of legal life which conceal and omit as well as inform".

57 The survey Rick has in mind is probably the survey of 50,000 graduates sponsored by DEET reported in *The Independent* (August 1994) p 58.

Although not a popular unit with all students, the teaching was rated highly and many students claimed it showed them “what the law can, and should, be about” and that Rick’s display of his “wide ranging learning” was a feature of the unit. It was at that stage that the “Greengrocer”, as Rick disparagingly refers to his dean, denounced the subject as “too theoretical” and “damaging” to student’s employment prospects. Rick was told that he was in any case already doing too much teaching and that “mothballing” the unit would give him the chance to do some “real research” so that, if he would only apply himself, he could become like his colleague, Dr Jane Henderson, who, with over thirty published articles at age 28, scarcely has an “unpublished thought”. Rick swears the dean made that last claim in a tone of unmitigated admiration.

We leave Rick as he enters the “youth of old age”. He likes teaching because it is a way of having time to explore and understand the law and he claims that to have the privilege of teaching others is to have the best opportunity to really learn something oneself. Although Rick has cut back on his workload to have more time with his family, he still gets a “buzz” from the youth and energy of his students, enjoys their brightness and the interplay of debate and is puzzled that some of his colleagues find law students arrogant. He thinks he does his best teaching preparation during periods of quiet reflection whilst walking his dog or working on the holiday home he is building at Lake Eildon. He likes the flexibility and time-shifting possibilities that academic life still offers and helped by his oldest child, an IT consultant, he has become adept at using the Internet to communicate to his off-campus students. Rick remains optimistic that eventually Australian law schools will follow emerging North American practices of allowing staff to specialise in teaching or research with parity of prestige for either option. For the time being, though, he is reconciled to hearing his dean’s muted praise for his teaching before moving the annual performance appraisal on to talk about his “quite inadequate DEETYA⁵⁸ points score”. Rick is annually counselled that he should forget about “intangibles” such as quality, scholarly teaching and committed community service because “these days”, claims his dean, the only things that count in the university are those matters that can be “objectively measured”. Rick’s attempts to talk to “the Greengrocer” about the “myth of objectivity” are brushed aside by the objection that 15 minutes is “quite long enough” for a performance appraisal provided we don’t get bogged

58 The Department of Education, Employment, Training and Youth Affairs, formerly known as DEET.

down with philosophy, which in any case can be “safely left” to colleagues in the Faculty of Arts.⁵⁹

Nigel – The Retired Judge

Nigel is a retired Judge who “came home” to Melbourne a few years ago from his interstate appointment. He retired slightly early because his younger partner, Bruce, was transferred back to Melbourne in his job as a trade union organiser. Whilst a judge, Nigel generously contributed guest lectures to the post-graduate legal training course run by the law school I was then a member of. I only met Nigel a few times over the years but was aware that students spoke highly of his helpful, practically oriented lectures. Given this slight acquaintance some years ago, I was somewhat surprised that he greeted me rather effusively in a Bourke Street bookshop in Melbourne’s CBD recently and overbore my protestations to insist on giving me “luncheon” at the “little Italian place” next door.⁶⁰

Some three hours later I knew Nigel a lot better and had some insight into how lonely retired judges could become. It seems people no longer laugh so appreciatively at their jokes and witticisms, if they see them at all, and there is no longer a retinue of Associates, secretaries and tipstaff to take care of routine matters and to generally massage the judicial ego. As we ate, Nigel, at my prompting, spoke about his career. As a student in the mid-60s, Nigel did a double degree in engineering and law, at the time an exceptional combination. He thought of himself as a typical Grammar (name of elite private school suppressed) “old boy” and deplored the anti-Vietnam War demonstrations led by that “pinko” Cairns⁶¹

59 On the annual performance appraisal as self-denunciation Bradney, *supra* note 27 at 24 writes: “During appraisal most academic workers now acknowledge their failure to realise the full potential of their productive capacity in a ritual which only avoids being a Maoist form of self-denunciation because of the privacy which attends it; this acknowledged failure is a necessary failure because our human capacity is to do ever more; the appraisal thus becomes a statement of perpetual penitence; moreover the failure is acknowledged in the sanctity of the confessional which ... leaves each individual constantly obsessed with their own self and oblivious to the shortcomings of their fellows.”

60 Presumably this was an example of judicial understatement, as *Florentino Grossi* restaurant in Melbourne, the dining place of choice for many of the Melbourne “establishment”, is not normally referred to in such diminutive terms. Vegetarians are advised, however, that for them the menu somewhat disappoints.

61 The late Dr Jim Cairns (1914-2003) was in the forefront of demonstrations against the Vietnam War and became Treasurer and Deputy Prime Minister in the Whitlam Labor Government.

and other “leftist rabble-rousers”. After university, Nigel developed a good practice at the Bar in the technical areas of building and intellectual property cases. His engineering degree and aptitude for technical matters ensured financial success and elevation to the ranks of QC by the age of 38.

Four years later it seems Nigel had a “mid-life crisis” before the term was possibly even invented. He left his wife and children and accepted his “true sexuality” after he met Bruce on a building arbitration matter. Shunned by many colleagues, Nigel felt he was professionally ruined. Fortunately for Nigel, both the then Premier and the Chief Justice in another State were sympathetic to his “plight” and arranged for Nigel’s name to be considered for a vacancy on the Bench of that State’s District Court. Nigel was a highly regarded judge, was an active contributor to functions arranged by the Law Society and, as a corrective to the concentration of most Evidence texts on criminal law examples, he wrote *Advocacy and Evidence in Technical Litigation*. Although now out of print, this work is regarded as a legal classic. Nigel finished his judicial career on the Federal Court, where his ability to render lucid judgments on often highly technical matters was much admired.

Last year Nigel, now retired, accepted an appointment as a part-time adjunct professor at one of Victoria’s law schools. Nigel relishes the work and the opportunity it gives him to mix with young students and to pass on the benefits of his experience. He also enjoys the lively discussion at the Staff Club and, with the encouragement of a new acquaintance who teaches feminist philosophy, has started “reading up” on “feminist jurisprudence”. This has been a somewhat difficult intellectual encounter for Nigel. A genuinely “nice” man, he had been largely unaware of any profound disquiet over the “masculine nature” of the law and the court room processes. He is now quite contrite and is seeking to incorporate such insights and critiques into his teaching of civil and commercial procedure. He claims that even contract law is not as objective and immune from a feminist perspective as one may have thought.⁶² Nigel has also re-thought many of his earlier political positions and last year wrote a letter of apology to Dr Cairns,

62 Nigel listed a number of names of feminist legal scholars, but in the luncheon context it seemed rude to take notes. I recall, though, that he mentioned that “old chestnut” in contract law, *Balfour v Balfour* [1919] 2 KB 571 had been subjected to an impressive feminist analysis (R Graycar and J Morgan, *The Hidden Gender of Law* (2nd ed, Sydney: Federation Press, 2002) 15-17) and that Mary Frug had written “a thoroughly convincing critique of three articles written by male contract law scholars” (M Frug, “Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law” (1992) 140 *University of Pennsylvania Law Review* 1029).

even though they have never met. Nigel said he had received a “most gracious and comforting” reply from Dr Cairns just a few months before he died.

Nigel sees the future of law teaching and legal academic life as needing to be both more radical and conservative. By radical he means students must be encouraged to develop a deeper perspective on the class and gendered nature of the law. He goes so far as to suggest he would have all law students read and discuss the book by Professor Margaret Davies, *Asking the Law Question*⁶³ as their sole compulsory activity in their first fortnight in law school.

On the other hand he realises that although most law students may choose never to practise or may leave practice quite quickly, he thinks it important that law schools increase their teaching of legal practice and procedure. He thinks most students wish to have the option of entering practice and also prefer to defer a decision about the precise direction of their legal careers for as long as possible. In his opinion, legal skills and procedures are in any case good general training for a variety of careers that involve communication skills, the formation and implementation of policies and concern for matters such as procedural fairness.

Nigel’s particular enthusiasm is an elective unit he is introducing to prepare those students who wish to seek positions as in-house or corporate counsel in industry. He is currently running this unit in conjunction with the daughter of an old friend who is corporate counsel for a major motor manufacturer. The idea is that students in this elective unit have a special work station, attend law school appropriately attired for a corporate position and work on a variety of problems and simulations that mirror the “general practitioner” nature of corporate counsel work. In addition to planned tasks, there are a number of time-sensitive “ambush” activities that must be completed under pressure that simulate the “real world” demands on corporate counsel. Despite the number of students who end up as working for private or government organisations, as far as Nigel is aware, this course is unique within Australian law schools. It is restricted to senior students and a ballot had to be imposed because it is very popular. The thing Nigel and the students find most gratifying is that the unit draws on a range of substantive law subjects, especially contract, labour and intellectual property law. The unit is a perhaps all too rare example of integrating the various subjects studied and skills acquired by students in the earlier phase of

63 M Davies, *supra* note 14.

their law. The senior students report that they feel they are actually being extended rather than just doing “more of the same” until they have the “points” for their degree. For his part, Nigel is surprised he has been drawn in so much. He admits he can only be so committed to this unit because he donates more time and effort than his part-time duties require and because he has none of the research obligations that “so oppress one’s colleagues”.⁶⁴

Reflections

We have considered the careers of three putative ideal types in the legal academy. Jane has specialised in an academic career from the start, and gone the PhD route that has long been far more common in other disciplines than in law, although this is starting to change.⁶⁵ Rick changed careers early and enlivens his classes with anecdotes from his legal practice. Concerned that some of his anecdotes are now a little dated, Rick for the last two years has worked pro bono at a community legal centre and is now also on its board of management. Nigel has come to academia later but still in time to enrich the learning of the law for many students as well as continuing his own journey in the law.

The route taken by Jane would seem to be the one that promises the best chance of a successful career. When she considers it necessary, Jane makes remarks about the importance of teaching but her professed conversion is somewhat unconvincing. For her it is research, and lots of it without getting bogged down in self-doubts about quality, that counts. Rick, who reads far more widely than Jane, perhaps dissipates his efforts too much and concentrates on his own teaching rather than doing more to nurture younger colleagues to become good and dedicated teachers. He knows that a PhD or equivalent is now essential for promotion at his university

64 It seems that Nigel and his colleague developed this unit about the same time as a similar course was being developed in the Centre for Law and Business Enterprise at Syracuse University in the USA. That innovation is discussed in C Day, “Teaching Students How to Become In-House Counsel” (2004) 51 *Journal of Legal Education* 503. An abbreviated syllabus, table of contents of course materials and sample assignments used in that course can be consulted at www.law.sy.edu/academics/centers/clbe/gencounsel/gc_alcourse.pdf (accessed 25 May 2004).

65 Between 1974 and 1985 the number of legal academics with PhDs rose from 16% to 18%: Pearce, *supra* note 10 at para 15.21; but in January 1985, 16% of full time legal academic staff were enrolled in higher degrees: Pearce at para 15.23.

and suspects that the “equivalent” means prestigious research grants and consultancies. He professes no interest in modifying his behaviour and reducing his dedication to teaching. Nigel, on the other hand, is in a completely post-career phase and seems happy to make a contribution “as long as people want me and good health permits”. That modest aspiration belies the emerging success of his team teaching and his own gains from joining the legal academy.

We take our leave of Jane, Rick and Nigel in Law Week, 2004, just as a major attack is launched on the continued adherence by the nation’s law schools to “chalk and talk” approaches to legal education. This criticism is levelled by David Weisbrot, President of the Australian Law Reform Commission and himself a former law dean. Professor Weisbrot urges the nation’s law schools to abandon “drumming in” case related rules and instead to focus more on “professional ethics, dispute resolution, negotiations, client interviewing, working with teams [and] having a greater identification with client interests”.⁶⁶

Our journey through the legal academy with our trium homenate⁶⁷ gives us some idea of each of their likely reactions to Weisbrot’s call to reform the LLB curriculum. Reading the article over breakfast, Jane will immediately have dictated a congratulatory message to “David” via her PAs voicemail box, saying how delighted she is to see David is still fighting “the good fight” for the broad generic skills “we” urged our fellow, “somewhat less progressive” law deans to adopt. We can only hope that Brian, the PA, is not too distracted by the sound of Hamish humming “The Vicar of Bray” in the background. Reading the article on the tram to work, Rick, who has a self-image of being permanently out-of-step, is having trouble adjusting to the fact that the “legal establishment” is catching on to the sorts of things he has been both advocating and doing for years. However, he cynically suspects it’s all destined for the “too hard basket” unless extra resources are forthcoming. Nigel is broadly approving of both Weisbrot’s critique and the suggested panacea, but he and his young colleagues discussing the article at morning coffee in the plush common room of the “sandstone law school” he teaches at, are concerned that Weisbrot’s agenda may just be added to calls from the profession for the inclusion of more “black letter law”. They fear this will cause a contraction in

66 B O’Keefe, “Law Schools Out of Touch”, *The Australian* (Wednesday, May 19, 2004) 34.

67 Jane’s inclusion in our study makes the use of the more usual *triumvirate* inappropriate.

the number of electives taught to accommodate an expanded core curriculum in the LLB and that an alliance between the new and the old “legal Leavesites”⁶⁸ will lead to an exclusion of critical legal perspectives from the curriculum.⁶⁹ For Nigel and his coterie the “quite appalling result” may be that future law graduates will have no understanding of the social class and gender-biased influences shaping our legal system.

Perhaps all that can be said with some confidence is that the debates about the purposes and forms of legal education will continue and that there is no one “correct” career pattern, but rather that a law school, like another place, has “many mansions”.⁷⁰ If this is so, the academy will require many gifts and abilities in pursuing the challenging and changing task of ensuring students have the chance to acquire a high quality legal education – whatever that means, or may come to mean. It is doubtful that Jane, Rick and Nigel collectively embody all of those gifts and abilities needed. Even Jane, despite her own international interests, has shown only a limited commitment to developing a curriculum to adequately prepare students for the global legal market place that some see as the essential

68 The term Leavesite refers to the views and influence of the acerbic literary critic Frank Leavis (1895-1978), who advocated the study of worthwhile literature (ie the works in the canon – the undisputed classics) and disapproved of the academic study of so-called “genre fiction” – crime and science fiction novels and the like – and of any deviation from a study of the text into extraneous background matters. See I MacKillop, *FR Leavis: A Life in Criticism* (London: Allen Lane The Penguin Press, 1995). Since 1992, under the influence of the “old Leavesites”, most Australian Law Schools prescribe eleven areas of core legal knowledge. These areas are colloquially known as the Priestly eleven, so named after the Chair of the Consultative Committee of State and Territorial Law Admitting authorities, the Hon Justice L J Priestly. The prescribed subjects are criminal law and procedure, contracts, torts, property, equity (including trusts), administrative law, federal and State constitutional law, civil procedure. See L McCrimmon, *supra* note 45 at 61.

69 M Thornton, “Portia Lost in the Groves of Legal Academe Wondering What to do about Legal Education” in I Duncanson (ed), *supra* note 48 at 11 argues cogently that the admitting authorities generally specify those subjects which “privilege property and profits in accordance with the capitalist imperative”. Thus property and land law, contracts, torts, company law and equity are compulsory, whilst “areas of practice associated with the less powerful sectors of society are unlikely to be included in the compulsory list”. Thornton suggests family, consumer, employment and trade union law as examples of subjects which, at best, enjoy elective status in LLB curricula. The determination of the shape and content of law school curricula by a process of collegial “horse-trading” of the type Nigel and his colleagues fear here is both named and condemned by M Le Brun, “Curriculum Planning and Development in Australia” in I Duncanson, *id* at 27.

70 *John* 14:2.

71 See H Arthurs, “The Political Economy of Canadian Legal Education” in Bradney and Cownie, *supra* note 2 at 28-31.

challenge facing law schools at the dawn of the 21st century.⁷¹ Rick, much as he deplores the artificiality of the current “paradigms” of legal education, does “his own thing” rather than publishing his views on teaching law and practical tips on methods for more effective teaching. Nigel may have some potential if his pioneering unit is picked up in a larger way, but it is doubtful if he has either the time or inclination to fight the battles against vested interests needed to achieve fundamental reform to the legal curriculum. The safest prediction is that debates over the ideal forms of legal education and the curricula required to implement such visions will continue⁷² and that within that debate there will be roles in the nation’s law schools for the Janes, Ricks and Nigels of the future.

72 Twining, *supra* note 8 at 162-171, discusses the process of a “creeping core” in British LLB curricula, so that “by 1994 the de facto ‘core’ effectively filled nearly two thirds of many curriculums and most students effectively chose vocationally ‘important’ options” (at 163). The advent of the “modern skills movement” in Britain, and the additional pressures it has brought, is discussed by Twining, *supra* note 8 at 168-171.

The Agency of Innovation: Subject Websites, their Perceived Value and Student Performance

*Andrew Field**

Ancora imparo¹

Introduction

The innovations of the information revolution, computers, the Internet and other increasingly frequent signs that we are now living in the 21st century have given rise to novel observations in all fields of human activity. In the teaching of the law in university courses, this is no exception.

The observation which gave rise to the present article arose through the teaching of an introductory course of commercial law to business students during Semester 1 2002. The students who are presently enrolled in BTF1010 Commercial Law at Monash University, Australia, experience many features their predecessors of past generations would recognise in attending university. For example, students attend lectures and tutorials. However, they are also assisted in their studies by the provision

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1 "I am still learning" attributed to Michelangelo (1475–1564). The motto of Monash University: see <http://www.monash.edu.au/about/motto.html> (accessed 20 August 2003).

of a number of technological teaching and learning aids. For example, lectures are accompanied by a series of PowerPoint projections; copies of those overheads can be obtained prior to the lecture via a subject website on the Internet. Various other teaching materials such as past exam papers, tutorial questions, sample assignment questions and answers can also be obtained from the website. In other words, the personal computer and its attachments are ubiquitous.

The relevant observation concerned a student who five weeks into semester was identified as answering a greater proportion of questions in a 20-student tutorial class and who had an above average command of the material being studied and discussed than her classmates. That observation alone was not exceptional. However, a further observation derived from an in-built counter on the subject website (or “unit” as they are called at Monash University) that keeps a tally of the times students access pages on the unit website, noted that this particular student had accessed the website² more than 150 times. In the teaching of Commercial Law, the WebCT site is used mainly as a course materials delivery platform. Thus, in view of the fact that the students would probably have only needed to access the site to download the unit tutorial questions book, the unit outline and five weeks of lecture notes, this figure appeared staggering. In fact, prima facie it was a figure four times what appeared to be the average of over 500 students enrolled in the unit. This observation posed in the author’s mind the question as to whether there was a correlation between the frequency of student access to the WebCT site and a student’s final performance in the unit, as represented by their final grade. Thus posed the hypothesis – that better performing students access the Commercial Law WebCT page more frequently than other students.

The realisation that this hypothesis had not been tested for this unit, which was one of the first to adopt WebCT at Monash University in 1999, and that there was little evidence of student use or appreciation of the teaching tool, gave rise to another question. The question was premised upon a smouldering debate between those academic staff who expend many hours in the preparation and maintenance of electronic aids, including PowerPoint slides, and those staff who dismiss such aids as either unnecessary or exercises in “spoon feeding”

2 Or “WebCT site” – described as such after the name of the company which provides the software. There are many other software packages which can perform the same tasks as those discussed here. WebCT simply happened to be the platform adopted by Monash University. Further information can be obtained from the manufacturer’s own website at <http://www.webct.com>.

students. Is the “Luddite” element of Academia correct to scoff at such “gadgets”?³ Therefore, the question was whether there was real value in using WebCT as measured in terms of correlations between student performance and frequency of WebCT access or in terms of the students’ own perceptions.

The study, which formed the basis of this article, was concerned with addressing these two questions. The article commences in “Developments in Teaching Technologies”, below, by arguing that the realities of modern lecturing and teaching in a university require an ability to embrace change.

Of course, not all change is positive. Not all innovations live up to the claims made in their favour. Hence, despite the claims that have been made regarding the strengths of WebCT as a teaching aid, the present examination was considered necessary. As a vast literature already exists questioning the effect of teaching technologies on student performance,⁴ the value of the technology had to be assessed in terms of its use – even merely the volume of its use by students, and conscientious students in particular. As discussed in “Justification: Comparability of Studies of Teaching Tools Experiences in Other Contexts”, prior studies have been made regarding student use of WebCT and its effect on student performance. However, these studies did not concern a sample of students as large as that enrolled in Commercial Law or which used WebCT as a materials delivery system for an on-campus face-to-face law subject.

The raw material that forms the basis of the conclusions in this article is presented in “Testing Groundwork Assumptions: Questionnaire Results” and “WebCT Use: Computer Generated Evidence”. “Testing Groundwork Assumptions: Questionnaire Results” presents information derived from a questionnaire administered to a sample of students to confirm previous assumptions concerning student use of computers, the Internet and specifically the subject website. This was important to gain an understanding of student perceptions and the validity of those perceptions. Finally, “WebCT Use: Computer Generated Evidence” presents the electronically

3 Fortunately, at the time of writing, the author has not actually seen any examples of lecturers repeating the actions of the original “Luddites”, who were members of the new English working class who, in the early 1800s set about breaking machines which they saw as making their own skills obsolete, and causing their wages to plunge. They took their name from their leader Ned Ludd. See A Briggs, *The Age of Improvement 1783-1867* (London: Longman, 1979) 182.

4 See discussion in Conclusion below.

generated evidence of student use of WebCT and identifies the evident trends.

Developments in Teaching Technologies

Socrates and the Modern Lecture Theatre

It has been said that “change is constant”.⁵ This should apply in teaching methods as in other areas of human activity.

Undoubtedly, the electronic technologies developed to assist teachers have made an overt and immediately apparent impact over the last 50 years. Indeed, they probably represent the most important development in the history of education after the invention of the printing press in the 15th century.⁶ Their impact can be seen from the introduction of audio amplification, mass photocopying for the provision of handouts to the introduction of overhead projectors and into the age of the Internet with the ability to create websites devoted to a university subject, filled with information ready for instant dissemination to a large number of students. For all teachers, the impact of these changes has been manifold and positive. However, there are also drawbacks, particularly in terms of time use. The reality is that it takes extra time to convert a prepared lecture into a series of overhead slides to display in lectures, to maintain a website or even to prepare copious amounts of photocopied handouts to distribute to students. Are these technologies necessary?

One topic of conversation that is probably a favourite in many university staff common rooms is to opine about the merits of the “Socratic” method of teaching. The Socratic method of teaching is premised on an argumentative discourse between the teacher and the student dating back 2,000 years; hence it is free of technology and may be used as a basis for refusing to adopt new teaching technologies.⁷

5 “Change is inevitable in a progressive country. Change is constant”, stated Benjamin Disraeli (1804–1881), British Prime Minister, speaking at Edinburgh in relation to the passing of the second *Reform Act* which increased the electoral franchise in Great Britain: *The Times* (30 October 1867).

6 John Man identified the coming of the Internet as the “fourth revolution” or turning point in 5,000 years of “human contact” (meaning communication). He identified the first as the invention of writing; the second as the invention of the alphabet; and the third as the invention of printing: J Man, *The Gutenberg Revolution* (London: Review, 2002) 1.

7 The author has heard senior staff describe the adoption of some of the technological teaching aids discussed in this article as “spoon feeding”, preferring to lecture with little more than a textbook at hand and a microphone amplification as the only concessions to the modern age of lecturing over 100 students at a time.

However, lecturers who cite Socrates as a reason to lecture with only “chalk and talk” (frequently without the chalk) to a lecture theatre filled with over a hundred students, where there is little hope for discussion with full group participation, misunderstand Socrates. Socrates’ views on teaching through argumentative discourse were expressed as follows:

I am sterile of wisdom, and the reproach that has often been made against me, that I ask questions of others, but never answer any by any chance myself, because I have nothing wise to say, is a true reproach. And the cause of it is this: it is divinely ordained that I should help others to bring forth, but bring forth nothing myself. I am, then, myself no such prodigy of wisdom nor can I point to any great invention, born of my soul: but those who pass their time with me, though at first they seem, some of them quite unintelligent, nevertheless in my company all, as time goes on, all to whom heaven is kind, progress amazingly – or so it seems to them and to others. And all the while it is clear that they have never learnt anything from me, but have discovered for themselves in their own minds treasures for their possession.⁸

Clearly, Socrates was outlining a teaching method used with a small number of students, whereby in focused discussion with them, he would challenge and cajole them into thinking out matters and discovering conclusions for themselves. This method is invoked by teachers in many disciplines when dealing with students, whether “one on one” or when student numbers are low. Thus, it is not difficult to imagine the Greek teacher with a small group of students engaged in debate. Crucially, it is clear that the teacher was giving individual attention to the students and guiding their intellectual progress. It is the teaching practice frequently pursued in classes with very small numbers or in tutorial groups with less than 20 students. Certainly, the Socratic goal to encourage students to make their own discoveries remains.

However, the modern reality of lecturing to groups in lecture theatres with seating for 350 students is clearly a different matter to the Socratic ideal. There can be no pretence of individual attention being given to each student and any lecturer who attempted to argue to the contrary should be

8 Socrates in conversation with Theaetetus, quoted in H F Carlill, *The Theaetetus and Philebus of Plato* (London: Macmillan, 1906) 148–151, reproduced in John Ferguson (ed), *Socrates: A Source Book* (London: Macmillan, 1970) 101.

challenged to identify by name all of the students in such a class from memory.

Teaching Technologies Employed in Teaching BTF1010 Commercial Law

Commercial Law is a core unit in the various Bachelor of Business degrees offered by the Faculty of Business and Economics at Monash University. This alone means that student numbers are high. Each year the unit has a total enrolment of approximately 1,000 students. The topics include contract law, negligence, liability for misrepresentations, the provisions of the *Trade Practices Act 1974* (Australia) which relate to these areas, agency, partnerships and an introduction to company law. Students' performances are assessed on the basis of two tasks. First, they are required to submit a 2,500-word assignment worth 30% of the final mark, including a headnote of a Supreme Court judgment and advice for a legal dispute for which the facts are provided. The second portion of the assessment is a three-hour end-of-semester examination.

The unit is taught over 13 weeks with a weekly two-hour lecture and a one-hour tutorial. For the tutorial groups, the techniques of a past millennium are no doubt as appropriate as ever they were. However, for the lectures that are delivered to hundreds of students simultaneously, it would be short-sighted to ignore modern teaching tools.

Some years back in the teaching of this unit, the techniques of "talk and chalk" were enhanced by the use of tools such as A4 plastic transparencies of notes and images that could be projected onto screens by overhead projectors. The introduction of the Microsoft PowerPoint software package allowed the creation of overheads with a very polished and professional appearance.

At some point in the 1990s, copies of these PowerPoint images could be accessed by students from university Internet sites, placed there by the university information technology staff at the request of the lecturer. This practice alone had two clear benefits. First, it provided students with a clear guide to the lecture. Secondly, it recognised that an increasingly larger portion of students at Australian universities were from non-English-speaking backgrounds. It meant that if the students could not follow the lecture then at least the written presentation allowed the students to take *something* out of the lecture. However, this process of uploading the images did take time on account of the multitude of such requests

and bureaucratic obstacles, rather than flaws with the actual technology. This time delay reduced the effectiveness of the tool. The only way to counter this time lag was to have the lecture written weeks ahead of time, thereby removing the lecturer's flexibility in teaching.

Since 1999 the teaching staff at Monash University have utilised the Internet and a unit-specific website, loaded onto the Internet via software provided by WebCT to assist in the teaching of the unit. The chief advantage of this system is that the software is simple enough to operate to enable the individual lecturer to control the material placed on the website without time delays. Accordingly, the Commercial Law WebCT site is essentially a materials delivery system, enabling mass delivery of materials to students within minutes of its creation. Generally, the materials placed there include:

- the unit outline;
- the unit tutorial book;
- copies of lecture overheads, placed on the site the week before the lecture for students to download and bring with them to lectures;
- the assignment questions set for the unit;
- an unreported appeal court judgment for which students will write a headnote as part of their assignment;
- past exam papers; and
- various links to law research sites and other study sites.

A further important advantage of the software is that access is only allowed to the site to designated users such as the students whose details, usernames and passwords are loaded at the start of semester. In short, the lecturer's and the university's intellectual property is at least partly protected as only enrolled students have access to the site.

In the early days of WebCT use in Commercial Law, the website was often used as a demonstration model in the university for other lecturers seeking to employ the software in their teaching.⁹ The opinions gained from such examinations of the system were such that its use has spread throughout Monash University and it is now the preferred Internet support platform for the delivery of materials,¹⁰ as well as

9 Viva voce evidence from Mr Brendan Sweeney, Lecturer in Charge of Commercial Law, in conversation with the author, about August 2002.

10 The evidence shows that it was sometimes an uphill battle to persuade teaching staff to examine the system. One communication from a proponent stated: "I am only suggesting you try a piece of a few cakes before buying any". Private email from the Flexible Teaching Consultant/Web Designer,

for other applications.¹¹ However, even in the teaching of commercial law in the five years since WebCT was introduced, there has been no study conducted to assess its value, whether as determined by students or as ascertained through their performance in the unit as reflected in their final marks. Hence, the present study, prompted by the observations noted above, but also justified by the lack of rudimentary information of this kind obtained in the teaching of this specific unit.

Justification: Comparability of Studies of Teaching Tools Experiences in Other Contexts

It might be argued that even if no survey had ever been made of WebCT use in BTF1010 Commercial Law, there should nevertheless be comparable studies in other similar law subjects. If there are such studies, does the present study have real merit or novelty?

The use of subject websites and information technologies has been quite common now for at least the last five years. Although over those years, there has been a great deal of discussion about the uses to be made of electronic media and the Internet specifically in the provision of university courses, the majority of such discussions and studies have been based in the wholesale provision of university courses “online”.¹² Similarly, as to studies specifically devoted to the uses of WebCT that might be comparable, they are not ideal in the present context. They can be distinguished from the present study in at least three different ways.

First, there are those claims based on the use of WebCT to provide courses entirely online. For example, the study by Yunfei Du and Carol Simpson on the “Effects of Learning Styles and Class Participation on Student’s Enjoyment Level in

Technology Services Group, Faculty of Business and Economics Monash University, to the Manager of Web and Internet Facilities, Information Technology Services, Monash University, dated 19 September 2000.

- 11 Other applications of the WebCT package not utilised in BTF1010 Commercial Law have been utilised in other units. These tools include tools for receiving assignment answers submitted by students, email facilities, bulletin boards, and discussion sites.
- 12 For an interesting discussion of the various arguments for and against the virtues of “online learning”, see “The Digital Degree”, produced by Joe Gelonesi, a radio news report broadcast on *Background Briefing*, ABC Radio National (Sunday 20 January 2002), transcript available at <http://www.abc.net.au/rn/talks/bbing/stories/s444980.htm>. See also C Allport, “Educating and Organising Globally: Perspectives on the Internet and Higher Education” (2001) (1 & 2) *Australian Universities Review* 44 at 21 for a discussion on the “virtual university” which examines some of the extreme arguments on this issue.

Distributed Learning Environments” has certain similarities with the present study. It used a student sample of a large class of 169 students. It based its findings on information gained via the WebCT software to determine how often students were using the site and how this corresponded to their final performance. However, the course being studied was different from the subject of the present study as it was entirely online and WebCT was being used as more than a materials delivery system. If the students did not participate, then they could not perform well in the subject.¹³

Secondly, there are those studies whose evidence was derived from classes with enrolments far below the 500 students that form the basis of the present study. For example, in a study on the use of WebCT in a journalism course, Jeffrey Merron wrote the following:

During this class, a student wrote to me, “I have discovered something about this medium that I had never noticed before. I have found that the bulletin board environment is more conducive to learning and discussion than any environment that I’ve been exposed to, including video, chat, and the traditional classroom setting. It allows students to interact in an intelligent, organized, and logical manner. We can enter at our leisure, contemplate the issues discussed, and develop a thoughtful experience.”

I received this unsolicited and unexpected comment about a third of the way through a summer class in 1998. The student, a Business Information Systems major taking one of his last classes before end-of-summer graduation, wrote this without conceivable motive: He was not a journalism major, I had never met him face-to-face, his grade for the class would have little significance on his academic record. The only rationale I could think of for this comment was: This student was excited about learning. Five years of student comments on classes had never turned up a gem like this one. What had I done?

I taught an online class.¹⁴

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- 13 Y Du and C Simpson, “Effects of Learning Styles and Class Participation on Students’ Enjoyment Level in Distributed Learning Environments”, Paper presented at the *Annual Conference of the Association for Library and Information Science Education Association* (New Orleans: LA, January 2004), 15-18.
- 14 J L Merron, “Managing a Web-based Literature Course for Undergraduates” (Winter 1998) (1)4 *Online Journal of Distance Education*: <http://www.westga.edu/~distance/jwin14.html>.

What follows is a discussion of a series of findings (“seven factors”) which contributed to success. Within their limits these findings are probably useful. Merron describes them as having helped him along the road to Damascus. However, the limits on the study and the feature that makes it less than entirely useful for a comparison with the present study is that Merron’s class sample had only 16 students.

Similarly, a further study from closer to home by Jennifer Curtin of Monash University discusses WebCT and online tutorials and, specifically, the uses of a bulletin board. However, Dr Curtin’s study sample class comprised only 14 students¹⁵ and it might be asked whether the benefits found in such a small group would be so apparent with 1,000 students per year.

These two studies illustrate the possibilities and use of WebCT. They are useful contributions to the general experience being generated of WebCT and contribute to the general pool of information. However, as to their bearing on the broader questions being discussed in the present study, the link between student performance and their use of WebCT, the value of the two studies is minor and not necessarily helpful. For producing a general test of such a hypothesis, these two studies dealt with too small a sample of students.

The third difficulty with other studies concerns the manner in which their conclusions were derived and the level of empirical supporting evidence. Some studies do address the use of WebCT as a materials delivery system, and also are based on the practices of large numbers of students. What might also appear initially pleasing in the context of the present study is that some of these studies *do* appear to be consistent with the hypothesis of the present study. For example, in a course entitled “Principles of Technological Change” conducted at Texas A & M University with an enrolment of 111 students, Tim Murphy and James Linder found that student use of WebCT did “contribute to student success”. The success was hampered only when “students do not have easy access to reliable computers”.¹⁶ Similarly, Debra Henley and Athol Reid in a study of student usage of WebCT in a Metabolism and

15 J Curtin, “WebCT and Online Tutorials: New Possibilities for Student Interaction (2002) 1 *Australian Journal of Educational Technology* 110-126; see <http://www.ascilite.org.au/ajet/ajet18/curtin.html>.

16 T Murphy and J Linder, “Building and Supporting Online Learning Environments Through Web Course Tools: It is Whippy, But Does it Work?”, paper presented at the *Annual Meeting of the Southern Association of Agricultural Scientists: Agricultural Communications Section* (2001), full text available at <http://agnews.tamu.edu/saas/Murphy.htm>.

Nutrition class found that student use of the subject site was high and that those students who achieved higher final marks accessed the WebCT site on average three times more often than other students.¹⁷

Similar results have been obtained in the business discipline. Anthony Basile and Jill D'Aquila analysed the use of WebCT in an accounting course of 128 students. They found that there was a positive response to the use of WebCT among their students and these students felt that they benefited from having such electronic resources.¹⁸

These studies are not exactly comparable with the present study, as when "student success" is described, it appears that these studies are registering *students' own perceptions* of success. Indeed, in each of these studies, the results were based on student surveys. The findings of those studies are perhaps comparable with the results of the questionnaire that was used in the present study (discussed below), although that questionnaire was anonymous and did not ask the students to rate their "success". However, they do not closely bear comparison with the empirical evidence that formed the basis of the findings of this study.

In discussing notions of successful student performance, the present study arguably has greater credibility than those studies referred to since a student's "success" is not equated with the students' own perceptions, but rather it is based on the students' final marks received for the unit. Their use of the WebCT site is not based on their own perceptions of how often they use the WebCT (although this information was obtained in the questionnaire discussed below) but rather on the electronically generated material.

Testing Groundwork Assumptions: Questionnaire Results

The value of the study appeared to be established. However, it was also apparent that there were certain other matters that would need to be considered before the study would carry any weight.

17 D Henley and A Reid, "Use of the Web to Provide Learning Support for a Large Metabolism and Nutrition Class" (2001) 29 *Biochemistry and Molecular Biology Education*.

18 A Basile and J D'Aquila, "An Experimental Analysis of Computer-Mediated Instruction and Student Attitudes in a Principles of Financial Accounting Course" (2002) *Journal of Education and Business* 137 at 137-143.

Student Access to Computers and the Internet

The most basic assumption adopted by universities in Australia in their implementation of information technologies, personal computers and the Internet as a means of communicating with students is that all students have access to these technologies. It is a matter that needs to be tested. The value of the WebCT site is only relevant to all students if all students have access to it. Regardless of how useful the technology is as a teaching aid, if a substantial portion of students cannot physically access it, then a lecturer's efforts in developing and maintaining such aids are wasted. Of more importance to the present study, if large numbers of students do not have access to the WebCT site then it is incorrect to make general statements regarding trends arising from student use of WebCT.

The Australian National Office of the Information Economy (NOIE) in its April 2002 report, *The Current State of Play: Australia's Scorecard*,¹⁹ noted that although 67% of Australian households owned a computer, only 49% of households were connected to the Internet. To say the least, such figures do not bode well for a university course that utilises the Internet for the delivery of a large portion of its materials. However, these figures arguably did not take into account such matters as a possibly higher percentage of home Internet connections, which might prevail in the residences of university students as opposed to general Australian households. It also did not take into account possibilities of student access to the Internet in other places such as at the university or at places of employment. Accordingly, to test these matters it was determined that an anonymous questionnaire would be administered to a sample of 100 of the commercial law students.

Students were asked: "Other than at University, do you have a computer which you can use with an internet connection?" This question was deliberately phrased with reference to university access since it has been suggested that all students have access to a computer as the university provides computer labs.²⁰ Yet, anecdotal evidence of student comments has indicated that frequently there were no computers available at the university

19 National Office of the Information Economy, *The Current State of Play: Australia's Scorecard* (Canberra: National Office of the Information Economy, April 2002) obtained at <http://www.noie.gov.au> (accessed on 29 October 2002).

20 For example: "Computers: Computers are an important aspect of university life. If you don't have your own computer, there are computer facilities at all Monash campuses providing student access to word processing, the Internet and email. Dial-in Internet access from home is also available to all enrolled students": *Monash University International Undergraduate Course Guide* (2003) 20.

because demand outstripped availability. Thus it seemed an important matter to determine whether students could access a computer elsewhere. Fortunately, the students' responses indicated that generally students did have access to computers elsewhere. The responses to this question were as follows:²¹

- At home 90
- At work 13
- Other 5
- Two students wrote in the word "no" even though the choice was not offered.²²

Accordingly, it was a safe and accurate assumption that virtually all students had access to a computer connected to the Internet through which they could access the WebCT page.

Further responses to related questions also indicated a degree of ease with which students were able to access the Internet and the WebCT page, although not through the efforts of the university's computer buying program but rather through students' own resources. This is illustrated by the following three questions and their responses:

- 1 To what extent do you have difficulty accessing a computer?
 - Greatly 5
 - Often 5
 - Sometimes 41
 - Not at all 48
- 2 Where do you most often access a computer for study/research purposes:
 - At university 17
 - At home 83
 - Other 3
- 3 To what extent do you find cost discourages you from accessing a computer?
 - Greatly 1
 - Often 5
 - Sometimes 41
 - Not at all 52
 - No response 1²³

21 As is apparent from the figures, students were permitted to give more than one response, explaining why the tallied figures total more than 100.

22 In light of this situation, copies of course materials and lecture overheads were placed on Reserve in the University Library for the use of these students.

4 To what extent do you often visit the university *only* to access computers?

- Greatly 1
- Often 9
- Sometimes 32
- Not at all 55
- No response 1

This information appeared to indicate that students generally have access to the Internet. Therefore, it would be safe to draw certain conclusions regarding a student's use of the Internet on the basis that all students had similar opportunities without a large number of students labouring under a special disadvantage related to computer access.

Student Perceptions of the Value of the Provision of Materials on Commercial Law WebCT Site

It was also considered useful to determine how students used the WebCT site. Obviously, an underlying assumption to the hypothesis that better students accessed the WebCT site more often was that they were accessing certain types of material. The most obvious type of material to access on a weekly basis would be lecture notes as they were placed on the site week by week and were acquired on a similar basis. This assumption was confirmed with the following question and responses:

1 Generally, what is your usual reason for accessing the Commercial Law WebCT page?

- Download lecture notes 97
- Other 25²⁴

Further, students confirmed that they appreciated the utility of having such notes provided prior to the lecture:

2 To what extent do you find it useful to have the lecture overheads provided before the lecture?

23 The responses to the question "If any, what sorts of costs discourage you from accessing a computer?" indicated that students were conscious of computer cost. The responses were: transport costs (5); printing costs (55); internet access costs (27); other costs (4).

24 The "Other" responses were divided almost evenly between accessing the WebCT page to access tutorial problems assignment notes. It is significant to note that over the semester there was one assignment set. Although a complete book of tutorial questions to be used during the semester was placed on the WebCT page at the commencement of the semester, anecdotally students reported downloading the questions required for a particular weekly tutorial week by week.

- Very useful 70
- Useful 7
- Not useful 1
- No response 1

Students demonstrated that they had developed the habit of accessing the WebCT page to access these notes:

3 To what extent do you obtain a copy of the lecture overheads prior to attending a Commercial Law lecture?

- Always 81
- Generally 15
- About half the time 2
- Sometimes 1
- Never 1

On a further positive note that evidences the students' embrace of new teaching technologies, it was also ascertained that students prefer obtaining these lecture notes from the WebCT site rather than from other possible sources.

4 Generally, when you obtain a copy of the lecture overheads, from where do you obtain it?

- WebCT 90
- Library Reserve 7
- Friends 5

Students Perceptions of their Own Use of the Commercial Law WebCT Site

It was clear that students over the course of the semester had developed a reliance on the WebCT site. There was clearly a habit developed during that time. The development of that habit would be empirically ascertained when the electronically generated tallies of student visits to the website were examined. However, even before that time, the questionnaire provided the opportunity to examine how the students reckoned the frequency of their own visits to the site. Hence the following questions and responses:

1 Generally, how often do you access the Commercial Law WebCT site?

- Every day 2
- Every second day 7
- Twice a week 42
- Once a week 48
- Less than once a week 1

Once again, the evidence from the students was that almost all of them were visiting the site at least once a week and over half of them twice a week. Leading the charge was a “hard core” of students who, if they did not visit the site every day, then did so every second day.

Confirmation of Student Appreciation of the Commercial Law WebCT Site

One further matter that was addressed in the questionnaire was concerned with the students’ perceptions of the value of the WebCT site. As noted above, it was ascertained indirectly that students preferred obtaining lecture notes from the WebCT site rather than from the university library. Therefore, it was suggested that they appreciated the site. However, the following questions provided a more direct response to this issue:

1 Would you describe the Commercial Law WebCT site as very useful, adequate, or not very useful?

- Very useful 23
- Adequate 76
- Not very useful 1

The response indicated not merely that students embraced the technology but, based on the large number of “adequate” responses, many students would like to see the uses of the site expanded. Nevertheless, they considered what was on the site to be of value to their commercial law studies, as evidenced by the responses to the next question:

2 To what extent do you believe that you could complete Commercial Law without the WebCT site?

- Definitely 4
- Probably 23
- Perhaps 37
- Probably not 36

Thus, when it came to addressing the final question, “To what extent do you believe that the Commercial Law WebCT site should be retained?” the results were overwhelmingly favourable with over 80% of students endorsing retention of the site. The results were as follows:

- Strongly agree 37
- Agree 48
- Don’t really care 7

- Not at all 4
- No response 2

Therefore, at this stage it might be ventured that the students' satisfaction with the use of a unit website as a delivery point for information to students has value at least in the perceptions of the students.

WebCT Use: Computer Generated Evidence

Identifying and Testing the General Trend

At all times, the WebCT program retains tallies of the number of times each individual has visited a page on the website, each visit being described as a "hit".²⁵ By tallying this information, one of the two questions raised in this article could be swiftly answered. The total number of visits to pages on the WebCT site could be compared with the students' final marks at the end of semester and it could be observed whether students who scored higher final marks accessed these pages more than other students. To determine general trends this could be achieved by simply determining the average number of hits recorded up to the end of semester by the students who scored a High Distinction.²⁶ The same would be done for the other mark grades.²⁷

However, because the WebCT program does not perform such a process electronically, this meant that the figures would have to be entered manually onto an Excel spreadsheet, which could then be used to determine the averages. Thus, using this method the following average numbers of "hits" (or WebCT page visits) were recorded across grades for the thirteen week semester:

25 This can be found under the "Student Tracking" function.

26 A mark of 80 or greater.

27 Distinction, 70–79; Credit, 60–69; Pass, 50–59; and fails 40–49. Students recording a final mark of less than 40 were not tallied as such students would include those who had withdrawn from the unit, discontinued the unit, or somehow remained on the system through some other administrative occurrence. For the purpose of the study, the presence or lack thereof is inconsequential as any trends should be apparent – or not as the case might be – across the remainder of the student body.

Table 1: Average total number of hits on Commercial Law WebCT site pages across grades

	Total Hits
High Distinctions	90
Distinctions	84
Credits	76
Passes	75
Fails (40-49)	61

The difference between successive grades is not great, although there is a noticeable trend. The difference between the High Distinction students and bare Pass/Fail students is relatively pronounced. The most successful students did appear to be using the WebCT site and were more active on that site than the Pass and Fail students. Accordingly, on this rather simplistic basis the hypothesis posed appears to have been borne out.

However, the rule of the hypothesis in isolation does not provide useful lessons with which to instruct students. Despite the trend, it does not follow that a student who accessed the WebCT page will automatically achieve a final mark of a High Distinction.²⁸

Explaining the Trend: How the WebCT Page Was Used

An explanation as to why the High Distinction students' frequent use of the WebCT site contributed to their success was to examine *how* they used the page. Within the terms of the present study and the evidence obtained, this meant examining whether there were any trends revealing peaks in use of the WebCT site at any points during the semester.

It was considered useful to see if any trends could be observed between student use at three-week intervals. Unfortunately, although the WebCT system keeps a cumulative tally for each student, it does not keep a progressive record of visits at certain intervals. Hence, if a student's record was examined on the WebCT hit counter in the exam week, the only information which would be available would be the total number of hits. Accordingly, to record the progressive tallies for weeks 6, 9, 12 and during the exam week, it was necessary to print out the figures for the 506 students at those three-weekly intervals, then manually load them onto the Excel spreadsheet.²⁹ This resulted in the manual loading of over 2,000 figures.

²⁸ The student who recorded the highest number of hits (271) scored a pass mark of 57.

The result was that for each of the students a cumulative figure was recorded of how many visits to the pages on the WebCT site on four particular dates. For example, for one student who finished with a final mark of 81 the entries were recorded as follows:

Table 2: Example of recorded WebCT hits as entered for one student

WebCT Wk 6	WebCT Wk 9	WebCT Wk 12	WebCT Exam Wk
41	50	67	72

Across the entire group of over 500 students, this information produced the following data regarding average numbers of visits to WebCT pages at three-weekly intervals over the semester, also presented as percentages of the total visits for the semester:

Table 3: Average total number of WebCT page hits across grades as recorded at intervals

Grades	Week 6	Week 9	Week 12	Exam Week
High	46	61	81	90
Distinction	(51%)	(68%)	(90%)	(100%)
Distinction	38	56	75	84
	(45%)	(67%)	(89%)	(100%)
Credit	34	49	67	76
	(45%)	(64%)	(88%)	(100%)
Pass	31	46	64	75
	(41%)	(61%)	(85%)	(100%)
Fail (40–49)	26	39	52	61
	(43%)	(64%)	(85%)	(100%)

29 No totals or entries of any kind sought before the week 6 total. In other words, no week 3 total was sought. This was due to a recognition that a large number of students would not be able to physically access the WebCT page in the first three weeks of semester. Past experience had attributed this to administrative problems which had prevented students' user names being loaded onto the system, late enrolments, and system failures which had made use of the site very limited in the first couple of weeks of semester. Thus, it was considered that any tallies recorded for week 3 could carry little compelling weight.

The clearest trend evidenced from this information is the way the High Distinction students stand out. In the first half of the semester, not only did these students access the WebCT site more often than other students, but they also accessed the site in the first half of semester more often than they did in the second half of semester. More than 50% of the High Distinction students' activity on the WebCT site occurred before the half-way mark of the semester. Further, as a percentage of their total activity on the WebCT site they remained ahead of all other groups of students until the final weeks before the final exam although at a decreased rate. To adopt racing parlance, the High Distinction students "departed their blocks quicker" than the other students. They accessed the WebCT site earlier than other students, explored, examined and familiarised themselves with it at greater length than other students. As the semester's end approached, their activity decreased, presumably as they revised the material already obtained and prepared for the exam.

The same trend can also be observed by simply comparing the average number of hits before week 6 and after week 6, that is, between the first half of the semester and the second half.³⁰

Table 4: Average total number of hits on WebCT pages recorded across grades before week 6 and after week 6 in a 13-week semester

	Up to Week 6	After Week 6
High Distinctions	46	44
Distinctions	38	46
Credits	34	42
Passes	31	43
Fails (40-49)	26	34

Once again, the same information presented in another format demonstrates the same trend. Whereas High Distinction students' use of the WebCT site was appreciably higher in the first six weeks of the semester, reaching into the forties for numbers of hits (and being the only grade band of students to achieve this), it then decreased in the second half of semester. Conversely, all other grade bands increased. The other pass grades climbing from around thirty hits in the first six weeks of semester to figures in the forties for the second half of the

³⁰ Figures for after week 6 were determined by subtracting the total number of hits from hits recorded up to week 6.

semester. In brief, in the second half of the semester all pass grades, including High Distinctions, recorded comparable numbers of hits. It was in the first half that the High Distinction students differentiated themselves.

The trend suggests that better performing students did access the commercial law website more often than other students. However, the evidence indicates this is attributable to them being more attentive and active on the site earlier than other students.

Further, such information should not come as a surprise. Whether frequent accessing of the website contributed to these students' success or whether the evidence of their frequent use of the website was simply an early indicator of the students most likely to perform well, that evidence is nevertheless reflective of the value of the website as perceived by these students. Better students use the website.

Confirming the Trend

The trend drawn from bare averages alone can be statistically open to question. Indeed, if only because a great many more students recorded Pass and Credit grades than High Distinctions, the claims made for those latter students and their study habits are on less certain ground. This is because, if one or two students recorded a very high number of hits, it would lift the average number of hits for a small number of High Distinction students appreciably, as opposed to the effect of a similar number of hits on the average of a grade band containing over 100 students as in the Credit or Pass grades.

Accordingly, to make the evidence of the figures more compelling by subjecting them to a further statistical test, median values were obtained to see whether the trend of the averages was replicated. Assuming the trend was replicated, the medians would be useful for supporting the evidentiary value of the averages referred to above, providing a further description of the material obtained. The median values returned for the first six weeks and the second six weeks appear below in Tables 5 and 6 (non-shaded cells).

Table 5: Medians for total number of hits for first six weeks

<i>Kruskal-Wallis Test: First six weeks versus Grades</i>				
	Nos	Median	<i>Average Rank</i>	Z
High Distinction	14	38.50	309.3	2.21
Distinction	64	36.00	271.6	2.59
Credit	154	30.54	243.5	1.37
Pass	165	25.00	216.3	-1.83
Fail (40-49)	65	21.00	185.5	-3.00
	462		231.5	
<i>H = 21.63 DF = 4 P = 0.000</i>				
<i>H = 21.64 DF = 4 P = 0.000 (adjusted for ties)</i>				

Table 6: Medians for total number of hits for second six weeks

<i>Kruskal-Wallis Test: Second six weeks versus Grades</i>				
	Nos	Median	<i>Average Rank</i>	Z
High Distinction	14	35.50	274.4	1.22
Distinction	64	30.50	246.0	0.94
Credit	154	28.00	243.6	1.38
Pass	165	28.00	229.2	-0.27
Fail (40-49)	65	24.00	185.1	-3.02
	462		231.5	
<i>H = 11.36 DF = 4 P = 0.023</i>				
<i>H = 11.36 DF = 4 P = 0.023 (adjusted for ties)</i>				

Tables 5 and 6 reveal the medians did mirror the trend observed in the averages. However, as a further measure the medians were finally subjected to statistical non-parametric testing to confirm the trend was more than a coincidence.

The relevant test applied was the Kruskal-Wallis test and an explanation of its results is set down in the notes below.³¹ The data in the shaded portions of Tables 5 and 6 have been provided for reader's verification of this test. Suffice to say, the trend was confirmed.

Therefore, the hypothesis identifying the correlation between student performance and the frequency of their use of the WebCT between remains intact.

Conclusion: What Does it Mean?

The adoption of modern teaching aids, including the Internet and websites, recalls a similarity between law teachers and practitioners. On the one hand, there are those law teachers who maintain that the teaching methods of a century ago are still the most effective and who turn their backs on anything that might suggest change. Conversely, there are law lecturers who bear an uncanny resemblance to their brethren in practice,³² desiring to use the latest equipment the modern

31 These tests were administered by Mark Hastings of the Department of Econometrics and Business Statistics, Monash University. A non-parametric test was required because the statistical population distribution of the data set is unknown (ie supra note 30 above). Readers seeking further explanation of the Kruskal-Wallis test and non-parametric tests should consult A Selvanathan, B Selvanathan, G Keller and B Warrack et al, *Australian Business Statistics* (3rd ed, Victoria: Thomson, 2004), Ch 16: "Non-parametric techniques: Comparing two populations". The test was applied through the Minitab software program version of 14 produced by Minitab Inc, and available at <http://www.minitab.com>. The purpose of this test is to determine if at least one median is statistically different from the other medians. To this end, the semester was split into two 6-week periods. The application of the Kruskal-Wallis test on grading and median hits resulted in an overwhelming rejection of the hypothesis that the medians are the same. To explain, for the first six weeks it was found that at least one median was different. This was supported by the p-value for the first six weeks being 0.000. Therefore, it was concluded at the 1% level of significance, at least one median was different. Similarly, in the second six-week block, it was also found that at least one median was also different. The p-value for the second six weeks was 0.023. Therefore, it was concluded at the 5% level of significance, at least one median was different. This is also in support of the descriptive statistics noted in the averages above, and the discussion below. In other words, the Kruskal-Wallis test as applied to this data set supports the cogency of the material forming the basis of this discussion in this article. Note that the figures in these tables have been rearranged from the order in which the Minitab program produced them. Specifically, Minitab produced the data beside each mark in alphabetical order of the marks (ie "C", "D", "HD", "N" and "P"). They have been rearranged in the order High Distinction, Distinction, Credit, Pass and Fail so as to be consistent with the other tables produced in this article. This information should be considered for those readers seeking to test this data.

32 The author does recognise that this similarity is frequently due to the fact that the law teacher is frequently a "moonlighting" practitioner.

age has to offer, the only difference being that the practitioner will pursue the latest motor vehicle, whereas law lecturers are slightly more limited in the gadgets they can afford. The software programs by which websites are created have been one example of such technology being swiftly embraced by these open-minded people. However, an associated danger is to incorporate such devices as an integral tool of any course and to use precious resources of time and effort – commodities the legal academic can ill afford without actually seeking to ascertain the value of such devices and expenditure. Is the balance “in the black”?

It is difficult to convince lecturers who do not use such technologies in their teaching that there are good educational reasons for using these technologies.

This article has set down some evidence as to why the adoption of websites, a dedicated WebCT site in this case, even as mere platforms for the delivery of materials, is a tool to be embraced. Even taking the students’ view that the website is a valuable tool and that they would encourage its retention, it was observed that generally those students who accessed the website also appear to have been the students who performed to a higher standard in the unit. In other words, all students appreciate the tool and the better students particularly appreciate the website.

Identifying this correlation has been the major focus of this article. At the time the information was gathered, there was little such information regarding this particular use of a website in a law unit of comparable size. Since that time this trend in noting a link between the student use of a dedicated website with student performance has been observed elsewhere in similar circumstances in law courses.³³ No doubt, it will be replicated in other studies yet to be completed. Such studies provide greater statistical persuasiveness to the argument in favour of using such technologies, beyond the descriptive nature of the evidence presented in this article. Speculative reasons for the trend observed can only be suggested.

However, the tempting theory that the use of the new technologies in teaching improves student performance is not directly reflected upon in this article. One reason for

33 NO Stockmeyer of the Thomas M Cooley Law School, Lansing, Michigan, USA, upon reading a brief summary of the author’s results as presented in the bulletin of the North American based Institute for Law School Teaching, *The Law Teacher* (referred to in note 34 above), undertook a similar survey which confirmed the results presented in this paper. See “Link Between Use and Grades Confirmed” (unpublished paper, August 2003).

this is that there is no comparable data evidencing how the introduction of earlier teaching technologies in the unit affected student performance. Further, to mount an argument without such a clear comparison would be to run contrary to numerous studies reported over the last 40 years that indicate that different technologies or media utilised in teaching do not affect learning outcomes.³⁴ Indeed, as Richard Clark wrote in 1983 to describe the argument: "The best current evidence is that media are mere vehicles that deliver instruction but do not influence student achievement any more than the truck that delivers our groceries causes changes in our nutrition."³⁵

Although this appears to be the predominant view,³⁶ Clark can also cite a series of studies which reported that the novelty of new technologies would, at least for a time, result in increased effort or persistence on the part of students which, in turn, would lead to gains in achievement.³⁷ Although he notes that the effect was found amongst secondary students and not tertiary students using computers,³⁸ the "novelty" effect does at least hold the possibility that the new technologies may stimulate students. However, balanced against this possibility is an idea with which Clark opens his survey: that what might actually lead to an improvement in student performance at the same time as the introduction of a new teaching technology is actually the "curricular reform which accompanied the change".³⁹ As Wilbur Schramm noted in his book, *Big Media, Little Media*, although teachers may spend a great deal of time determining which is the best medium to employ in their teaching to determine whether the "big media" (new technologies) are really worth five times the cost of the "little media",⁴⁰ learning "seems to be affected more by what is delivered than by way of delivery system".⁴¹ Despite this view, if the introduction of a new technology has the effect on teachers of stimulating them into revising or refreshing their

34 Although written over 20 years ago, a substantial survey of this literature is provided by R E Clark, "Reconsidering Research on Learning from Media" (1983) 53(4) *Review of Educational Research* 445.

35 Id at 445.

36 R Dubin and T C Taveggia, *The Teaching-Learning Paradox* (Centre for Advanced Study of Educational Administration (Eugene: University of Oregon, 1968).

37 J Kulik, C Kulik and P Cohen, "Effects of Computer Based Teaching on Secondary School Students" (1983) 75 *Journal of Educational Psychology* 19, cited in Clark, supra note 38 at 450.

38 Id.

39 Id at 445.

40 W Schramm, *Big Media, Little Media* (California: Sage Publications, 1977) 275.

41 Id at 273.

curricula at regular intervals, then the outcome will surely be better for students.

Therefore, in this context there is a possibility that there may be a causative link effect – albeit an indirect link – between new teaching technologies and student performance. Of course, there are other matters that may have stronger claims to affecting student performance. For example, study time and the study environment would be strong contenders. Certainly, a student’s natural intellectual abilities cannot be discounted.

However, this article has been concerned with identifying whether those better students use a particular technology. It has established that those students who will perform well will generally use this technology. Therefore, subject to exceptions,⁴² evidence of frequency of student access can assist teachers in identifying students who already have the capacity to do well, with or without the website. Add to this the evidence that the better students value websites and that the majority of students value the site, there appears at least to be engagement by students with their studies.

Socrates would probably have approved.

42 Indeed, as if to confirm this possibility and defy the trends of the group of 506 students as a whole, it is perhaps pertinent to note that the student who finished first in BTF1010 in Semester 1, 2002 with a High Distinction recorded only 66 hits on the WebCT site – a tally just above the average for a Fail student! This is, presumably, the “exception which proves the rule”.

Reform of Professional Legal Education at the University of Hong Kong

*Richard Wu**

Introduction

In 2000, the Hong Kong government appointed two professors from Australia (“the Consultants”) to conduct a review of legal education in Hong Kong. The Consultants released their report, “Legal Education and Training in Hong Kong: Preliminary Review” (“the RLET”) in August 2001.¹ This is the most important document on legal education for Hong Kong in the past three decades. The RLET recommended, inter alia, the abolition of the Postgraduate Certificate in Laws course (“PCLL”)² run by the Faculty of Law at the University of Hong Kong (“HKU”).³ Instead, they proposed the establishment of a new Legal Practice Course by the local legal profession outside the university.⁴

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1 The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Report of the Consultants, Legal Education and Training in Hong Kong: Preliminary Review* (“the RLET”) (Hong Kong: The Steering Committee on the Review of Legal Education and Training in Hong Kong, 2001).

2 The PCLL is a one-year course providing professional legal education to law students after they finish their undergraduate legal studies but before they enter the legal profession of Hong Kong. According to D M E Evans, the founding dean of the Department of Law at HKU, the abbreviation of PCLL was chosen, instead of PCL, to avoid confusion with the BCL (ie, Bachelor of Civil Law) granted by the University of Oxford. See D M E Evans, “Taken at the Flood: Hong Kong’s First Law School” in R Wacks, *The Future of Legal Education and the Legal Profession in Hong Kong* (Hong Kong: Faculty of Law, 1989) 31.

3 *Supra* note 1, para 8.1.5 at 200.

4 Q Chan, “Radical Change to Law Course Proposed”, *South China Morning Post* (5 February 2001) 6.

In response to the RLET, the HKU Law Faculty has reformed its PCLL in the past three years.⁵ In this article, I attempt to trace and analyse the reform of PCLL at HKU. I will first elaborate on two UK documents important to the original PCLL (“old” PCLL) at HKU. Secondly, I will highlight various reports on legal education issued in the United Kingdom (UK) and their relevance to the reform of professional legal education in Hong Kong. Thirdly, I will describe the development of other PCLL courses in Hong Kong to provide the context for understanding the evolution of PCLL at HKU. Fourthly, I will analyse the distinct features of the “old” PCLL, and its major “defects” as pointed out in the RLET. In addition, I will explain several major issues facing the “old” PCLL. Then I will elaborate on several distinct features of the reformed PCLL (“new” PCLL), analysing the progress and implementation issues of the “new” PCLL. Finally, the future reform directions of the “new” PCLL will be outlined. I will then summarise the achievements of the “new” PCLL, with particular reference to the criticisms of the “old” PCLL by the RLET.

Two Important UK Documents Shaping the Birth of PCLL at HKU

In the late 1960s, the Hong Kong government set up a Working Party to review professional legal education and training in Hong Kong. As Hong Kong was still a UK colony at that time, the prevalent UK model and ideas on professional legal education heavily influenced the thinking of the Working Party. In particular, two UK documents were important in understanding the establishment of PCLL at HKU.

The first document was a paper delivered by Professor LCB Gower in 1967 called “The Inter-relation of Academic and Professional Training”.⁶ In his paper, Gower discussed the distinctions between academic and professional training, their relationships to each other, methods of instruction for academic and professional training, and appropriate bodies to undertake academic and professional training. Gower brought up many insightful ideas on professional legal education. For example, he argued for a common course of initial professional training as follows:

5 A Li, “Law Faculty Fights for Postgraduate Course”, *South China Morning Post* (6 August 2001) 2.

6 LCB Gowers, “The Inter-relation of Academic and Professional Training” (1967) *Journal of Society of Public Teachers of Law* 9 at 434-450.

During the initial training period the embryo lawyer generally does not know into which branch of practice he will go. He needs a training which will allow him the maximum possible mobility subsequently. In any case, there is a substantial core of expertise common to all branches of legal practice. Initial professional training should seek to produce decently well qualified general practitioners – not narrow specialists.⁷

In the same paper, Gower also argued that universities should undertake professional training in countries that do not have professional institutions, providing such training, for example, as in the UK at the law schools of the Inns of Court and the Law Society, as follows:

If university law faculties exist and professional institutions do not, every effort should be made to avoid the enormous expense of establishing the latter. Provided that universities are prepared to recognize, as they should, that it is part of their role to undertake professional training, provided that they are located near the town centres, provided that they can recruit the right sort of instructors with recent practical experience, provided that their relations with the profession are sufficiently cordial and intimate, it is far better that they should handle this part of the training also (ie professional training).⁸

The other document influential to the establishment of the HKU's PCLL was the Report of the Committee on Legal Education, chaired by Mr Justice Ormrod, which was published in 1971 ("the Ormrod Report").⁹ The Report marked a "turning point in the history of legal education"¹⁰ making far-reaching recommendations on legal education reforms in the UK and its colonies, including Hong Kong. The most important recommendation of the Report was, undoubtedly, the separation of legal education into three stages: the academic, professional and continuing education or training stages.

The influence of Gower's paper and the Ormrod Report in the Working Party's deliberations on the future model of legal education for Hong Kong was obvious. For example, the Working Party adopted a model of separation for academic and professional legal education similar to the model

7 Id at 441.

8 Id at 448.

9 Great Britain, *Report of the Committee on Legal Education* (Ormrod Report) (London: HSMO, 1971) Cmnd 4595.

10 W Twining, *Blackstone's Tower* (London: Sweet & Maxwell, 1994) 36.

recommended in the Ormrod Report. The Working Party also considered the HKU Department of Law, set up in 1969, to be the institution providing academic legal education.

However, in the choice of institution undertaking professional legal education, the Working Party considered three possible options. The first option was the establishment of a professional law school separate and distinct from HKU and modelled on the UK system.¹¹ The second option was a course arranged by the HKU Department of Extra-Mural Studies. The third option was a course offered by the HKU Department of Law.

After careful deliberations, the Working Party rejected the first option on two grounds. First, the cost of setting up a separate professional school was expensive.¹² Secondly, it was difficult to attract quality staff, both full-time and part-time, for a new professional school.¹³ The Working Party also rejected the second option on two grounds. First, the HKU Department of Extra-Mural Studies would not be able to attract competent teachers. Neither would they be able to provide adequate premises for running a professional legal education program. In the end, the Working Party recommended that the HKU Department of Law should provide professional legal education, as this “provides the best safeguard against the lowering of standards during the degree course and the postgraduate stage”.¹⁴

As one can see, this institutional choice was in line with Gower’s thinking with the university providing professional legal education instead of a professional school set up by the profession outside the university. Moreover, HKU’s PCLL had adopted a common curriculum since its inception in the early 1970s, which also echoed Gower’s idea of a common course of initial professional training.

11 In the 1960s, the College of Law and Inns of Court School of Law, institutions separate from the universities, provided the “professional-stage” training for future solicitors and barristers in England.

12 In para 18 of the Working Party Report, it was stated that: “The establishment of a professional School of Law (separate from the Department of Law of the University) would require considerable capital expenditure and would be costly to maintain as a separate institution. It could not be financed out of fees from students and grants from the professional bodies *without making unrealistic or unreasonable demands on members of the profession.*” See D M E Evans, *Legal Education in Hong Kong* (Hong Kong: Hong Kong University Press, 1974) 40.

13 In para 23 of the Working Party Report, it was stated that “it would not be easy to secure the services of qualified teachers. The rates of remuneration would probably be unattractive to busy local practitioners”: see Evans, *supra* note 12 at 42.

14 Paragraph 26, the Working Party Report. See Evans, *supra* note 12 at 44.

Other UK Reports on Legal Education Reform and their Impacts

Apart from Gower's paper and the Ormrod Report, several other UK reports were influential in the development of legal education in the UK and its colonies. The Benson Report¹⁵ called for a fundamental reform of the teaching methods and examination style to discourage cramming on the part of students, as "vocational training should be more than an exercise in memorising facts".¹⁶ The Report also, like Gower's paper, recommended a joint vocational course for the intending barristers and solicitors in the future. As the Benson Report stated:

This is not to say that in the future barristers and solicitors should share all subjects of vocational training, but a considerable common core would in our view be in the public interest.¹⁷

In the late 1980s, the Law Society and Bar Council of England appointed a Committee to review the future of the English legal profession, which published what is widely known as the Marre Report.¹⁸ The Report identified a wide range of intellectual and practical skills that law students needed to acquire at the academic and vocational stages of legal education. For the academic stage, the Marre Report recommended the teaching of the following skills:

- 1 an adequate knowledge of substantive law;
- 2 an ability to identify legal issues to construct a valid and cogent argument on a question of law;
- 3 an ability to carry out research making intelligent use of all source material;
- 4 an ability to understand the underlying policy and the social context of any law;
- 5 an ability to analyse and elucidate an abstract concept;
- 6 an ability to isolate elementary logical and statistical fallacies;
- 7 an ability to speak and write clear, and succinct English;
- 8 a cultivation of a capacity for active learning;

15 Royal Commission of Legal Service, *Final Report* (Cmnd 7468, HMSO, London, 1979) ("The Benson Report").

16 *Id.* at para 39.44.

17 *Id.*

18 Report of the Committee on the Future of the Legal Profession, *A time for Change* (General Council of the Bar and the Law Society, 1988) ("The Marre Report").

- 9 an ability to ascertain and verify the relevant facts of any legal problem;
- 10 an ability to analyse facts to construct and criticise an argument on a disputed question of fact.¹⁹

For the vocational stage, the Marre Report recommended the teaching of the following skills:

- 1 an adequate knowledge of legal practice and procedure;
- 2 an efficient grasp of techniques for applying the law, for example problem-solving skills;
- 3 an ability to draft legal documents;
- 4 an ability to present effective oral and written arguments in a variety of settings;
- 5 an adequate knowledge of professional and ethical standards;
- 6 an ability to communicate effectively with clients in a variety of settings;
- 7 an ability to establish a good relationship with clients while eliciting relevant information;
- 8 an ability to help clients understand options available to them so that they can make an informed choice of action or direction;
- 9 an ability to negotiate effectively with the other party or their representative;
- 10 an ability to assess when the client might benefit from referral to another professional person, in addition to legal advice, and to propose this referral without losing the client's confidence;
- 11 an ability to help clients to manage the powerful feelings which accompany legal proceedings, both in civil and criminal cases;
- 12 an ability to advise clients without using legal jargon and, as far as possible, without inflaming the acrimonious feelings that may exist between the parties concerned;
- 13 an ability to co-operate with other professional persons involved in the same case or field of work;
- 14 an adequate knowledge of effective organisational and management skills, including the use of modern technology.²⁰

19 *Id* at Ch 12. A list of these skills is set out in *Law Notes*, Vol 107(10) at 278-279.

20 *Id*.

In addition, the Marre Report recommended that the vocational stage should focus on teaching practical skills by using modern teaching and examining methods.²¹ It is noteworthy that most, if not all, of these skills are now taught in the “skill-based” professional legal educational courses around the world, including the “new” PCLL at HKU, discussed below.

In the 1990s, the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (“ACLEC”) published a comprehensive report on legal education in the UK. The report emphasised that law students should acquire professional skills in the stages of vocational course and in-service training.²² It also affirmed the mode of active teaching and learning methods adopted in the new professional legal education courses established in the UK, namely, the Legal Practice Course and Bar Vocational Course. As one can see below, the “new” PCLL at HKU also emphasises skills teaching and active learning.

However, the ACLEC Report criticised the UK model of legal education for its rigid division between academic and vocational stages of legal education, rather than treating it as a continuum. Such a model encouraged the separation between theory and practice, between “academic” knowledge and “professional” expertise, resulting in the relative neglect by law schools of subjects such as civil and criminal procedures, and professional ethics as being regarded as too far removed from reality.²³ Such a model of legal education also led to “an unnecessary compartmentalisation” of the vocational and academic aspects of legal education.²⁴ The model also led the professional bodies to see themselves as:

regulators of the law degree rather than facilitators and partners with the universities. For their part, the university law schools have been suspicious and resentful of the professional bodies.²⁵

As one can see below, HKU Law Faculty will reform its three-year LLB program into a four-year program, folding back all the “knowledge-rich” PCLL subjects (such as civil and criminal procedures) into its LLB program. Such reform

21 See the Marre Report, *supra* note 18 at Ch 14.

22 The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (London: ALEC, 1996) (“The ACLEC Report”), para 2.4.

23 The ACLEC Report, *supra* note 22 at para 2.8.

24 The ACLEC Report, *supra* note 22 at para 2.11.

25 The ACLEC Report, *supra* note 22 at para 2.12.

should result in a better integration of the academic and vocational stages of legal education in Hong Kong than in their UK counterparts.

Historical Development of PCLL courses in Hong Kong

The PCLL at HKU enjoyed the status of a monopoly until the early 1990s, when the other law school at City University of Hong Kong started the second PCLL in 1991. In this second PCLL, City University attempted to introduce new innovative methods such as problem-based learning, skills seminars, in-tray exercises, large-group/lectures, homebase, computer-assisted learning, volunteer program (legal aid), tutorials, buzz groups, brainstorming, role playing, use of manuals, texts, handouts, videos and work experience.²⁶ They also involved the local profession in a mentorship program, guest lecturers, panellists, team teaching, moot judges and external examiners.²⁷ In addition to core PCLL subjects, students were also required to study two out of three subjects. Many practical and skills aspects of the program remain unchanged up to this date.²⁸

In addition, the HKU School of Professional and Continuing Education (“SPACE”) started a PCLL in 1991. At its inception, the program was run independently by SPACE. Later, the program was run by teachers of the Department of Professional Legal Education of HKU Law Faculty, who conducted lectures and tutorials as well as examinations for the SPACE program. The SPACE PCLL provided an alternative to students who were unable to find places in the full-time PCLL run by HKU or CityU. Starting from September 2001, the SPACE PCLL ceased to operate.

Distinct Features of the “Old” PCLL

When HKU first established the “old” PCLL in 1972,²⁹ it contemplated a further period of training after the three-year LLB course:

26 City Polytechnic of Hong Kong, *Professional Legal Education for Tomorrow's Lawyers* (Hong Kong: City Polytechnic, 1991) 27-28.

27 Id at 33-35.

28 The RLET, *supra* note 1 at 392.

29 For the Regulations and Syllabus for the Postgraduate Certificate in Laws 1973-4, see Evans, *supra* note 12 at 141-142.

because the period of study for the degree was too short to enable sufficient ground to be covered. Also the further training which an intending practitioner required could not be given wholly within the context of the University degree and would be bound to include “practical” instruction.³⁰

However, it was contemplated that courses at the “old” PCLL:

will have a more “practical” flavour in that they will emphasize the importance of analysis of factual situations based on “real life” and of grasping the application of law to those situations rather than in relation to hypotheticals.³¹

While it was claimed that the LLB course at HKU provided academic legal education and the “old” PCLL course concentrated on professional legal education, the two courses were not substantially different in their inception. As Ted Tyler, the former head of the Department of Professional Legal Education at HKU, pointed out, the “old” PCLL at HKU introduced in 1972 was, in effect, a “fourth year of the LLB”.³² In essence, the “old” PCLL provided courses in continuum with the courses provided by the LLB.

In a nutshell, the “old” PCLL at HKU focused on teaching legal knowledge with some training in practical skills. Indeed, when the Working Party first proposed the establishment of the “old” PCLL, the latter was cast:

not in the form of practical training that would prepare a graduate for the practice of law, but as extension of the programme of study begun at the undergraduate stage (ie LLB) and aimed at the acquisition of legal knowledge and the development of appropriate intellectual skills.³³

This reflected the emphasis on teaching legal knowledge, rather than on the practical skills acquisition of the “old” PCLL at HKU in its original design.

Another consistent feature of the “old” PCLL at HKU was its adoption of a “subject-based” curriculum. For example, it consisted of eight subjects: conveyancing, probate, landlord and tenant, revenue, commercial law and practice, practice and procedure (civil and criminal), accounts and financial

30 Evans, *supra* note 12 at 17.

31 *Id* at 20.

32 E G L Tyler, unpublished paper given at a symposium at the City University of Hong Kong on 11 November 1989 and quoted in M Littlewood, “Professional Legal Education in Hong Kong” (1989) 8(1) *Journal of Professional Legal Education* 49.

management, professional practice and advocacy (civil and criminal). All these courses were compulsory for all students and there were no optional subjects.

If one looks at the timetable of the “old” PCLL, one can easily discern its “subject-based” characteristic. Under the old timetable, one day in every week was designated to a subject. For example, students learnt the subjects of conveyancing (or probate and landlord and tenant) on Monday, revenue on Tuesday, commercial law and practice on Wednesday, practice and procedure (criminal and civil) on Thursday, accounts and financial management (or professional practice) on Friday, and advocacy (criminal and civil) on Saturday. For most of the subjects, there were lectures in the morning and tutorials (or small group sessions) in the afternoon. These tutorials in the afternoons consolidated students’ knowledge and skills taught in the morning lectures.

The two branches of the local legal profession also had their input into the “old” PCLL curriculum. For example, the Law Society preferred that the subjects of conveyancing and probate be taught at the “postgraduate” level, while the Bar Association expressed a similar view on the subject of practice and procedure.³⁴ Apparently, the “old” PCLL incorporated the views of the local profession into its curriculum.

Some Issues of “Old” PCLL Over the Years

Staff Issues

As indicated, the Working Party preferred the HKU’s Department of Law, rather than its Department of Extra-mural Studies, to provide professional legal education. In retrospect, the choice was correct as the Department of Law provided a better work environment in terms of research, undergraduate teaching and career promotion within the university than the Department of Extra-mural Studies. As pointed out by Peter Willoughby, the first director of PCLL course at HKU, very few who joined the rank of PCLL teachers wished to be seen merely as “legal practice course instructors”. Many of them wanted to see themselves as university academics, and were interested in doing some undergraduate teaching and research in addition to PCLL teaching.³⁵

33 Evans, *supra* note 12 at 19-20.

34 Evans, *supra* note 12 at 20.

35 P Willoughby, “The Scope and Limitations of the Legal Practice Courses: Should They Replace Article and Pupilage?” (unpublished paper presented at the Commonwealth Law Conference, Hong Kong, 18-23 September 1983).

Therefore, there was limited attraction to the HKU Department of Extra-mural Studies for competent practitioners if the latter were only recruited as instructors of practice skills. In contrast, the HKU Department of Law was better able to recruit competent legal professionals to join the ranks of PCLL teachers. HKU needed to “compete” with the high-paying private sector for legal talents when it was set up in the early 1970s, a time when Hong Kong still suffered from a shortage of lawyers and most local practitioners were trained in the UK.

However, in recent years, the HKU Law Faculty has been able to recruit more experienced practitioners to join the rank of PCLL teachers, many of whom were working as partners of major international and local law firms prior to their joining. This new profile of PCLL teachers can be partly attributed to the change in the diversity of the legal profession in Hong Kong. When the PCLL was first established in the early 1970s, the pool of legal talent remained small, mostly local practitioners trained overseas. As the HKU Law Faculty has trained generations of local lawyers, the pool of local legal talent, and hence potential PCLL teachers, has become larger. Moreover, as the legal profession continues to grow in Hong Kong, more lawyers consider law teaching as a viable option for their second career. This also adds to the pool of potential PCLL teachers. In fact, most of the PCLL teachers recruited in recent years possess local practical experience, which testifies to the change in profile of PCLL teachers at HKU.

Curriculum Issues

It is noteworthy that the curriculum of HKU’s PCLL remained largely in the original design throughout the 1980s and 1990s, notwithstanding the radical changes that took place in other professional legal education courses around the world in the same era. There were many possible explanations for such “inertia”. Transition to a “skill-based” course required a staff profile comprising teachers with a wealth of local practical experience. However, recruitment of such experienced practitioners as PCLL teachers in the 1980s and 1990s proved extremely difficult, as private legal practice in Hong Kong was very lucrative in those days.

The unique political history of Hong Kong in the early 1990s also contributed to a preference for the “status quo” over professional legal education in Hong Kong. In June 1989, the Tiananmen Square Massacre took place in China. This had a devastating effect on the confidence of Hong Kong people,

and the legal profession was no exception. Any radical change to the legal system, including the model of professional legal education, would be viewed with scepticism by the local legal profession and possibly the government of the Peoples Republic of China.

RLET's Criticisms of the "Old" PCLL

As mentioned above, the RLET was released in 2001. The Report criticised the "old" PCLL on nine grounds:

- 1 *An unclear purpose.* The Consultants concluded that the PCLL at HKU was "in reality, an additional year of law studies – with a distinct academic emphasis in its goals, content, teaching methods and assessment".³⁶ They took the view that the PCLL course should be reformed to fold back its "academic" components into a reformed four-year LLB course. In this way, the PCLL would be developed into an entirely new course teaching skills.³⁷
- 2 *A lack of coherence.* The Consultants opined that the "old" PCLL was a "subject-centred" program. In other words, the teachers taught different subjects and developed their expertise in different subject areas. There was no integration between different subjects and they did not form part of a coherent course or program imparting lawyering skills.³⁸
- 3 *The PCLL's placement within the universities.* The Consultants took the view that the PCLL should not be located within universities as the program was vocational in nature. Moreover, PCLL teachers saw themselves as academics and therefore were expected to research and publish. The university environment was not conducive to teachers providing a form of vocational preparation for legal practice.³⁹
- 4 *Inadequate teaching and assessment methods.* The Consultants criticised the PCLL for its inadequate teaching and assessment methods due to the shortage of resources. They perceived that the teaching and assessment methods of world standards could be adopted if the legal practice course was removed from the university setting.⁴⁰
- 5 *Inconsistent treatment of those seeking a PCLL place.* The Consultants criticised the PCLL for its inconsistencies in

36 The RLET, *supra* note 1 at 187.

37 *Id.*

38 The RLET, *supra* note 1 at 188.

39 The RLET, *supra* note 1 at 190.

40 The RLET, *supra* note 1 at 192.

fees between the PCLL programs run by HKU Law Faculty and SPACE. They also criticised the HKU and SPACE PCLL programs for giving priority to their own students, thereby jeopardising the interests of those students studying law at overseas law schools. The Consultants felt that such inconsistencies and inequities could be overcome by an independent legal practice course set up outside the university.⁴¹

- 6 *Artificial division of the law program into the LLB and the PCLL.* The Consultants criticised the university law program for artificially dividing into LLB and PCLL, which was largely a result of the historical development of HKU Law Faculty over the years. They therefore recommended that those “academic” courses in the PCLL program, such as revenue, conveyancing, probate and commercial law, should be taught as part of the undergraduate LLB.⁴²
- 7 *The need to have a common entrance standard for those entering the profession.* The Consultants criticised the failure of the PCLL to ensure that the local and overseas law graduates had a common body of knowledge. For example, those returning from overseas did not receive any education in the basic law; the most important constitutional law document of Hong Kong. They therefore recommended the establishment of a conversion course catering for the needs of overseas law students.⁴³
- 8 *Availability only as a full-time course.* The Consultants criticised that the PCLL was available largely as only a full-time program. They recommended that the program be made available to the public on a part-time basis in the interests of access and equity. The consultants also considered it viable to deliver the PCLL on a “distance-learning” model in future.⁴⁴
- 9 *An inability to manage the process as a whole and to enable reform on an ongoing basis.* The Consultants made the general assertion that the HKU’s PCLL was “frozen in time” and had “no way of reforming itself”.⁴⁵ They felt that the only way to resolve the problem was for the profession to create a separate institution responsible for vocational training outside the university.⁴⁶

41 The RLET, supra note 1 at 193.

42 The RLET, supra note 1 at 193-194.

43 The RLET, supra note 1 at 194.

44 The RLET, supra note 1 at 194-195.

45 The RLET, supra note 1 at 195.

46 The RLET, supra note 1 at 195-196.

Distinct Features of the “New” PCLL

In response to the RLET, the HKU Law Faculty started to reform its PCLL in 2001. It established a core design team consisting largely of PCLL teachers who were experienced practitioners in different practice areas, such as conveyancing, litigation and commercial practices. The core design team was commissioned to design a new curriculum and course materials for a “new” PCLL that would reflect the concerns of the RLET, incorporating the best professional legal education practices of other common law countries to meet the needs of the local legal profession.

It was advocated that the curriculum of the “new” PCLL would have seven characteristics: general framework for legal practice, problem-centred, systematic skills teaching, feedback culture, professional attitude towards learning, training groups, guest instructors, programmed instruction, and end-of-semester assessment.⁴⁷ In this article, I wish to analyse four salient features of the curriculum, namely, problem-based learning, skills teaching, programmed instruction and training groups.

Problem-based Learning

“Problem-based learning” is not something new. Barrows and Tamblyn provide a definition of “problem-based learning” as follows: “The problems, not a set syllabus, provide the stimulus and framework for learning. Knowledge is acquired through self-directed study and small group discussions, rather than through lectures.”⁴⁸ In the “new” PCLL, students are encouraged to learn by way of solving legal problems presented to them, rather than by way of traditional lecture attendance. This is a mode of active learning and students are expected to read cases and statutes assigned to them, and conduct further legal research they consider necessary to solve the legal problems presented to them.

The “new” PCLL curriculum reflects such an emphasis on legal problems. The curriculum consists of two components. The first is called “non-contentious”; the other is “contentious”. Such a demarcation is based on the nature of the legal work

47 For a discussion of the seven characteristics of the “new” PCLL curriculum, see S Nathanson, W W S Chow and F W H Chan, “The University of Hong Kong’s New PCLL” (2002) 32 *Hong Kong Law Journal* 381 at 381-396.

48 Barrows, S Howard and R M Tamblyn, *Problem-Based Learning: An Approach to Medical Education* (New York: Springer, 1980) 191 and quoted in H S Barrows and R M Tamblyn, “A Taxonomy of Problem-based Learning Methods” (1986) 20 *Medical Education Journal* 481.

undertaken by lawyers in Hong Kong.⁴⁹ Generally, lawyers in Hong Kong undertake two types of legal work. The first type of legal work is “non-contentious” in nature and facilitates business transactions in Hong Kong, such as property and commercial transactions. This usually consists of a series of legal problems on drafting agreements for sale and purchase of land property, business joint ventures, share acquisitions and letters of advice on the effects of security documents. These legal problems facilitate student learning in such practice areas as conveyancing, probate and corporate in context, familiarising students with common legal documents that they will encounter in these areas of practice.

The second type of legal work undertaken by lawyers in Hong Kong is “contentious” in nature. This mainly involves civil and criminal litigation. A series of legal problems is designed on the drafting of pleadings and affidavits for use in litigation, and many court advocacy practices. These legal problems facilitate student learning in the law and practice of civil and criminal litigation in context to familiarise the students with various court documents that they will encounter in civil and criminal litigation.

While problem-solving plays a prominent role, there are still lectures in the “new” PCLL. However, their functions are quite different from traditional lectures. In the “new” PCLL, the lectures serve a variety of functions, including equipping students with “core” knowledge in different practice areas and providing demonstrations on applying this “core” knowledge to solve practical legal problems. The format of such lectures enables students to learn the law and practice in context to prepare them to solve legal problems in small group sessions.

Thus, the curriculum of the “new” PCLL is different from its “old” counterpart. Under the curriculum of the “new” PCLL, teaching methods rely heavily on traditional lectures and small group sessions. This follows a traditional academic structure. The RLET criticised such traditional methods because the small group sessions, in their view, can easily become “a review of the lectures, rather than essentially an opportunity to acquire the skills of a practicing lawyer”.⁵⁰ In comparison, the problem-based curriculum in the “new” PCLL enables students to learn law in context strengthening their problem-solving skills that are crucial to their future

49 By lawyers, I refer to both solicitors and barristers. Hong Kong still retains the UK model of separation of the legal profession. The legal profession is divided into two separate branches, namely, solicitors and barristers.

50 The RLET, *supra* note 1 at 179.

success in the legal profession.⁵¹ This deals with the criticism of “inadequate teaching and learning methods” in the RLET.

Skill Learning

As HKU established the “old” PCLL at a time when Hong Kong was still a UK colony, its curriculum largely mirrored the UK counterpart.⁵² It inherited the “knowledge-based” feature of UK professional legal education courses prevailing in the 1970s. However, radical changes have taken place in the UK professional legal education since HKU introduced the “old” PCLL in 1972.⁵³ For example, the UK Bar introduced a “skill-based” Bar Vocational Course in 1989. Similarly, the UK Law Society adopted a “skill-based” Legal Practice Course to replace the “knowledge-based” Law Solicitors Finals in 1993. These represented developments of the so-called Legal Skills Movement in the UK.⁵⁴ In other common law countries, such as the United States, Canada and Australia, skills training in professional legal education took place even much earlier.⁵⁵

Following the trend of “skill-learning” in professional legal educational courses in the UK and other common law countries, the “new” PCLL emphasises the teaching of various legal and lawyering skills. The “non-contentious” practice areas focus on teaching such skills as document analysis, document drafting, letter writing and negotiation. We teach these skills in the contexts of different practice areas such as conveyancing, probate and commercial practices. The “contentious” practice areas focus on teaching skills of court advocacy, drafting of court pleadings and opinion writing. The “new” PCLL teaches these skills in the contexts of civil and

51 For a discussion of problem-solving in professional legal education, see S Nathanson, “Problem-solving in Professional Legal Education” in Wacks, *supra* note 2 at 7.

52 For example, the College of Law in England taught subjects like conveyancing and land law, wills and administration of estates, commercial law and litigation in the 1970s. These were similar to the subjects included in the curriculum of the “old” PCLL at its inception.

53 For a historical account of the gradual adoption of a “skill-based” educational philosophy by the professional education courses in Britain from 1970 to 1990, see N Saunders, “From Cramming to Skills – The Development of Solicitors’ Education and Training Since Ormrod” (1996) 30 *The Law Teacher* 167 at 168-186.

54 For an evaluation of the Legal Skills Movement in England, see J Macfarlane, “The Legal Skills Movement Ten Years On: Triumph or Compromise” (1997) 24 *Journal of Law and Society* 440; A Boon, “History is Past Politics: A Critique of the Legal Skills Movement in England and Wales” (1998) 25 *Journal of Law and Society* 151 at 151-169.

55 For an overview of skill training in common law countries prior to 1990s, see S G Gullickson, “The Evolution of Skills Training” (1985) 3 *Journal of Professional Legal Education* 161.

criminal litigation. These skills are largely the same as those recommended in the Marre Report in the UK. The emphasis on skill teaching is also a response to the RLET's criticism of "unclear focus" in the "old" PCLL.

Programmed Instructions

In response to the RLET's criticism of "lack of coherence", the "new" PCLL adopted an approach of "programmed instructions" in its teaching methods. In the "new" PCLL, the HKU Law Faculty uses a significant number of "activity plans" as tools for teaching and learning. These activity plans comprise legal problems, instructions to students and notes to teachers. All activity plans are identical in their format. The activity plans lay down clear objectives so that students can know in advance what knowledge and skills they are expected to learn and practise before they come to class.

To facilitate and promote skill transfer in the Activity Plans, the "new" PCLL also prepares "skill guides" in different practice areas so that students know the objective standards and criteria of the different skills expected of them. "Skill guides" are widely used in "skill-based" professional legal education courses in other common law countries and have proven to be useful tools for teaching legal skills.⁵⁶

The activity plans also integrate legal knowledge and legal skills. This "integrated" approach reinforces students' skills in solving realistic legal problems and promoting more effective learning and retention of legal knowledge. For instance, students will learn joint venture laws more effectively if they have had the experience of drafting a joint venture agreement. However, they cannot draft a joint venture agreement properly if they do not acquire the skills of document drafting. By designing an activity plan on the drafting of a joint venture agreement, the "new" PCLL "kills two birds with one stone", teaching the students the legal knowledge in joint venture laws and the legal skills of document drafting. The students should retain more legal knowledge by such an integrated approach, rather than learning through traditional lectures and tutorials.⁵⁷

56 For example, the Legal Practice Course at Nottingham Law School, England uses skill guides in their teaching. For more details on use of "skill guides" in that course, see S Slorach and S Nathanson, "Design and Build the Legal Practice Course at Nottingham Law School" (1996) 30 *The Law Teacher* 187 at 196.

57 This argument is supported by research in the discipline of education. See P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 148.

The activity plans also adopt a “building block” approach. For example, a series of activity plans is prepared on the preparation of loan documents, advising clients on the terms of specific loan documents and enforcement of such documents to teach students the law of credit and security in context. In the same activity plans, students learn the skills of document drafting, document analysis and letter writing. In this way, students can build upon and integrate their knowledge and skills in one activity plan with what they learnt in preceding activity plans. Moreover, students can transfer the skills and knowledge that they learn from one factual context to another. Such a “building block” approach creates a more “realistic” learning environment for students who can build up their legal knowledge and skills incrementally.

Finally, the “new” PCLL emphasises a feedback culture.⁵⁸ In small group sessions, teachers give feedback to students either on their written work or oral presentations. This motivates students to learn and improve their performance. Students are also encouraged to give “peer feedback” on each other’s work in small group sessions. This strengthens and improves their skills of communication and teamwork.⁵⁹ In addition, practitioners experienced in different areas of practice are invited to teach part-time and give feedback on student work on a regular basis. This is an important form of feedback that motivates students to learn and improve their performance.

Training Groups

Training groups are an important design feature of the “new” PCLL. Traditionally, lawyers work as individual legal experts but they are increasingly expected to work in teams, with either other lawyers or other professionals, such as accountants. Moreover, they must communicate effectively with their colleagues, clients and judges in their legal practice. Through training group arrangements, the “new” PCLL strengthens the training of two important interpersonal skills of teamwork and communication skills.

58 Feedback is widely recognised as an important component of professional educational courses in other common law countries: see, S Slorach and P Knott, “The Development of Skills Teaching and Assessment on the English Legal Practice Course – A Nottingham Law School Perspective” (1996) 14(2) *Journal of Professional Legal Education* 189 at 192.

59 The abilities to communicate effectively and work cooperatively are generally regarded as “interpersonal skills” that lawyers should learn and acquire in their professional legal education: see The Law Society of England and Wales, *Training Tomorrow’s Solicitors* (London: Law Society, 1990) 11.

The “new” PCLL divides students into groups of 16 (or less) based on different mixes of age, gender, education and working backgrounds. All students remain in the same group throughout the course. In other words, they meet the same group of students on a daily basis and work closely with one another. These training groups promote peer feedback and establish mutual support among students throughout the course, as well as enhance their interpersonal skills. Similar training groups are used in professional legal education courses in other common law countries. They prove to be effective in promoting group learning skills and building strong friendships within the training groups.⁶⁰

Progress and Issues in Implementing the “New” PCLL

Progress

The HKU Law Faculty started to implement the “new” PCLL in September 2002. Starting from September 2003, revenue law was taught in LLB instead of PCLL. Moreover, trial advocacy was introduced in the PCLL in the academic year 2003 and the HKU Law Faculty enlisted the assistance of a team of four specialist advocacy trainers from the Australian Advocacy Institute to run this new course of trial advocacy.⁶¹

Implementation Issues

Involvement and Collaboration with Legal Profession

At present, there are several issues in implementing the “new” PCLL. First, the HKU Law Faculty needs to deal with the issue of involvement and collaboration of the legal profession in the “new” PCLL. It needs to work closely with the local profession on the form and content of the “new” PCLL curriculum. As the “new” PCLL represents the most important reform in postgraduate legal education in HKU since its inception in 1972, the local legal profession is understandably concerned with the design and quality of the new course in terms of educating and training better lawyers for Hong Kong.

60 See, eg, Slorach and Nathanson, *supra* note 58 at 193. In fact, one student at Nottingham Law School commented: “Putting us into groups of 18 is brilliant in that we obtain an identity and make friends easily who are then able to help with my problems connected with the work.” See Slorach and Nathanson, *supra* note 58 at 193.

61 For more details of the visit of advocacy training specialists, see “Australian Advocacy Training” (2004) *HKU Faculty of Law Newsletter* (Spring Edition) 14.

Throughout the history of HKU's PCLL, the local legal profession has played an important role. In the "old" PCLL, the legal practitioners were mainly involved as external examiners. For each subject, the two branches of the legal profession appointed their representatives to be external examiners. They were involved in monitoring the standards of the PCLL course by approving the examination papers and "re-marking" selected samples of the examination scripts.

In the "new" PCLL, local practitioners have played a more active role. They were heavily involved in the design and delivery of the course. For instance, the small group exercises were designed jointly by the academic staff of HKU Law Faculty and outside practitioners in the courses of Civil Procedures and Civil Advocacy.

Many experienced practitioners also participated in the "new" PCLL as part-time tutors in various subjects or as external assessors in the courses of Civil and Criminal Advocacy. In order to enhance the teaching skills of these practitioners, the HKU Faculty organised a number of "training the trainers" workshops. In these workshops, the practitioners were taught the new skills required of teachers in the "new" PCLL and the techniques of leading small group discussions. In some workshops, practitioners were taught specific teaching skills. For example, the abovementioned team of specialist advocacy trainers from the Australian Advocacy Institute conducted a series of workshops in April 2004 for local practitioners who acted as tutors in the PCLL advocacy course.⁶² In most workshops, practitioners were also taught on a "learning-by-doing" model with the attendance of practitioners consistently high, demonstrating their commitments to the "new" PCLL and the perceived usefulness of the workshops.

The HKU Law Faculty also introduced a Law Mentorship Scheme for its students, starting from September 2002. In this scheme, outside practitioners serve as mentors to HKU law students. This scheme enables PCLL students to interact closely with outside practitioners, learning professional attitudes and values from them. Although the Law Mentorship Scheme does not form part of the regular curriculum of the "new" PCLL, it enriches the learning experience of PCLL students by bringing them into close contact with outside practitioners. These experienced practitioners are also ideal "role models" for imparting professional attitudes and values to our students through the Law Mentorship Scheme. In a way, this scheme

62 Id.

can be considered as part of the “informal” curriculum of the “new” PCLL.⁶³

It is also noteworthy that the two branches of the profession set out their benchmarks for the “new” PCLL. The Law Society focused on skills like problem-solving, applied legal research (including computer-aided), communication (including writing, drafting, interviewing, counselling, plain English), fact investigation and analysis, advocacy, litigation management and strategies, negotiation, legal analysis, organisation and management of legal work, recognising and resolving ethical dilemmas and ethical formation.⁶⁴ The Bar Association focused on skills like legal research, fact management, opinion writing, conferencing, drafting, negotiation and advocacy. However, the Bar Association also emphasised knowledge in the law of evidence, civil remedies, criminal litigation and sentencing, professional ethics and conduct.

In the future, one possible area of collaboration between the HKU Law Faculty and the local profession is the integration of the “new” PCLL with the mandatory continuing legal education schemes of the local profession. At present, the Law Society has established a Continuous Professional Development Scheme for local solicitors. Similarly, the Bar Association has established an Advanced Legal Education Scheme for local barristers. In the RLET, there was no discussion of possible collaboration between the HKU’s PCLL and the continuing legal education courses provided by the two branches of the profession. However, as the reform of “new” PCLL continues, collaboration seems possible in this regard. As the HKU Law Faculty introduces more “electives” in the “new” PCLL, it is possible that these “elective” courses will be designed and implemented in collaboration with the continuing legal education schemes run by both branches. Courses like “case management” and “practice management” can be planned and implemented together by the HKU Law Faculty and the two professional bodies so that students can learn the skills in these two areas both during and after they study the “new” PCLL. Such collaboration should be viable, taking into account the strong alumni network of HKU Law Faculty in the local legal profession. In fact, the current Chairman of the Bar Association is an alumnus of the HKU Law Faculty.⁶⁵

63 For more details of the law mentorship program, see “Law Mentorship Programme in its Second Year”, *HKU Faculty of Law Newsletter*, supra note 61 at 22-23.

64 The Law Society of Hong Kong, *Benchmarks for the PCLL* (23 April 2002).

65 For example, the current Bar Chairman is Mr Edward Chan SC.

Academic Board

However, the most important involvement of the local legal profession in the “new” PCLL has been the creation of an Academic Board. In early 2002, the HKU Law Faculty established an Academic Board to oversee the reform work of the “new” PCLL.⁶⁶ Apart from representatives of HKU Law Faculty, representatives from the two branches of the legal profession also participated. The Board enables the legal profession to give their input and to participate in the reform work of the “new” PCLL. When HKU first established the “old” PCLL in the early 1970s, it was already recognised that the effectiveness of legal education in Hong Kong would only be ensured through mutual trust and understanding between HKU and the legal profession.⁶⁷ To this end, the Academic Board plays an important role in promoting mutual trust and understanding in the reform and implementation of the “new” PCLL.

The Academic Board also established three sub-committees: the Human Resources Sub-Committee, the Curriculum Sub-Committee and Admissions Sub-Committee. These three sub-committees are composed of members from the Department of Justice, the Judiciary, the two branches of the legal profession and staff from the HKU Law Faculty. The Human Resources Sub-Committee is responsible for formulating the human resources policy of the “new” PCLL, establishing the recruitment criteria and skills set of teachers. The Committee also deals with the recruitment of both full and part-time teachers for the “new” PCLL. The Curriculum Sub-Committee is responsible for the design and implementation of the “new” PCLL curriculum. The Admissions Sub-Committee is responsible for the future admission of PCLL students. It establishes the admission criteria, including standards of academic performance and skill requirements for students applying for admission to the “new” PCLL.

Since their establishment, the Academic Board and its three sub-committees have played an important and effective role in the reform of the “new” PCLL. Since members of the Academic Board and its three sub-committees are all senior and respected members of the two branches of the profession and reflect the Department of Justice and Judiciary, they represent the views and interests of all stakeholders in the local legal education.

66 M Chow, “Law course revamp to focus on practical skills”, *South China Morning Post* (19 April 2002) 4.

67 Evans, *supra* note 12 at 23.

Reform of Teaching and Assessment Methods

As the “new” PCLL is developing into a “skill-based” course, the HKU Law Faculty needs to reform the teaching and examining methods to reflect such change. As the Marre Report correctly asserts, practical skills need to be taught by using modern examining methods. In terms of assessment, the “new” PCLL is moving towards an “open-book” format in most courses to reflect the change in course emphasis from “knowledge-based” to “skill-based”.

While both the RLET and many local practitioners find favour with continual assessments, hitherto, the “new” PCLL has not adopted this as the primary assessment method for two reasons. First, the problem of plagiarism may undermine the effectiveness of continual assessment as an examining method. Second, students may shift their focus and attention to obtaining good grades in the continual assessments, rather than participating actively in the small group session. This will undermine the learning effectiveness of PCLL students. However, the HKU Law Faculty is now considering continual assessment for selected PCLL courses like Advocacy and Professional Practice in the future.

The “new” PCLL course also tries to be modelled on “real” legal practice. For example, it emphasises the concept of transferable skills, which means that legal skills in one context can be transferred to another. For example, the skills of letter writing in the context of “non-contentious” legal practice can enhance the skills of drafting of pleadings in the context of “contentious” legal practice. However, it must be acknowledged that the “new” PCLL cannot wholly “imitate” real legal practice. For example, students in “PCLL” are *not* expected to work on several assignments at the same time. While some may criticise such course design as portraying an “unrealistic” picture of legal practice, students learn more effectively by focusing on one single assignment rather than requiring them to do a diverse range of assignments at any one time.

Some people have advocated that PCLL students should be placed in law firms outside the university during their PCLL year to hone and enhance their skills learnt on the PCLL. This is not viable, given the large number of students studying on the HKU’s PCLL program, as it is unrealistic for local law firms and barrister chambers to provide sufficient vacancies for “in-house” training of students during their PCLL year.

Changing the Learning Culture of PCLL Students

In the years to come, the HKU Law Faculty needs to change the learning culture of its PCLL students. There has been criticism that Hong Kong law students could not learn law “pro-actively” and adapt to a “non-lecture-based approach to learning and teaching”.⁶⁸ Moreover, it was felt that “Hong Kong’s law graduates had for too long been ‘spoon-fed’ and only acquired information by rote learning”.⁶⁹ As the “new” PCLL is based on students’ active-learning, the HKU Law Faculty needs to effect a change in the learning culture of its PCLL students. In fact, “active-learning” is one of the essential skills that students must acquire for their success in the “new” PCLL and for their future legal career. As the RLET rightly pointed out:

[I]f the legal education and training system is to meet the challenges of legal practice and the needs of Hong Kong society into the 21st century, and is to be one which equals best international practice, the aim of learning and learning in law should be to have students engage actively with the course material so that the learning experience is one of active and not passive learning.⁷⁰

In this regard, the reform experience of the Commercial Law and Practice course of the “old” PCLL gives reason for optimism. The Commercial Law and Practice course was “re-designed” in the late 1980s based on principles of problem solving and skill learning. It was well received by students and has remained one of the most popular courses over the years.⁷¹

The “new” PCLL curriculum is centred around “realistic” legal problems and the use of training groups serve as useful catalysts in effecting a change of the learning culture from passive learning to active learning. In fact, the experience of the “new” PCLL in the past two years confirms that such a change of learning culture is attainable. As Professor Michael Wilkinson, the current Head of Professional Legal Education Department of HKU, pointed out recently, students are generally receptive to the new style of teaching. Most of the

68 N Gold, “Professional Legal Education for Tomorrow’s Lawyers: The Evolution of the Postgraduate Certificate in Laws at the City Polytechnic of Hong Kong” (1991) 9(1) *Journal of Professional Legal Education* 45 at 53.

69 *Id.* at 47.

70 RLET, *supra* note 1 at para 7.6.3.

71 For more details of the design of the Commercial Law and Practice course and survey of students’ responses to the course, see S Nathanson, “Developing Legal Problem-solving Skills” (1994) 44(2) *Journal of Legal Education* 215 at 220-231.

students are keen to participate in classes and class atmosphere has become livelier. These trends reflect that the new teaching methods introduced by the “new” PCLL are successful in inducing a change in student learning culture.⁷²

Training of PCLL Teachers

In the next few years the HKU Law Faculty also needs to deal with the issue of teacher training. As the new PCLL emphasises skill learning, it requires different teaching abilities and skills sets. To tackle this problem, PCLL teachers have undertaken a series of teacher training sessions in the past two years to strengthen their skill-teaching abilities and techniques. For example, the HKU Law Faculty invited Professor Philip Martin Knott, Department Head of Professional Legal Studies, Nottingham Law School, England, to conduct training sessions for its teachers on skill-based teaching in February 2003. Similarly, Professor Judith Smith, Director of Professional Legal Education and Training program at University of Queensland, Australia, conducted training sessions on skill-teaching for PCLL teachers in May 2003.

Future Reform Direction of “New” PCLL

Four-year LLB Reform

The “new” PCLL reform is only part of the legal education reform package at HKU. When the HKU Law Faculty started its radical reform of PCLL in 2002, it also embarked on a fundamental reform of its undergraduate program and would convert its LLB program from a three-year program to a four-year program in September 2004.⁷³

Starting from September 2003, the HKU Law Faculty started the process of “folding back” the “knowledge-rich” PCLL subjects into the LLB curriculum and the revenue course was introduced as an elective course in the LLB curriculum in the same year. This process will continue until September 2008 when all “knowledge-rich” PCLL subjects like conveyancing and civil litigation will be taught in the LLB curriculum.

72 M Wilkinson, “Updates on the PCLL Reform”, *Faculty of Law Newsletter*, supra note 61 at 3-4.

73 For more details of the 4-year LLB reform, see R Mushkat, “The 4-year LLB Reform”, *Faculty of Law Newsletter*, supra note 61 at 1-2.

“Streaming” and “Electives”

From the academic year 2004, the HKU Law Faculty will introduce “streaming exercises” and “electives” into its PCLL. The former is a compromise between the two branches of the profession so that the PCLL students intending to join the solicitor and barrister branches would attend the same lectures but different small group sessions, based on the branch of the profession that they intend to join. The “electives” will include the subjects that serve to enhance the specialisation of intending pupils and trainee solicitors in specified practice areas. At present, the “electives” most likely to be introduced in the academic year 2004 include advanced litigation and corporate finance.

Part-time PCLL

In the academic year 2005, the HKU Law Faculty will introduce a part-time PCLL. This is in response to the RLET and the growing demand for PCLL studies on a part-time mode in Hong Kong. It also creates more flexibility for students interested in studying PCLL after finishing their undergraduate legal studies both inside and outside Hong Kong. The part-time students will have their classes on week days and weekends; the course content, teaching methods and assessment methods will be identical to the full-time mode.⁷⁴

Conversion Course for Overseas Law Graduates

The reform of the “new” PCLL at HKU will be completed in 2008 when most of the substantive law subjects will be folded back into the undergraduate LLB stage. By that time, the “new” PCLL can focus on the teaching of legal skills as most of the “knowledge-rich” courses will be taught in the four-year LLB. However, those law graduates returning from overseas will need to study certain conversion courses for up to a maximum of one year. These conversion courses will cover subjects peculiar to the Hong Kong legal system and laws, such as the Basic Law of the Hong Kong Special Administrative Region. This is in response to the RLET’s criticism that the PCLL did not have a common entrance standard for all students entering the local legal profession.

74 See Wilkinson, *supra* note 61.

Conclusions

The PCLL at HKU has played an important role in training and educating future lawyers in Hong Kong throughout the past three decades. The reform of the PCLL will undoubtedly have a profound impact on the future development of professional legal education and the rule of law in Hong Kong. As one can see from the table below, all the criticisms of the RLET have been dealt with by the “new” PCLL, either by reforms hitherto undertaken or reforms that will be implemented in the next few years. With the strong support of the local legal profession and concerted efforts of the HKU Law Faculty, there are grounds for optimism that the HKU’s “new” PCLL will develop into a professional legal education course that meets the best international practices in the years to come.

	“RLET”	“New” PCLL
1	An unclear purpose	Skill training
2	A lack of coherence	Programmed Instruction
3	The PCLL’s placement within the universities	Remains unchanged, but higher involvement by local legal profession, in particular the Academic Board
4	Inadequate teaching and learning methods and assessment methods	Adoption of problem-based learning and active learning
5	Inconsistent treatment of those seeking a PCLL place	Consistent treatment of all students receiving PCLL places by abolition of SPACE PCLL in 2002
6	Artificial division of the law program into the LLB and PCLL	Introduction of four-year LLB rationalises the division of LLB and PCLL, with the former imparting legal knowledge and the latter training legal skills
7	The need to have a common entrance standard for those entering the profession	Introduction of conversion courses in 2007 will ensure a common entrance standard for all entering the legal profession
8	Availability only as a full-time course	Part-time PCLL course will be introduced in 2005
9	An inability to manage the process as a whole and to enable reform on an ongoing basis	The Academic Board provides effective monitoring of the PCLL reform to ensure the reform proceeds on a phased and ongoing basis

TEACHING NOTE

Using Interactive Teaching Strategies in Large Lectures: Some Personal Reflections

*Diana Henriss-Anderssen**

Introduction and Premises

The purpose of this article is to describe, evaluate and reflect upon certain interactive teaching strategies used in the large lecture theatre environment. The article will describe the teaching context in which interactive strategies have been introduced, and will outline and discuss the teaching strategies and aids used. Finally, the effectiveness of the strategies in improving student learning will be evaluated, and some personal reflections on the teaching experience recorded.

The major premise underpinning the article and the exercise, the subject of this article, is that the object of good teaching is to promote high quality learning on the part of the student.¹ I adopt a framework for teaching which embraces the idea of teaching as the fostering and promoting of student learning. This approach is based largely on the work done by Paul Ramsden,² amongst others, which has been enhanced in the context of legal education in Australia by writers such as Richard Johnstone and Marlene Le Brun.³ According to this

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1 P Ramsden, *Learning to Teach in Higher Education* (London and New York: Routledge, 1992) 87; R Johnstone, "Rethinking the Teaching of Law" (1992) 3(1) LER 17 at 28.

2 Ramsden, *supra* note 1; P Ramsden, "Improving the Quality of Higher Education: Lessons from Research on Student Learning and Educational Leadership" (1995) 6(1) LER 3.

3 See, eg, Johnstone, *supra* note 1; M Le Brun and R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: LBC, 1994).

approach, good teaching involves three things: understanding student learning; appreciating both the primary importance, and the best means, of fostering and promoting learning, and having the necessary skills to do so; and the practice of constant reflection.

This approach to teaching and learning proceeds from the epistemological position that knowledge does not exist independently from the knower, but “must be reconstructed by learners”.⁴ Skills, concepts and facts are mutually dependent.⁵ The academic and social environment is critical, and student learning is learner-focused rather than teacher-focused.⁶

A further and related premise of this article, and the exercise it describes, is that the goal of teaching must be to advance the student’s capacity for “critical literacy”. Critical literacy has been explained as “involv[ing] a form [of] self-awareness based on being sufficiently conceptually literate to read and critique key aspects of the social order and to understand one’s status and role in it”.⁷ Thus, critical literacy, like ethical judgment, is an ultimate skill or set of skills – ultimate in the sense that it incorporates and is mutually dependent upon the development of cognitive and affective (attitudinal) learning.

This article is written in the spirit of sharing a reflective teaching experience. As Ramsden points out, “[good] teaching is open to change: it involves constantly trying to find out what the effects of instruction are on learning, and modifying that instruction in the light of the evidence collected”.⁸ Further (and somewhat reassuringly), “good responsive teaching cannot avoid making mistakes”.⁹ This article is not about prescribing a model for teaching contextual or theoretical materials, nor is it intended as a comprehensive guide for converting lectures into active student learning experiences. It is merely the sharing of one teacher’s experience of trying new ways to promote student learning, and the reflection and evaluation of whether the methods employed achieved the desired outcome – improved student understanding.

Promoting student learning obviously requires an understanding of student learning. Contrasting approaches to learning on the part of students have been described

4 Ramsden, *supra* note 2 at 18.

5 *Id.*

6 *Id.* at 19.

7 P Havemann, “Law in Context – Taking Context Seriously” (1995) 3 *Waikato Law Review* 137 at 138-139.

8 Ramsden, *supra* note 1 at 102.

9 *Id.* at 179.

by Ramsden and others.¹⁰ A “deep” approach to learning is described as involving a desire to really understand.¹¹ Students who employ a deep approach to learning focus on the significance of new information. Deep learning involves relating new information to existing knowledge and personal experience,¹² and “relat[ing] theoretical ideas to everyday experience”.¹³

The deep approach to learning may be contrasted with a “surface” approach, which demonstrates a desire to simply complete task requirements.¹⁴ Students who adopt a surface approach seek to reproduce, rather than to understand, new information, and focus unreflectively on signs rather than significance.¹⁵ Good teaching will encourage a deep approach to learning, and discourage surface learning approaches.¹⁶

A deep approach to learning is encouraged by teaching and assessment methods that foster active engagement with the subject matter.¹⁷ The idea that traditional lectures are an inadequate teaching method for those concerned with promoting active student learning is not new.¹⁸ No matter how entertaining or inspiring the lecturer nor how fascinating the material covered, traditional lectures involve students being passive rather than active. As Johnstone points out, the lecture “encourages student passivity and involves the teacher taking responsibility for student learning”.¹⁹

The motivation for introducing interactive teaching strategies into the large lecture environment arose from a desire to promote “deep” approaches to learning, and dissatisfaction with the traditional lecture format as an effective teaching strategy. This article is not about making lectures more *interesting* – it is about shifting the focus of the lecture from a performance by the lecturer (before a largely passive, albeit interested, audience of students) to an active learning experience on the part of the students.

10 Ramsden, *supra* note 1, Ch 4; L Blaxter, C Hughes and M Tight, *The Academic Career Handbook* (Buckingham: Open University Press, 1998) Ch 5; and Le Brun and Johnstone, *supra* note 3, Ch 2.

11 Ramsden, *supra* note 1 at 46; Blaxter, Hughes and Tight, *supra* note 10 at 87.

12 *Id.*; Le Brun and Johnstone, *supra* note 3 at 59.

13 Ramsden, *supra* note 1 at 46.

14 *Id.*

15 *Id.*; Le Brun and Johnstone, *supra* note 3 at 59.

16 Ramsden, *supra* note 1.

17 *Id.* at 81.

18 Ramsden, *supra* note 1 at 152-156; Johnstone, *supra* note 1 at 43, Le Brun and Johnstone, *supra* note 3 at 258-260.

19 Johnstone, *supra* note 1 at 43.

Background

The primary instigating factor behind a trial of more innovative lecturing techniques was reflection upon a previous teaching experience. The teaching strategies discussed here were prompted by an experience in teaching legal theory to first year law students, and have been developed in that context. There is no reason, however, for the discussion to be confined to the teaching of legal theory. This article is primarily concerned with teaching methods that promote student understanding and promote deep approaches to learning, and it is not suggested that anything discussed here might not be relevant in teaching other law subjects.

The teaching experience which prompted implementation of the strategies described here involved the teaching of a first-year Law in Context subject at James Cook University in the year 2000.²⁰ Law in Context, as the name suggests, seeks to facilitate student understanding of the Australian legal system and law through an understanding of the context in which it operates. Students are introduced to historical, sociological, socio-legal and philosophical literature as they study legal structures and institutions, dispute resolution and access to justice. Skills objectives include critical analysis and ethical awareness, as well as communication, teamwork and problem solving skills.

Although this article is not primarily concerned with discussing the virtues of contextual law teaching, a brief justification may be in order. A contextual approach to law teaching enhances broader objectives of knowledge and understanding,²¹ critical skills²² and ethical awareness.²³ In other words, it facilitates critical literacy. This is so even in the first year of law studies.²⁴ Legal theory is integral²⁵ to a critical and contextual approach to the teaching of introductory law

20 The subject (hereinafter referred to as Law in Context) was then called "Legal Studies", but has since been renamed more aptly "Law in Context". This subject is currently being reviewed as part of a wide-ranging curriculum review of the LLB program at JCU.

21 M Keyes and G Orr, "Giving Theory 'A Life': First Year Student Conceptions of Legal Theory" (1996) 7(1) LER 31.

22 Havemann, *supra* note 7; P Havemann and J Mackinnon, "Synergistic Literacies: Fostering Critical and Technological Literacies in Teaching a Legal Research Methods Course" (2002) 13(1) LER 65.

23 D Henriss-Anderssen, "Teaching Legal Ethics to First Year Law Students" (2002) 13(1) LER 45.

24 M Keyes and G Orr, *supra* note 21; C Sampford and D Wood, "'Theoretical Dimensions' of Legal Education – A Response to the Pearce Report: (1988) 62 ALJ 32 at 43-44.

25 But not, on its own, sufficient: see Havemann, *supra* note 7.

subjects.²⁶ A recent “stocktake” of law teaching in Australia²⁷ found an increase in emphasis on teaching theoretical perspectives.²⁸ According to this report, at least eight out of the 27 law schools have a compulsory legal theory subject in first year and more incorporate legal theory into other introductory subjects.²⁹

The commitment to fostering a deep approach to learning in Law in Context resulted in certain design features. These included, first, the subject matter being split into three concrete modules, each building upon the cognitive, affective and skills achievements of the previous module. This encourages students to relate new information to their existing knowledge – an indicator of the deep approach to learning.³⁰ Secondly, it saw a shift to using assessment as a teaching strategy and a shift away from the all-encompassing end-of-semester examination. This was done because a deep approach to learning is encouraged by assessment methods that “foster active ... engagement with learning tasks”,³¹ whereas assessment methods that emphasise recall, or that create anxiety, are associated with the encouragement of surface learning.³² Each module was assessed independently, and the end-of-semester examination did not revisit the earlier modules. As each module built on the last, however, the knowledge and skills from each previous module were incorporated into the next one.

The first module, legal structures and institutions, introduced the study of the courts, the judiciary, the legal profession and other legal structures and institutions within the framework of the rule of law. Limited jurisprudential material was introduced to enable understanding of the rule of law. Students were introduced to critical analysis through using historical, sociological and socio-legal material to critically analyse the role of these institutions in Australian society. Assessment was by way of an analysis of the Queensland courts, and involved fieldwork, group work, oral presentation and written assignment.

26 Sampford and Wood, *supra* note 24 at 43-44; Havemann, *supra* note 7.

27 R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee*, Australian Universities Teaching Committee (2003): <http://www.autc.gov.au/pr/law/split_law.htm> (accessed 16 April 2003).

28 *Id.* at 123.

29 *Id.* at 124.

30 Ramsden, *supra* note 1 at 46.

31 *Id.* at 81.

32 *Id.*

The second module, access to justice, built on the first in terms of skills and subject matter. It contained a focus on access to justice for indigenous Australians, and again used historical, sociological, socio-lingual and anthropological materials. The assessment for the second module was a written assignment.

The subject matter of the third module was legal theory. One of the reasons for introducing legal theory in the third and final module was that, by the time that students commenced the final module, the students were becoming comfortable with context and critical analysis at an introductory level. Concepts had been introduced which could now be explored. The third module was designed to expose and explore philosophical concepts underpinning the law and theoretical perspectives on the law. Initially the idea was to give students a “taste”, and thereby an appreciation, of the range of philosophical perspectives. Students were introduced, over four short weeks, to liberalism, economic analysis of law, critical legal studies, and feminist legal theories. The legal theory module of the subject covered the last four weeks of semester, and was worth 30% of the overall assessment for the subject. The assessment for the module was an examination.

In the year 2000, students had performed very poorly in their assessment in the legal theory module of Law in Context. The subject was taught to approximately 180 students on the Townsville campus and approximately 80 students on the Cairns campus. The teaching strategies employed were traditional lectures and tutorials (two hours of lectures and a one-hour tutorial per week). Numbers in the tutorials were deliberately kept small (15-20 students). Feedback from students indicated that students were happy with the lectures on each theory. They found the lectures interesting and inspiring, and the lecturer passionate. Once the interest inspired by the lecture subsided, however, students started to feel intimidated by the subject matter. They found the theories conceptually very difficult, and the readings extremely challenging.³³

This feeling of intimidation was exacerbated by the lecture/tutorial (theory/application) dichotomy. In the tutorials, students were asked to apply the theory studied that week to a factual scenario, in a similar way to the traditional problem method used in teaching substantive law. By discouraging

33 This was despite the use of texts specifically directed at first year law students – R Hunter, R Ingleby and R Johnstone (eds), *Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law* (2nd ed, Sydney: Allen & Unwin, 1995); S Bottomley and S Parker, *Law in Context* (Sydney: Federation Press, 1997).

reproduction of the information presented in the lectures and readings, the intention was to discourage a surface learning approach. The application of the theory to a practical scenario was designed to encourage students to attempt to understand the significance of the material in order to understand how it might apply to a practical situation. It also facilitated the assessment, an examination in which students were asked to apply the theories to problems using the method practised in tutorials. It was felt that this type of assessment would be more effective in assessing the students' understanding of the theories than an assessment that merely required regurgitation of information. If the tutorials had simply consisted of discussions of the theories, without application to practical situations, the students may have felt more comfortable. As it was, the students were unsure of what was expected of them in the tutorials. Despite the small numbers of students in the tutorials, they felt overwhelmed and intimidated. This feeling did not improve over the four weeks that this component of the course covered.

As stated above, the examination assessed only the legal theory module of the subject and was worth 30% of the overall assessment for the subject. In Townsville in 2000, the failure rate for the examination was a shocking 72%. (Students performed much better in the other pieces of assessment, however, and the failure rate for the exam was not an indication of the failure rate for the subject as a whole.) For any teacher concerned with enhancing student learning, this sort of experience raises the question "what went wrong?"

Upon reflection, a number of factors may have contributed to the poor exam performance. One external factor may have been stress from large exams in other subjects, combined with the relatively low weighting allocated to the examination. (The examination in this subject was worth just 30% of the semester's assessment, compared with approximately 70% in other law subjects.) This latter possibility has since been addressed by mandating a minimum performance in the end-of-semester examination in order to obtain a pass in the subject.

The poor performance in the legal theory module, especially compared with much better performance in the other two modules of the subject, may also be attributable to the desirability and difficulties of including legal theory in the first year. It was apparent from the student feedback that significant contributors included student uncertainty about what was expected of them, poor understanding of the theories themselves, and inability to apply the theories. The

pedagogical rationale for teaching legal theory in introductory law subjects was discussed above.

Before any rapid conclusions could be drawn about whether first year students have the capacity to comprehend the content (questions about “what” was taught), it was first necessary to evaluate whether the teaching methods employed to teach that content (the “how”) were adequate. This would involve not only evaluating the effectiveness of the existing teaching strategies, but also trialing new, and hopefully more effective, teaching strategies.

The task of evaluating the effectiveness of the existing teaching strategies revealed that, although the students were happy with the lectures, and found them interesting and engaging, this was not reflected in student understanding of the subject matter. Part of the problem seemed to lie in the distinction between the theory (taught in the lectures) and the application (taught in tutorials). In hindsight it was clear that there was too great a divergence between the two. It was thought that a more gradual consolidation of theory, building in stages to greater application, may address the student uncertainty, understanding of the theories, and ability to apply them.

One way to achieve this might be to spend less time lecturing and more time in tutorial classes. Because of large student numbers and limited university resources, however, it was not possible to move away from the traditional two-hour lecture and one-hour tutorial. To overcome the theory/application problem, then, it was thought that the lectures would need to become more interactive, so that students were actively applying the theory themselves in a non-threatening environment.

A week-long intensive on “Legal Education” with Fiona Martin at Queensland University of Technology³⁴ provided some insight into concrete teaching strategies. I developed a teaching plan to address the problems, and improve the learning experience of the students in the subject. The aim was for the lecture itself to become an active, rather than passive, learning experience. I wanted to change the focus of the two-hour lecture from mere presentation of information, in which the role of the student was simply to record the information for learning later. The information, after all, was available in written form in texts, primary and secondary materials. Some

³⁴ Legal Education was a subject offered by Queensland University of Technology as part of the coursework LLM program, and undertaken by the writer in 2001.

lecturing, however, would be necessary to clearly explain and elucidate the concepts and material.³⁵ As most students lose concentration after approximately 20 minutes,³⁶ short periods of lecturing could be interspersed with other learning activities to provide a more valuable and effective learning experience.³⁷

In order to promote learning within the lecture, then, students would be presented with information in short spurts, and then asked to apply that information immediately. The idea was that immediately using or applying the information would improve understanding and retention. Interactive teaching aids and strategies would be employed during the course of the lecture.

There were time implications in implementing this strategy. In order to incorporate the interactive components into the lectures, the time actually spent lecturing would need to be reduced. As a result, some depth of analysis would be sacrificed. To avoid this, I chose to increase the amount of time spent on each topic covered, and dropped some topics from the course altogether. Liberalism and Feminist Legal Theories were retained with greater emphasis on understanding the concepts, and Critical Legal Studies and Economic Analysis of Law were dropped. I felt that it was more likely that the learning objectives of the subject would be achieved by focusing on fewer areas, than by attempting to “cover the field”. This is supported by Ramsden, who argues:

The ground is covered for the lecturer, perhaps, but not by the students. Few, if any, modern philosophical, educational, and psychological theories accept that there is any direct relation between what is taught and what is learned.³⁸

The teaching plan as devised then was implemented in second semester 2001 in both Townsville and Cairns and was refined in second semester 2002. These strategies were also used in lectures in the fourth year subject, Jurisprudence, in 2002. A final year elective, this subject has a smaller cohort of students. Approximately 40 students were enrolled in Jurisprudence in 2002. Feedback from students, comments from peer review, and reflections upon the teaching process have formed the basis of improvement and refinement of the strategies.

35 Clear explanation is one of Ramsden's six principles of good teaching: Ramsden, *supra* note 1 at 96.

36 Johnstone, *supra* note 1 at 43.

37 *Id.*; Le Brun and Johnstone, *supra* note 3 at 260.

38 Ramsden, *supra* note 1 at 154.

Teaching Strategies Employed

The major teaching strategy is to break up the two-hour lecture into a number of smaller presentations, interspersed with interactive learning components. Each presentation takes no longer than 20 minutes. Following each presentation, students individually apply the information from the presentation segment to a handout containing a problem scenario. They subsequently form buzz groups³⁹ to discuss the application, and finally the groups are then asked to contribute some of the main points from their discussion to the entire lecture group. The process is then repeated.

This strategy is employed to involve students actively in the learning process in order to promote understanding and retention, and to achieve the cognitive objectives of the lesson. The group discussion should also promote critical analysis of the material. This major teaching strategy and some supporting teaching strategies and aids are discussed in detail below.

Structure of the Lecture

The table below presents an overview of the generic lecture structure.⁴⁰ The number of topics covered, and the length of time spent on each, may vary from week to week. The primary teaching aids are a handout containing a legal scenario and the use of Microsoft PowerPoint presentation. The size and style of the lecture theatre varied according to the subject being taught. For the larger Townsville cohort enrolled in Law in Context, comprising approximately 180 students, a large lecture theatre with ascending fixed seating and a seating capacity of 250 was used. Smaller lecture theatres, still with ascending rows of fixed seating, were used for the smaller lecture groups (approximately 85 students in Law in Context in Cairns, and 40 in Jurisprudence in Townsville⁴¹).

39 Buzz groups are small groups of three to five students.

40 Times given are approximate. The degree of flexibility allowed is discussed below.

41 Only six students were enrolled in Jurisprudence in Cairns in 2002 – one of the first years that final year subjects were offered on that campus subsequent to the commencing of law in Cairns in 1998.

Table 1: Lecture Plan

Content	Teaching Method	Teaching Strategy/Aids	Time (minutes)
Introduction –objectives of the lecture	Lecture	PowerPoint	5-10
Introduction	Quiz/questionnaire	Handout	5
Topic one	Lecture	PowerPoint	15-20
	Individual application, followed by buzz group discussion	Handout	5
	Large lecture group discussion	Handout	5
[Break]			5-10
Topic two	Lecture	PowerPoint	15-20
	Individual application, followed by buzz group discussion	Handout	5
	Large lecture group discussion	Handout	5
Conclusion	Lecture	PowerPoint	10
	Individual application and engagement		5

At the beginning of the lecture, students are given a short introduction, which gives an outline of the lecture and clearly sets out the objectives of the lecture. A handout is then distributed. Depending on the nature of the topic, the handout may contain a number of discrete exercises in increasing order of complexity, but generally it contains an actual or hypothetical legal scenario.

In the latter case, the handout is designed to be familiar to the students. In style it resembles a tutorial or exam question, and the subject matter is a legal scenario. Both these features are employed to catch the students' attention or empathy. Generally, the scenarios used in the first-year Law in Context are hypothetical, to ensure that the legal issues are kept fairly simple. In Jurisprudence, however, generally handouts contain actual legal scenarios, as the students are in their final or penultimate year and this consolidates and builds upon existing knowledge and skills. Students are asked to read the handout and write down their intuitive responses to the scenario. This strategy is employed to engage the students' interest and attention by actively engaging the students in a

non-threatening way. It is also designed to facilitate learning by building upon the students' existing knowledge.

The students are then asked to compare their answers with those of their neighbour. Again, the students are actively engaged in thinking about the issues in a relatively non-threatening way. To maintain the safe environment, students are not asked to reveal their answers to the whole class or the teacher. They are, however, told that we will come back to those answers at the end of the lesson. The strategy is to build upon students' existing knowledge base and consolidate learning from the lesson. The aid of PowerPoint is also used here with instructions for the activity prominently displayed.

Throughout the lecture, the students will be applying the information from the short presentations to the handout. The same handout is returned to throughout the lecture. The benefit of this is that students become familiar with the contents of the handout, and the lecture is not interrupted more than is necessary by the handing out of further material.

Use of PowerPoint Presentation

PowerPoint Presentation is used as a visual aid. The PowerPoint slides are animated so that each dot point appears as it is discussed. The visual and auditory senses are then engaged on the same material at the same time. Care is taken when utilising some of the "fancy features" of PowerPoint so as to not detract from the content of the lecture. The PowerPoint is an aid, not the focus of the presentation.

The PowerPoint slides are made available to students via the subject website prior to the lectures, so that students can print them out and bring them to the lecture. The purpose of this is that, during the lectures, students will not need to write as furiously, taking notes, as research has indicated that excessive note-taking can inhibit effective learning.⁴² The focus for the student shifts from furious note-taking to listening and understanding, taking sufficient notes to supplement the slides. One concern with the distribution of lecture slides prior to the lecture is that it may discourage students from attending classes. To avoid this, lecture slides are deliberately constructed so as to not provide the students with a set of "notes". The slides tend to contain sets of headings and subheadings so that students can follow the lecture. Care is taken in preparing the PowerPoint slides so that they cannot stand on their own without attendance at class – the sense of the slides becomes apparent during the lecture.

42 Le Brun and Johnstone, *supra* note 3 at 265.

Buzz Groups

In applying the lecture material to the handout, students are asked to form groups of three to five⁴³ (buzz groups). As Johnstone has pointed out, “[t]he greatest strength of buzz groups is that they encourage active learning”.⁴⁴ Le Brun and Johnstone list a number of objectives for the use of buzz groups,⁴⁵ including:

enabl[ing] students to discuss a question which we set, provid[ing] students with an opportunity to apply their learning to a problem, giv[ing] students a chance to check on their understanding of the topic ... [and] provid[ing] an opportunity for quiet students to contribute to discussions.⁴⁶

In the buzz groups, the students discuss the application of the information to the problem contained in the handout. While the groups are engaged in discussion, I walk around the lecture theatre, ensuring that all students are involved in a group, answering questions and stimulating discussion where necessary. The timeframe allowed for the buzz groups is fairly critical to the success of the strategy. It is necessary to allow enough time for discussion of the issues, but not so much time that students’ attention starts to wander.

At the end of the buzz group session, feedback is relayed from the buzz groups to the large lecture group. Because of time constraints, not all groups will be able to contribute to the class discussion on each question, but all will be able to see how their answers compared to those of other groups. The role of the lecturer is to ensure that all aspects of the application are covered. The nature of the feedback from the buzz groups also allows the teacher to assess the students’ understanding of each topic for the purpose of better teaching. The lesson need not proceed onto the following topic until the teacher is satisfied that the cognitive objectives have been achieved for the previous topic.

Conclusion of Lecture

At the conclusion of the lecture, students are asked to reflect upon their initial intuitive responses to the scenario (recorded

43 Usually two or three in front and two behind: the students in front swivel to talk to those behind. Students are discouraged from forming groups along a single row of seats, as it is difficult to achieve the same sense of intimate discussion.

44 Johnstone, *supra* note 1 at 44.

45 Le Brun and R Johnstone, *supra* note 3 at 296.

at the beginning of the lecture), and the application of the material covered in the lecture. They are then asked to locate their own personal response to the scenario within (or without) the range of theoretical perspectives canvassed.

This exercise is designed to promote the affective (value) objectives of the lesson, and to consolidate the learning from the lesson. The task requires students to reflect, summarise and prioritise what they have learned in the lesson and engages the students in building upon their knowledge from prior to the lesson. It is also an important exercise in facilitating critical literacy, which involves self-awareness.

Evaluating the Effectiveness of the Strategies

The effectiveness of the strategies may be gauged from a number of sources. One is feedback from the students themselves. Peer review by other university teachers can also provide insight into the effectiveness of the strategies. Subject assessment can provide a measure of whether student performance has improved. The link between improved student understanding and improved student performance may provide further insight into the effectiveness of the strategies. Finally, these processes are consolidated by teacher reflection.

Student Feedback

Student feedback has been obtained in a variety of ways: first, from questionnaires designed specifically for the purpose; secondly from the university student feedback process; and thirdly from informal discussions with students throughout the teaching and learning process.

Questionnaires

Feedback was obtained through the use of questionnaires in each semester over three semesters. The questionnaires were completed during lecture time at the end of semester.⁴⁷ The specific purpose of the questionnaires, which was the evaluation of the effectiveness of the teaching aids and strategies outlined above, was clearly explained to students, as were the concepts of deep and surface approaches to learning. Students were asked to indicate, using a scale of one to five,⁴⁸

46 Id.

47 Only those students attending on the day were surveyed; the approximate percentages of students surveyed varied between 43% and 70% of the enrolled population.

48 1: ineffective; 5: very effective.

the effectiveness of each of the strategies in assisting “deep approaches to learning” in the subject. Students were also asked to comment on the effectiveness of the strategies. The results of the questionnaires for each of the teaching aids and strategies evaluated are tabulated below.⁴⁹

The Use of PowerPoint Presentation

Table 2: The Use of PowerPoint Presentation

Semester	Subject	Campus	Ratings (percentage of class surveyed)				
			1	2	3	4	5
Sem 2, 2001	Law in Context	Townsville	0	0	14	41	45
	Law in Context	Cairns	0	0	10	45	45
Sem 1, 2002	Jurisprudence	Townsville	0	0	11	43	46
	Jurisprudence	Cairns	0	0	0	29	71
Sem 2, 2002	Law in Context	Townsville	1.5	1.5	10	35	52

The questionnaire responses indicated that students found the use of PowerPoint an effective teaching aid. Most comments on the questionnaire responses suggested that the PowerPoint presentation was an effective visual aid to enhance understanding, and that it helped students follow the structure of the lecture. Students commented that the PowerPoint helped them maintain attention in lectures. Some students commented on the content of the PowerPoint slides, in that they did not contain a set of “notes”. Of those that commented on this, most felt that this was good because it directed their attention to the lecture content and to their texts. Some of these students however would have preferred more detail. I have mixed feelings about this. I do feel that including more detail might increase the effectiveness of the slides. The students themselves, however, did not indicate *why* they wanted more detail. It may, in fact, reflect a desire for the easier mode of surface strategies. The general response to the slides was that they were effective. On balance, because of the distribution of slides prior to the lecture, my conclusion is that it is better not to include too much more detail, as that may discourage attendance at the lectures.

⁴⁹ The figures in the tables are rounded.

*Distribution of PowerPoint Slides Prior to Lectures*Table 3: Distribution of PowerPoint Slides
Prior to Lectures

Semester	Subject	Campus	Ratings (percentage of class surveyed)				
			1	2	3	4	5
Sem 2, 2001	Law in Context	Townsville	0	3	5	29	63
	Law in Context	Cairns	0	0	13	19	68
Sem 1, 2002	Jurisprudence	Townsville	0	4	14	25	57
	Jurisprudence	Cairns	0	0	0	29	71
Sem 2, 2002	Law in Context	Townsville	1.5	1.5	6	28	64.5

The distribution of slides prior to the lectures was also very popular. It may not be immediately apparent that this strategy would promote a deep approach to learning as opposed to a surface learning approach. Because the distribution of slides would make life easier for students, it would probably appeal to the student adopting a surface approach as well as the student adopting a deep approach. However, the comments on the questionnaire responses indicated that this strategy had encouraged a deep learning approach.

The purpose of distributing the slides, via the website prior to lectures, was to allow students to print them out and bring them to the lecture. The anticipated effect of this was to reduce the amount of note-taking and allow the students to concentrate more on listening and understanding.

Many of the comments from the students confirmed that this purpose had been achieved. These students stated that they had been able to spend more time in the lecture listening and actively trying to understand the information. Interestingly, an even greater response was that the prior distribution of slides enabled the student to anticipate the content of the lecture, thereby enhancing understanding in the lecture itself. A number of comments also indicated that the slides were useful for later study, as a guide for combining notes from lectures and readings. A related comment by some students was that they used the slides later to check that they had covered all the key points. Students indicated that another advantage of having the hard copy of the slides in addition to that on the projector was that it enabled them to better follow the lecture structure, thus enhancing understanding.

The fact that the vast majority of comments were related to improved understanding indicates that this strategy

was effective in promoting student learning and may have encouraged a deep learning approach.

Because the first two teaching aids/strategies⁵⁰ reduce the minimum threshold amount of work on the part of the student, one would expect them to appeal to the student adopting a surface approach as well as the student adopting a deep approach. The interactive components of the course are less likely to appeal to students adopting a surface approach component of the class.⁵¹ The following strategies comprise the interactive component of the class.

Application to Scenario on Handouts

Table 4: Application to Scenario on Handouts

Semester	Subject	Campus	Ratings (percentage of class surveyed)				
			1	2	3	4	5
Sem 2, 2001	Law in Context	Townsville	1.5	1.5	17	53	27
	Law in Context	Cairns	0	0	23.3	33.3	43.3
Sem 1, 2002	Jurisprudence	Townsville	0	0	25	36	32
	Jurisprudence	Cairns	0	0	14	43	43
Sem 2, 2002	Law in Context	Townsville	3	1.5	3	44	47

Response to the question on handouts was, in some semesters, almost as high as the response to the use of PowerPoint. In Townsville in semester 2 2002, 47% of students questioned rated the effectiveness of the handouts at 5, and 44% rated them at 4.

The majority of comments about the interactive problems were to the effect that this strategy enhanced understanding and retention. Related comments were that the problems made the students think about and analyse the information, and that the problems tested their understanding of the information by showing up areas that they may have missed, or not fully grasped.

Many students commented that this strategy raised their awareness and understanding of how the topic applied to real life situations, and allowed them to put the theories they were studying into perspective. These are all indicators of a deep approach to learning.

50 The use of PowerPoint during lectures and the distribution of slides prior to lectures.

51 Although it is hoped that these strategies decreased the *incidence* of surface approach to learning – comments certainly indicated that this might have been the case.

A few students commented that the handout scenarios helped them prepare for the exam. One student commented that they needed more time and information to fully comprehend the material before applying it.

Buzz Groups

Table 5: Buzz Groups

Semester	Subject	Campus	Ratings (percentage of class surveyed)				
			1	2	3	4	5
Sem 2, 2001	Law in Context	Townsville	6	24	31	24	15
	Law in Context	Cairns	10	3	53	17	17
Sem 1, 2002	Jurisprudence	Townsville	3.5	25	28.5	25	18
	Jurisprudence	Cairns	0	0	14	43	43
Sem 2, 2002	Law in Context	Townsville	5	6	25	40	24

Responses to the buzz groups varied from cohort to cohort, with responses generally becoming more positive with each semester. In the most recent semester, 40% of students surveyed rated the buzz groups at 4, with 23.5% rating at 5, and 25% at 3.

The majority of comments were positive. The greatest number of comments were to the effect that students found it beneficial to hear other people's views or perspectives. Many students commented that the use of buzz groups enhanced their understanding and retention of the information, and that the buzz groups were a useful vehicle for testing the students' understanding. These results support the objectives of buzz groups suggested by Le Brun and Johnstone,⁵² referred to above.

Other comments were more mixed. These responses reflect concerns suggested by Le Brun and Johnstone:

Students who are preoccupied with the lower cognitive learning objectives often believe they are not learning anything in buzz groups because we are not "giving them content". Able students can feel that they are not developing what they know if the rest of the group is not as well prepared or as skilled as they are in working with the material.⁵³

⁵² Le Brun and Johnstone, *supra* note 3 at 296.

⁵³ *Id.* at 297.

Some students commented that, although on the whole they felt that the buzz groups were effective, this did depend upon the composition of the group. Some students commented that their groups were ill-directed or tended to become sidetracked. Other students commented that they felt that they benefited more from the whole-class discussion of the problem than they did from the buzz groups. One student commented that although he or she did not feel the buzz group discussion was beneficial, the breaks from lecture presentation did help maintain attention throughout the two-hour lecture period.

The nature and tenor of the student comments generally indicate that these teaching strategies encouraged a deep learning approach. The majority of the comments talked about *understanding* rather than passing the exam; applying knowledge to the real world; seeing other people's perspectives; that the strategies "made [them]" think critically; and that they engaged their own views. These are all indicators of a deep learning approach.⁵⁴

University evaluation feedback

Feedback on the teaching of the subjects concerned was also contained in evaluations conducted as part of the routine James Cook University teaching evaluation system. Comments and feedback on teaching in the subject generally were very positive, which supports the general impression that the teaching was effective. Very few, if any, however, of the comments in the university feedback system, related specifically to any of the particular strategies outlined in this paper. The large majority of comments related instead to passion and interest in the subject and in teaching, willingness to help, clarity of explanations, and organisation.

Informal student feedback

Informal feedback, in the form of conversations and other verbal and written communications, generally indicates that the learning experience in these subjects is very valuable. In particular, student comments indicate that the students have affectively engaged with the material, in that it helped them to think critically and reflect upon and examine their own previously held views, not only of the subject matter, but also of other areas of knowledge about which the learning experience has inspired critical thought. This is a sign that the affective self is engaged, and is an indicator of both a deep learning approach and the development of critical literacy.

54 Ramsden, *supra* note 1 at 46.

Significantly, across all forms of student feedback one feature was striking. The confidence with which students engaged with the subject matter of the course improved dramatically after the strategies were introduced.

Peer Review

When a colleague mentioned to me that she needed to do an observation of teaching as part of her Graduate Certificate of Tertiary Teaching, I welcomed the chance to obtain some peer feedback on the teaching strategies I had been developing. I invited her to sit in on one of my lectures on feminist legal theory in Law in Context in 2001. She was thus able to observe the students' response and participation. She wrote:

The fact that a large portion of the class sat in the first three rows indicated to me that the students already knew Diana's material was interesting and useful. Students also spontaneously asked questions during the lecture segments, which for me indicated the students felt Diana was very approachable. The students also appeared to be listening actively – it was clear to me that the material presented was thought provoking for the students. During the buzz groups, Diana moved around the lecture theatre ensuring the students were executing the task properly ...

Probably the most important feature of Diana's lecture was the way she managed to engage the students in the topic with the handout requiring student reflection. This task then put the topic into perspective for individual students as they considered where their own views fit [sic] into the topic (Feminist Legal Theories).⁵⁵

Student Performance in Assessment

One significant indication of the success of the teaching strategies is that student performance in assessment has improved dramatically over the two years that the teaching strategies have been implemented. In Townsville, the failure rate for the examination⁵⁶ in Law in Context dropped from

55 J Shields, "Observation of Teaching" (unpublished paper completed as part of assessment for Graduate Certificate in Tertiary Teaching, James Cook University, 2001).

56 The examination was worth only 30% of the overall assessment for the subject. As indicated earlier, students performed much better in the other pieces of assessment and the failure rate for the exam was not an indication of the failure rate for the subject as a whole.

a staggering 72% in 2000 (the year prior to instituting the changes) to just 28.5% in 2002. The corresponding increase in pass rates was spread across all passing grades, from Pass to High Distinction.

Improved understanding is not the sole reason for this change, however. There are other contributing factors. As mentioned above, in order to allow time for the interactive strategies in the lectures, some topics were dropped from the subject. Therefore there was not as much material covered. The students had the same amount of time to cover less material. Understanding and skills were so much improved that it is felt that this is a better result than covering more material with reduced understanding and skills.

Conclusion

It is clear from the above evaluation that, since the introduction of interactive teaching strategies into the lectures in Law in Context and Jurisprudence, student learning in those subjects has improved. The main problems that I had identified prior to the introduction of the strategies were: student uncertainty about what was expected of them; poor understanding of the theories themselves; and inability to apply the theories. The teaching strategies implemented to address these problems have been effective. Students' confidence has improved dramatically since the strategies were introduced. Understanding and ability to apply the theories have also dramatically improved. Students are engaging confidently and skillfully with the theories that comprise the subject matter of the course. This experience has reinforced for me the need to channel our enthusiasm for the subject by being open to changes in our teaching.

TEACHING NOTE

Role Playing in Consumer Protection Law: The Market Day Project

*Samantha Hardy**

Introduction

The Market Day Project is a series of activities aimed at giving students a number of different perspectives on legal disputes involving consumers, and at engaging them in the complexities of a life-like situation. In the early activities the students play the roles of consumers and retailers and, in effect, create their own disputes. In later activities, the students act as the lawyers for the consumers and retailers, isolating the legally relevant facts from the earlier role-plays, negotiating with the other disputants, and providing legal advice.

The project involves a broad range of activities and focuses on developing a number of different skills. The students work in groups, which requires communication and planning skills. Some activities involve creativity, such as preparing a product advertisement. Others encourage dramatic skills, such as role-playing the pressured salesperson during the purchase transaction. Later activities develop factual analysis, negotiation and written communication skills. Each activity builds on the previous activities, keeping students engaged with the development of the dispute throughout the project.

Although developing the project took substantial work and time, the actual running of the activities is surprisingly easy. Student feedback has been overwhelmingly positive, and it appears that the project has improved learning outcomes in the subject and in particular has increased students' application skills.

Background

Consumer Protection Law is a one-semester elective subject, usually studied by students in their 3rd to 5th year of law.

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Enrolments are usually between 30 and 80 each year. Topics covered include agency, sale of goods, consumer protection and product liability law. Consumer Protection Law is allocated five hours of contact teaching time each fortnight. That time is divided into a two-hour lecture each week and a one-hour seminar every second week. I am both the coordinator and the sole staff member responsible for teaching and marking in the unit.

The learning outcomes of the unit explain that students, on completing the unit, should be able to:

- 1 Describe and explain commercial and consumer transactions as they occur in the real world of business and in an increasingly global marketplace.
- 2 Understand the objectives, requirements and processes of the State and federal legislative schemes for the protection of consumers in Australia.
- 3 Apply the relevant legal principles to factual scenarios and provide relevant and practical legal advice to consumers, retailers, wholesalers, manufacturers, and the ACCC.
- 4 Recognise the limitations of consumer protection laws with respect to the realities of commercial and consumer transactions.
- 5 Assess and evaluate existing consumer protection law and policy and argue whether or not it responds to practical commercial and consumer needs.
- 6 Demonstrate skills in statutory interpretation, legal research, written and oral communication.

With respect to generic graduate attributes, students should be able to:

- a) apply their knowledge of consumer protection law to a wide range of familiar and unexpected real life problems;
- b) keep up to date with changes in the law through appropriate research strategies;
- c) learn both independently and cooperatively;
- d) demonstrate skills of oral and written communication suitable to particular audiences;
- e) organise large amounts of information according to relevance and formulate a range of solutions to problems;
- f) demonstrate an awareness of the local and global context of consumer protection law;
- g) acknowledge the social and ethical implications of their actions.

Until 2002 the subject was assessed by one problem-based assignment and an end-of-semester examination. However, marking students' answers to problem-based assignments, I was struck by the fact that many students tended to reproduce the law in an abstract and decontextualised way. They appeared to have significant difficulty in applying the law to the facts and providing meaningful and practical advice. I began to consider ways to develop the students' application skills.

In 2002 I decided to replace the standard assignment with a series of activities in seminars that I called the "Market Day Project" (explained in detail below). Assessment in the unit now consists of an end-of-semester open book examination (50%); submission of answers to three past examination problems (15%); and the Market Day Project Activities (35%).

The Market Day Project

The broad aim of the Market Day Project was to create a contextualised simulation, requiring the students to look at the events typically involved in consumer disputes from different perspectives. The students were involved in a simulated marketplace, in which they engaged in consumer and retailer activity, and had to identify and deal with legal problems that arose in the course of that process. The project attempted to develop students' functioning knowledge of consumer protection law. Biggs explains that functioning knowledge requires a foundation of sound content (declarative) knowledge, but also involves knowing how to do things, such as carrying out procedures or enacting skills (procedural knowledge) and knowing when to do these things and why (conditional knowledge).¹ Accordingly, this project aimed to develop students' knowledge of the content of consumer protection law (from legislation, cases and commentary) but also how and why to use that knowledge to do things, such as identifying legally relevant facts and providing a client with practical legal advice.

The exercise departed from the traditional assignment model in that it required the students to consider a consumer protection problem from the beginning of the transaction giving rise to the legal issues, rather than dealing with the issues in hindsight, well after the transaction had taken place. Half the students role-played consumers wanting to purchase

1 J Biggs, *Teaching for Quality Learning at University* (Buckingham: SRHE and Open University Press, 1999) 40.

a product. In doing so they needed to consider what the consumer might want in a product, and what they would be likely to find appealing in advertisements for the product. They also had to think about the types of questions that a consumer might ask of a sales person during the actual purchase of the product. The other half of the students role-played retailers selling the products that the consumers wished to purchase. These students were required to develop an advertisement that they thought would be appealing to consumers. They also had to engage in “sales talk” during the actual purchase, and consider the consequences of any statements they made during this transaction.

In later activities the students were required to role-play the consumers’ and retailers’ lawyers. In these roles they were required to isolate from the previous activities the legally relevant facts, research the areas of law involved, and provide advice to the consumer or retailer involved. These different activities required students to “think like a lawyer”, but only after they had experienced the role of the client. This provided students with an important perspective on consumer-based disputes, as well as legal practice in general.

Group Work

The Market Day Project includes a large amount of group work. Students were required to form groups of three and to remain in the same group for the duration of the project. I debated whether or not to allocate students to groups or to let them form their own groups. However, given the fact that the Market Day Project was quite a new experience for most of the students, I decided to try to make them as comfortable as possible with the project by letting them select their own groups. Each semester there are quite a number of students who do not know others in the class very well (especially when I have a broad range of third, fourth and fifth year students) and I have had to arrange them into groups. However, so far I have not noticed any particular problems with letting the majority of the students select their own groups. Perhaps the relatively smooth running of the groups was assisted by the fact that we spent the first seminar specifically addressing potential problems with group work (see below).

The use of groups was both a logistical and an educational decision. The use of groups was “designed to mimic the approaches to problem-solving found in the workplace and students [were] expected to learn approaches to resolving

conflict, planning and managing time".² The group work also includes a number of different types of activities, including creative, written and oral work, allowing different members of the groups an opportunity to display their strengths in a variety of contexts.

However, there are also notorious difficulties with group work. Individual motivation and personal schedules may clash with group objectives; not all students may believe they benefit from group work; and there are issues of equity of contribution and student competitiveness for grades.³ The group-forming seminar (see below) attempted to minimise these issues by addressing them explicitly and requiring the students to anticipate problems and discuss methods for dealing with them in advance.

Group work assessment was also carefully planned in order to "ensure fair individual assessment but also to spell out the expectations for the nature of group interactions".⁴ The use of lecturer and peer assessment aims to ensure fair individual marks but also encourage cooperative group work.

Students were assessed in two ways. Each group received an overall mark for its project work. This mark was awarded based on specified criteria for each part of the project. This mark was out of 20. The assessment criteria for each Market Day Project activity focuses on the students' achievements against the learning objectives and outcomes, with particular emphasis on the development and application of graduate attributes. The criteria for performance are spelled out clearly in the unit outline for each assessable task, and students are awarded a grade based on their performance against these criteria. For example, the criteria for the assessment of the Letters of Complaint and Response in the Market Day Project include particular performance standards for an excellent letter, a very good letter, a good letter, a passable letter and a poor letter. This is a clear example of "criterion-referenced assessment" in which "students are allocated to or awarded a grade based on their achievement of or performance against criteria which define the various grades or levels".⁵

Each student also received an individual mark out of 15, which represented that student's contribution to the group

2 R James and C McInnis, *Strategically Re-Positioning Student Assessment: A Discussion Paper on the Assessment of Student Learning in Universities* (Melbourne: Centre for the Study of Higher Education, August 2001) 10.

3 Id.

4 Id.

5 J Lublin, *Guide to Peer Review of Teaching* (Hobart: Flexible Education Unit, University of Tasmania, 2002) 3.

work. This mark was awarded by the other members of that person's group and was confidential. Each member of the group had to hand me a sheet on which they had marked themselves and the other students in their group for each activity in the Market Day Project. I then awarded each student the average of the marks awarded.

I did, however, reserve the right to award an individual mark different to the average if I believed the other members' marking was inappropriate (for example, where group members agreed to award each other full marks for each activity regardless of the respective levels of contribution). I was able to keep an eye on the level of contribution made by individual students during the activities carried out during the seminar times. However, if the class size was much larger, this would be difficult. I was unable to monitor contribution to the work performed outside of class time, but relied upon group members to inform me of any difficulties. Where necessary I met with students individually and as a group to discuss any concerns. In general, very few issues arose and the students appeared to mark each other fairly.

Each student's result was thus the group mark out of 20, plus that individual student's average mark out of 15, giving a total out of 35 overall.

Activities

Most of the activities were conducted during the seminars; however students were also required to do some work outside of seminar classes. The project activities included both oral and written work, and the work differed according to whether they were in a Retailer or a Consumer group.

Seminar 1 – Setting up the groups

In the first seminar the students formed their groups and were allocated retailer or consumer status. The students were given readings in relation to working in groups, and each group had to fill in a questionnaire aimed at identifying potential problems in the group and developing strategies for dealing with them.

In this seminar students were also given an introduction to the Market Day Project and provided with their consumer/retailer profiles. Each group with retailer status was instructed that they were responsible for marketing and selling an espresso coffee machine. Their first task was to prepare an A4-sized advertisement for their product. Each retailer group was

given a statement from their marketing department about what kind of tactics they were allowed to use in their advertisement. Each retailer group was given different information. For example, one group was instructed to advertise a 50% off sale, another group a closing down sale.

Each group with Consumer status was given a profile of their consumer and shopping instructions. Each consumer group was given different instructions. For example, one consumer was given the following information:

You run the general store in Hicksville, a small country town a few hours drive from the nearest city. A new city-slicker recently moved to the town and asked you if you sold coffee machines because he wanted to buy one. You said that you'd have one in stock next week, and you need to buy one during your next trip to the city. You will then resell it to the customer, at a price to cover your expenses and make a modest profit. You only need to buy one coffee machine because it's unlikely that you'll ever sell more than one in Hicksville.

Another was instructed:

Your fiancé's parents are coming over for a dinner party next week and you really want to make a good impression. You know they like coffee, so you have decided to buy a coffee machine so that you can serve them really good coffee and petit fours after dinner. You're not a big coffee drinker yourself, and you have no idea how to use a coffee machine, so you are looking for something that's foolproof to use.

Retailer groups had one week to prepare their advertisement and were instructed to be creative and add as much detail as they wished, so long as they complied with their marketing department's instructions. The advertisements were posted on the Commercial Law notice board as well as scanned and posted on the WebCT site. Consumer groups then had a week to review them and decide which retailer seemed most appealing to them. Consumer groups were required to hand in a brief note reviewing each advertisement from the perspective of their particular consumer. An example of one of the notes read:

We are four cash-strapped uni students who need a large capacity, durable, reasonably cheap coffee machine that will last us until the end of the year. The lower the quality of the machine, the more important a warranty is ... Retailer 7's advertisement mentions a healthy discount and

a manufacturer's warranty although we have no idea about the specific terms or whether they offer any after sales service.

In this process, students in the retailer groups identified an important perspective on consumer protection disputes relating to advertisements. Concerned about the lack of instructions as to what information the advertisement should contain, one student asked "What if we put something in the ad that comes back to bite us?" and then realised that that was the point of the exercise. Consumer groups were also required to consider the transaction from the point in time when the consumer first reads an advertisement for a product.

A week before market day, each retailer group was given instructions informing them that the basis on which they had conducted their advertising campaign was, in fact, incorrect. For example:

In fact your advertisement wasn't strictly true. Some items are marked down by 50% but the coffee machine is only really marked down by 20%.

Retailer groups were also given further generic instructions relating to their sales conduct on the day, which read:

You are under considerable pressure from your boss. He has been threatening to sack you unless your sales performance improves. Things came to a head this morning in a heated argument, during which your boss yelled: "You couldn't sell if your life depended on it. If you don't sell this coffee machine by the end of the day, I rest my case and you're fired!" Accordingly, you are determined to sell the coffee machine, and you will go to almost any lengths to do so. You may even be prepared to engage in some "dodgy" sales talk in order to sell the machine and thus keep your job.

These instructions encouraged the students to think beyond the legal issues to other factors that might be affecting the dispute, for example, that the salesperson was at risk of being sacked, a possible cover up from management, and the issue that their client's concerns may not really be legal or compensable.

Seminar 2 – Market Day

Market Day occurred during the normal seminar time. Retailer groups set up their "shop" in the seminar room and identified themselves by displaying their advertisement. Retailers were given their coffee machine to sell (consisting of a picture of

a coffee machine with sealed information for the successful consumer attached). Consumers were asked to remain outside the room until the retailers were ready to open for business.

Consumers were told that they had to purchase a coffee machine during the seminar hour. They were at liberty to shop around between the retailers, or they could go directly to the retailer of their choice and immediately complete the sale. How much they told the sales assistant about their reasons for buying the machine was up to each consumer.

Each group nominated one or two spokespeople to conduct the transaction. Other group members were required to closely watch the process and make notes about any important representations made during the negotiations.

In the first seminar group the dynamics were quite entertaining. One of the retailers had produced a very enticing advertisement, with a very low price for the coffee machine. A few consumers lined up to speak with this retailer, leaving one retailer without any potential customers. This led the latter to make more and more outrageous statements in order to encourage customers to come and shop with them.

Some of the comments made by retailer group members to consumer group members included:

- If you bought from someone else you'd have to pay \$500 ... ours is \$299, you wouldn't find cheaper.
- If you're not 100% happy with it, we'll replace it.
- It's actually up to 50% off. This machine's only 20% off.
- This has a lifetime guarantee.
- It would cover you if anything went wrong with it ... unless it's your own negligence or anything.
- We believe in flexibility in sales. Satisfying the customer. Of course we'll refund.
- We undercut all others.
- You are not just buying a coffee machine, it's a whole lifestyle.
- These machines never break down, they keep on keeping on.

There was also competition between consumers. In the end, some consumers missed their first choice of retailer because they shopped around for too long or could not make a decision to complete the purchase earlier. These consumers had to buy the machine from another retailer (as each retailer only had one to sell).

Once every consumer had purchased (and every retailer had sold) a coffee machine, the consumers were allowed to open the sealed information attached to the picture of the coffee machine. They were also given further information specific to their group. For example, one consumer group received the following post-purchase information:

After a week of using the machine the motor blows up. Not only do you not have a working coffee machine, but you are losing a lot of money from coffee sales, because people don't want to buy instant coffee. Unless you get the coffee machine fixed or replaced in a hurry, you may risk losing your entire business. You have since discovered that this retailer was selling this exact coffee machine two weeks before you bought it for a price only 20% more than the price you paid for it on sale, although they represented to you that the price was 50% off normal sale price.

Consumer groups were then required to prepare a letter of complaint addressed to the retailer from whom they purchased their machine. They were to refer to the matters specified in their post-purchase information as well as any other matters that arose in the course of their negotiations with the retailer on market day.

The retailer groups were given their consumer's letter of complaint and required to draft a reply. They were informed that they needed to oppose the complaint and try to scare the consumer from taking the claim further, given that they were already in trouble with their boss.

Seminar 3 – Statement of Facts

In this seminar, each group had a copy of both the consumer's and retailer's letter and was required to sit down and try to work out a statement of relevant facts from which they could later identify the legal issues. They could obtain these facts from the advertisements, the letters themselves and from their recollection of what occurred during Market Day. Students were instructed to prepare a statement of facts as if they were to present the document to a barrister who was going to prepare an advice. They were also told to consider how they were going to prove the essential facts, and what further information they needed. Students also had to consider facts and evidence relevant to what the opposing group was likely to argue.

Once the students had some idea about their own version of the facts, they were invited to meet with their opposing group

to see whether they could agree on any facts in order to save time and effort in proving them. Groups were instructed that they could choose to be open or defensive in their dealings with the other groups, and could agree on nothing or as much as possible. Students were also advised to consider the practical consequences of different causes of action (for example, costs orders, tactical issues, etc).

This proved to be a fairly difficult task for the students, and confirmed my suspicions that they were too used to being given a sanitised and complete set of facts in examination and assignment questions. Not surprisingly, there ended up being quite a difference of opinion between retailer and consumer groups about what was actually said on Market Day. This reinforced that the “true facts” are not always easily identifiable, and are frequently disputed. It also caused a number of students to bemoan their failure to pay enough attention, or to take notes, during the Market Day transaction – again a valuable lesson.

Each group was required to present its statement of facts at the next seminar, along with an indication of which facts had been agreed with the opposing party. Given some students’ lack of note-taking during their discussions with the opposing group, I wondered how many opposing groups were going to indicate that they had agreed to different facts. This is exactly what occurred, and gave the students another important lesson about ensuring that they were clear about what was agreed to in a meeting with another party.

Seminar 4 – Identifying the Issues and Planning Research

In this seminar the groups identified the legal issues revealed in their statement of facts and planned their legal research. Students were very comfortable with this exercise as this is generally the starting point for traditional assignments.

While looking at the requirements of the relevant legislation, many groups realised that they needed more facts on which to base their claim or defence. Students also realised that some of the things that they had taken for granted (for example, that the opposing party was a corporation) was something that they could not assume and would have to either prove, or ask the other side to concede. This experience brought home to many students the need to address commercial problems in a logical order, and to clarify any assumptions they make before attempting to advise their client. This exercise also neatly demonstrated the circularity of the relationship between facts and law, and the need to constantly review the information to hand.

Seminar 5 – Preparing Letter of Advice

In this seminar students were given a short talk about how to prepare a letter of advice to a client.

The groups were required to start putting their research into a letter of advice to their retailer or consumer client. One of the problems identified during this activity was that students found it difficult to advise a client in simple terms. Most students were still focused on demonstrating all that they knew about the particular area of law, rather than advising the client about how the law was relevant to him or her. In future years, I intend to conduct a separate class on advice writing in order to deal with this problem, with information relating to writing style, use of appropriate language, how to give clients bad news, and the importance of practical advice.

Seminar 6 – Presentations of Reflective Analysis

In the reflective analysis, students were asked to give a presentation in which they discussed the following things:

- How the members of their group dealt with working in a group, what worked well, what went wrong.
- What the group was concerned about when they were preparing or reviewing the advertisements.
- What happened to the group during its participation in Market Day.
- How the group dealt with the activities that followed (writing the letter, identifying the facts and legal issues, planning research, writing the letter of advice).
- How the group fared in the negotiation.

The groups' analyses varied greatly in terms of the level of preparation and creativity in presentation. One consumer group prepared a short video in a "Current Affair" exposé style about the retailer's alleged misconduct. Another prepared a television commercial for a product and then demonstrated how both a consumer and a retailer could protect themselves from any consumer protection issues.

Some of the most interesting observations by the students were:

- That people frequently saw the same transaction differently.
- How important it was to keep a record of what was said during transactions and negotiations.
- How the "buyer beware" principle frequently did not work in practice.

- The danger of making unsubstantiated assumptions.
- The need to ensure that the language of advertisements and sales talk is accurate and complete.
- How important it is for retailers to know about the product they are selling.
- The need to reinforce to consumers information that might at first appear to be obvious from the retailer's perspective.
- The frequency of evidential problems in consumer transactions.

Connection with Lectures

Lectures and the Market Day Project activities are complementary, both providing information and the opportunity to achieve learning outcomes in a variety of ways. In general, lectures provide a structured, systematic and methodical approach to the content of the course. They build up the detail of the legal principles in a step-by-step, topic-based approach. However, legal problems in practice rarely fit wholly within a single legal topic, and the Market Day Project activities are aimed at providing students with a less structured overview of Consumer Protection Law in practice, involving problems in which many different areas of content may overlap.

Generally, the students were exposed to tasks in the Market Day Project just before the lecture dealing with the declarative knowledge necessary to deal with that task appropriately. For example, students were required to prepare a product advertisement prior to the lectures about consumer protection issues in advertising. They were also required to negotiate the sale and purchase of a product prior to lectures dealing with sale of goods law. However, students were not required to submit their legal advice relating to the problems that arose from these activities until some weeks after the relevant lectures. This resulted in a number of beneficial learning outcomes. First, students were frequently inspired to read ahead as they were interested in finding the knowledge needed to solve the problem before attending the lecture. Secondly, during the lectures, students often recognised the relationship between the content of the class and the problem they had just experienced in the Market Day activities. This recognition meant that the students were more interested in the content of the lecture as they were motivated to find a solution to their own problem.

Student Evaluations

Formal student evaluations of teaching and learning are administered towards the end of the semester. They are voluntary and anonymous. These evaluations contain the university's standard questions, as well as course-specific questions designed by the coordinator. Students are also encouraged to add comments about any aspect of the course, and many take the opportunity to do so.

Some of the main points revealed from student evaluations in 2003 were:

- The coordinator's view that the unit fulfilled the objectives stated in the outline was supported by the fact that over 85% of students surveyed agreed with a statement to that effect.⁶
- 87% of students surveyed believed they gained a good understanding of the subject.
- Importantly, given the unit's focus on problem solving, almost 100% of the students surveyed agreed that they had developed the ability to solve problems in the field.
- Nearly 75% of students surveyed agreed that they had developed skills needed by professionals in the field.
- Over 86% of students surveyed found the market day activities to be a valuable learning experience.
- 78% of students surveyed found the unit stimulated their interest in the subject.
- About 70% of students surveyed enjoyed the group work.

Generally speaking, student satisfaction with the project was high. Comments included:

- "I think the process of getting to advise a client is the best learning exercise I have engaged in at law school."
- "The group assessment activities were an interesting and valuable learning exercise, as they allowed a more practical understanding of the law."

Learning Outcomes

The Market Day Project required the students to engage in learning activities that were likely to result in their achieving the unit's learning outcomes.⁷ The project required a solid

6 I note that, of the 40 students enrolled in the unit, 23 completed the unit evaluation.

7 T J Shuell, "Cognitive Conceptions of Learning" (1986) 56 *Review of Educational Research* 411.

content-based knowledge of the relevant consumer protection law, but also procedural knowledge (how to appropriately use the law) and conditional knowledge (when and why to use it). The project engaged the students in a process in which the declarative and procedural aspects were integrated,⁸ and which involved active rather than inactive learning.⁹

One of the most important aspects of the project was its contextual nature. As Blasi has noted, in imparting expertise, “there is no substitute for context”.¹⁰ The students were required to play the roles of clients, witnesses, and lawyers. The activities involved legal and factual analysis, as well as interpersonal and communication skills, such as judgment and imagination. The practical nature of the project also meant that the students’ legal knowledge was placed in a meaningful context.

The Market Day Project also specifically includes a number of aspects aimed at developing social and ethical awareness. The students assigned to Retailer groups are specifically instructed that they are able to engage in “dodgy sales practices” in order to make a sale during Market Day, and accordingly have to make a decision about whether or not to do so. This usually involves a discussion among the group members about the ramifications of their decision. Sometimes these practices occur without much forethought, and the students are then left to deal with the consequences – a learning experience in itself. For example, one group was particularly unethical during the Market Day itself, and then had to face the consequence that the opposing group refused to negotiate with them at all in later activities and took a very hard line in the dispute resolution process. The “unethical” group was then required to spend some time during their Reflective Analysis speaking about what they would have done differently had they realised the consequences of their actions before Market Day.

Course Assessment

The two main pieces of summative assessment in the course are the Market Day Project activities and the Open Book Exam. These are quite different in form and emphasise different skills

8 As recommended by Biggs, *supra* note 1 at 41-42.

9 Biggs, *supra* note 1 at 76-79.

10 G L Blasi, “What Lawyers Know: Lawyering Expertise, Cognitive Science and the Functions of Theory” (1995) 45 *Journal of Legal Education* 313 at 397.

and abilities. However, in combination they give students the opportunity to demonstrate their achievement of the unit's learning outcomes and the university's graduate attributes. The examination provides an important balance to the group work in the Market Day Project, providing a clear indication of each individual's performance in a controlled environment.

Market Day Project activities are also designed in such a way as to minimise opportunities for plagiarism and inappropriate use of materials.¹¹ Each semester the students are given different scenarios for the retailer and consumer groups, and the interactive nature of Market Day itself means that each time the course is run the students develop a whole new set of facts and relationships across groups. In 2004, the Project revolves around the sale of DVD players, rather than coffee machines. This ensures that there is no opportunity for students to simply re-hash former students' materials.

Conclusion

It is quite difficult to validly assess whether or not students' overall learning outcomes have actually improved significantly as a result of the introduction of the Market Day Project. Although my sense is that students' examination answers now demonstrate greater application and less regurgitation of content, this has not necessarily translated into a higher average mark compared with students studying the course before the Market Day Project was introduced. However, in terms of student engagement and alignment of assessment with learning outcomes, I believe that the Market Day Project has been a success. In particular, the project increases the likelihood of learning by requiring the students to engage in tasks which are "novel and varied in interest, offer reasonable challenges, help students develop short-term self-referenced goals, focus on meaningful aspects of learning and support the development and use of effective learning strategies".¹²

11 James and McInnis, *supra* note 2 at 7.

12 P Black and D William, "Assessment and Classroom Learning" (1998) 5 *Assessment in Education* 7 at 31.

TEACHING NOTE

Crossing the Language and Cultural Divide – The Challenges of Educating Asian Law Students in a Globalising World

Steven Freeland,* *Grace Li*** & *Angus Young****

Introduction

Following the March 2004 annual meeting of the National People's Congress in China, the country's Parliament formally approved 13 constitutional amendments, including some that addressed the issues of private property ownership and human rights.¹ These amendments contain radical changes to the underlying legal framework that regulates life in China. The notion of private property ownership, whilst familiar to most developed and, indeed, many developing countries, represents a significant departure from the system of law that emerged as a result of the rise to power of the Communist Party in the 1940s. Despite ongoing debate about the nature of human rights and arguments of cultural relativism, the ongoing incorporation of basic international human rights standards into the domestic law of countries throughout the world highlights the increasingly "global" nature of many important issues.

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1 C Buckley, "China Approves Amendments to Constitution on Human Rights", *The New York Times* (15 March 2004): www.nytimes.com (accessed 17 March 2004).

These developments take place for many reasons. There are complex political, cultural, social and economic forces at play. It would be naïve to suggest that significant legal change takes place in a vacuum of reassessment simply for the sake of “change for the better”. Nevertheless, legal reforms represent further examples of what some might regard as a “trend towards convergence” in law, which itself stems from the seemingly inevitable path of globalisation. As the discourse between governments and their citizens increases to an inter-dependent basis, accumulation of knowledge, experience and expertise in “foreign” concepts of law – as well as in many other areas – will inevitably follow.

We see this convergence not only at the domestic level. As the regulation of international issues becomes supranational with the establishment of international courts and tribunals, so must the rules and procedures governing these institutions take into account notions of law from a variety of legal systems. For example, the 18 judges who preside in the recently established International Criminal Court (ICC) come from legal systems as diverse as England, France, Costa Rica, Samoa, Republic of Korea, Mali, Brazil, Canada, Finland, Latvia and other countries. This may lead to differences of opinion as to the application of legal principles to a particular case² and also requires that the ICC’s rules of evidence and procedure³ represent an “amalgam” of common law and civil law concepts, following in the footsteps of the two ad hoc tribunals established during the 1990s by the United Nations Security Council.⁴

All of this adds force to the advantages associated with the internationalisation of legal education; the rapid rise in the number of overseas students who seek to undertake at least a part of their university studies in a foreign country. Over recent years, large numbers of law students from China, Hong Kong, Taiwan, Thailand, Malaysia, Indonesia and

2 The International Criminal Tribunal for the Former Yugoslavia highlighted the different approaches to procedural questions that arise through the diverse legal backgrounds of judges in an international court: see Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, *Prosecutor v Tadic*, Case No IT-94-1-T (10 August 1995) and Decision on Prosecutor’s Appeal on Admissibility of Evidence, *Prosecutor v Aleksovski*, Case No IT-95-14/1-AR73 (16 February 1999).

3 Rules of Procedure and Evidence of the International Criminal Court (Doc ICC-ASP/1/3).

4 International Criminal Tribunal for the Former Yugoslavia, established by United Nations Security Council Resolution 827 (1993) on 25 May 1993 and the International Criminal Tribunal for Rwanda, established by United Nations Security Council Resolution 955 (1994) on 8 November 1994.

other countries have undertaken legal studies in overseas institutions. In Australia the growth in the number of Asian students undertaking degrees in law over the past decade has been staggering. This phenomenon gives rise to a number of important issues.

A decade ago D J Phillips published discussions on this issue in a legal education journal. His first article gave an overview of the implications with regard to foreign students coming to Australia to pursue post-graduate degrees and suggested academics should modify the way they teach these students.⁵ His second article argued that academics should develop cross-cultural sensitivity in teaching overseas students. These articles were not directed at legal education per se and solutions offered were ethnological.⁶

In this teaching note, we set out some of the important reasons why Asian students have seen it as necessary to seek to further their legal education in countries such as Australia. This involves an assessment of the type of skills required of those Asian students undertaking law in Australia and how the educative process should continue to evolve to meet these needs. This note then sets out the experiences in two particular situations, the teaching of Business Law to Asian Students and an innovative Australian postgraduate program taught in Mandarin. These experiences further highlight the need for Australian universities to carefully consider their strategies when offering courses for Asian students, particularly in view of the challenges posed by the continuing development of globalisation in the 21st century.

The Need for a “Globalised” Asian Law Student

International events in recent times, such as the expansion of the World Trade Organization, the Asian Economic Crisis, and the September 11 attacks in the United States have highlighted the need for cooperative and multilateral approaches to address issues of “global” concern. Questions related to human rights, the environment, public and corporate governance, as well as the need for an effective “international” justice system, have become important themes for many governmental and non-governmental organisations.

5 D J Phillips, “University Academics Responding and Adjusting to the Increasing Numbers of Cross Cultural and Overseas Students” (1992) 3(2) LER 123 at 123-153.

6 D J Phillips, “Solutions to the Dilemma and Concerns of Teaching International Students in Universities” (1994) 5(1) LER 47 at 47-66.

With the increased inter-dependence of States, it is imperative to develop co-operative and multilateral solutions to these issues. Areas such as human rights, international trade, the environment, international criminal justice, natural resources, indigenous rights and the common heritage of mankind all require a global approach. As trade and commerce proliferates, a standardisation of commercial arrangements becomes increasingly necessary. Inevitably, all of this will impact on domestic laws. No longer can the lawyer disregard international law principles in the context of domestic disputes. It is in this context that the mobility of Asian law students has increased dramatically.

In a recent address in Melbourne,⁷ Justice Michael Kirby noted a tendency towards “the utilisation of universal human rights law in constitutional elaboration”, an approach that can be found in many domestic law jurisdictions, including several countries within Asia. This is an irreversible process and there can be no doubt that domestic law in Asia will be increasingly influenced by international legal norms.

As a corollary, domestic law principles and procedures are also increasingly relevant in the development of these international processes. A global approach inevitably leads to convergence of certain components from the many domestic legal systems of the world in order to establish appropriate supranational regulatory bodies, tribunals and courts.

As a result, law students need to anticipate a more “holistic” and less State-centric view of law and legal regulation. States cannot seek to participate and benefit from the globalisation of trade and industry without also accepting other aspects of this globalisation process. Indeed, standards viewed as a form of global governance will be necessary to ensure that the benefits of globalisation do not bypass the developing and emerging countries in the region.

All of this will have important ramifications for tomorrow’s Asian lawyers. It will therefore be necessary for the next generation of lawyers in the region to be conversant with the following principles:

- The ways in which other important disciplines – politics, commerce, financial markets, capital, cultural values, indigenous rights – impact upon and are affected by the law.

⁷ “Talking about Death: The High Court of Australia and the Death Penalty” (address to the Criminal Law Association (Victoria) and Reprieve Australia, 6 October 2003).

- The ways in which international law norms develop and/or impact on domestic regulatory regimes and vice versa.
- The differences and similarities between the diverse systems of law, particularly in view of the increasing convergence of procedural and substantive legal norms.
- The formulation of appropriate transnational dispute resolution mechanisms.
- The strengths and weaknesses of the current multilateral regulation.

No doubt, this is a daunting task, particularly as this is by no means an exhaustive list. Yet, tomorrow's Asian lawyers cannot afford to be seduced by the apparent "simplicity" of globalisation. Indeed, in parallel to technological advances, the world becomes "smaller" and more complex. These developments will impact significantly on the Asian region. In order for the lawyers of Asia to play their proper part in designing and implementing appropriate legal norms for the changing geopolitical and economic environment on a global, regional and domestic scale, they must be cognisant of the broad spectrum of issues that this encompasses. It is for these reasons that the tendency for Asian students to undertake law studies in countries such as Australia will continue.

The Growth in Asian Students Studying in Australia

In the last few years, the number of foreign students coming to Australia to study has surged, with numbers doubling from 93,722 in 1994 to 190,606 in 2001.⁸ Education has become Australia's third largest service export industry. In terms of dollar value, it is a \$5 billion industry.⁹ According to the Department of Education, Science and Technology, students from around 200 different countries come to Australia to study.¹⁰ One of the largest pools of students comes from North and South-east Asia, which accounts for approximately 80% of the total student visas issued.¹¹ In 2003, the top ten Asian Countries in terms of foreign student enrolments in Australia were China, Hong Kong, Singapore, Malaysia, Indonesia, South Korea, Japan, Thailand, India, and Taiwan (see Appendix 1).

8 Department of Education, Science, and Technology, AEI – International Education Network, *Recent Annual Statistics*: <<http://aei.dest.gov.au/general/stats/StudentVisaData/RecentAnnualData/RecentData.htm>>.

9 Speech by the Hon Dr Brendan Nelson, "Engaging the World through Education", Federal House of Representatives (October 2003), p 6.

10 D J Phillips, *supra* note 9 at 5.

The largest growth of foreign students over this period came from China and India at 38% and 23% respectively.¹²

With the growth of the education sector as a commercial service provider, Australia's Minister for Education, Dr Brendan Nelson, noted in a recent speech some emerging concerns:

The greatest risk is damage to Australia's reputation for quality. There are three main risks to quality – inadequate inputs, inadequate process and insufficient outcome ... Australian providers will need to meet minimum standards of curriculum, teaching and infrastructure inputs that are fit for the purpose wherever they are provided ... Graduates of Australian programs, wherever and however they are provided, will need to be able to demonstrate sound outcomes. Failure in one area can do damage to the entire reputation of Australian education.¹³

This highlights a relentless challenge for universities and academics to make certain the learning outcomes of foreign students are of a consistently high standard, which is not a straightforward task given the diverse educational backgrounds of these students. The difficulties are further compounded where English is not the student's primary language pre-university. Moreover, their educational emphasis, delivery methods, and knowledge accumulation techniques might differ from Australia's or even the Anglo-American tradition.

Australia does have an advantage over education providers in countries like the UK, with a sizable multicultural population helping to ease the transitional and adjustment process for foreign Asian students. Most of these students tend to choose to study in large Australian cities, with 65% converging on Sydney and Melbourne,¹⁴ where most of the Asian migrants reside. Still, the diversity in educational background, ethnicity, and motivation continues to plague foreign students' ability to deal with the transition into an Australian or Anglo education system.¹⁵

11 D J Phillips, *supra* note 9 at 22.

12 Department of Education, Science, and Technology, *AEI Market Indicator Data for February 2004*: <<http://aei.dest.gov.au/general/interest/04Interest08.htm>>.

13 D J Phillips, *supra* note 9 at 15.

14 D J Phillips, *supra* note 9 at 7.

15 C McInnis, R James and C McNaught, *First Year on Campus: Diversity in the Initial Experiences of Australian Undergraduates* (Working Paper Series, Centre for the Study of Higher Education, University of Melbourne, 1995).

No matter the subject matter, a recurrent challenge for any teacher is to communicate ideas to the students within a semester of 13–14 weeks. Even if foreign Asian students pass the Institute English Language Studies English requirements, it is difficult for academics to be certain that the correct or intended message is received during lectures and tutorials. Recent studies have found that more than half of the foreign Asian students surveyed had a weak command of the English language. As a result, simply keeping up with lectures and tutorials becomes a formidable task.¹⁶ Although the language factor could be overcome with language coaching in the course of their university studies, there are other deep-rooted and fundamental factors to consider.

Educational Approach and Cultural Mindset in Asian Countries

The massive and rapid industrialisation process of Asian countries over the last three decades has exacerbated the demand for skilled labour, causing a tendency for their education system to be based on quantity, not quality of labour. Thus, intensive learning styles and factory-like “rolling off” of new graduates is considered to be a necessary policy to meet industrial demands.¹⁷ Asian students become prone to memorising vast amounts of information without any time for thought, analysis or critical thinking. This method of learning is symptomatic across all levels of education, from primary to university.¹⁸ Moreover, Asian countries’ educational curriculums do not regard oral presentations as an essential aspect of assessment. Class presentation and participation would be an alien concept for most of them.

As a result, Asian students’ abilities to develop their own arguments and critical thinking are sometimes largely neglected. Their learning process tends to focus on finding solutions or answers to match the questions, without sparing much thought or concern for understanding or appreciating the implications of the knowledge conveyed in classes. With examinations and tests the main forms of assessments,

16 R Burns, “Study and Stress among First Year Overseas Students in an Australia University” (1991) 10 *Higher Education Research and Development* 61 at 61-76.

17 A Chodhury and I Islam, *The Newly Industrialising Economies of East Asia* (London: Routledge, 1993) 146-147, 159-161.

18 The concepts of critical thinking and developing arguments are constant challenges for foreign Asian students, especially in their first year at an Australian University: D J Phillips, *supra* note 16 at 65-67.

their time and effort is devoted to preparing how to answer questions rather than on the content of what is being taught.

An Educative Process to Meet the Demands of Asian Law Students

Naturally, all of these developments raise questions as to how we should address the demands of these globalised Asian law students in Australia. This process, the experience and expertise of the educators and the makeup of the teaching curriculum must be adapted to reflect these challenges. This section intends to address some broad key requirements of this process.

The Educative Process

“Traditional” teaching through a lecture/seminar system may not be sufficient to serve the needs of tomorrow’s Asian lawyers. Of course, some components of instruction are appropriate but it will become necessary to include greater practical elements as part of an Australian law course. Simulations, compulsory advocacy exercises and placements with “real world” organisations will help the Asian law student to become accustomed to the evolving nature of the legal process.

No doubt, many Australian universities attempt to facilitate some of these activities; however, more needs to be done. This must be done without compromising the academic integrity of an Australian law degree in terms of content and rigour.

In addressing some of the problems mentioned earlier, it would be ideal for Asian students to have undergone an adequate orientation program that may help them to bridge some of the problems arising from differences in the educational approach and learning culture adopted in Australia. Clearly any associated additional costs and time considerations might make Australia a less attractive proposition for Asian students, unless there are greater incentives to do so, for instance through the professional accreditation process in their home country.

The Educators

Australian law schools must recognise the need to engage faculty members from a diverse range of background experience, particularly those familiar with relevant disciplines and the region as a whole. It is important that students receive

instruction and guidance from educators who approach contemporary legal issues from different and relevant perspectives. This will help to enhance an understanding of the interaction between law and other disciplines.

This means that more resources need to be invested in formulating these specific teaching programs and training. For instance, there is a growing awareness amongst some law teachers of the need to be more sensitive and adopt cross-cultural approaches to legal education.¹⁹ Law schools in the US, which have long experienced teaching US laws to foreign LLM students, continue to refine their teaching methods and contents to address the above issues.²⁰

The Curriculum

This is the area where perhaps the most significant changes can be made on an ongoing basis. Without being overly dramatic, it is crucial that the law school curriculum is constantly assessed and revised so that students are offered relevant, contemporary units of study. Just as the law itself must constantly adapt to changes in technology, politics, market forces and socio-economic developments, so must the areas of study undertaken by future lawyers of the region be influenced by the demands of globalisation.

In recent years in Australia we have seen new “cutting edge” units of study being offered at law schools. These provide overseas students with the expertise to incorporate relevant skills into the complex, changing economic, political and social climate in their home countries, such as international advocacy, space law, biomedical law and bioethics, quantitative methods in law and environmental management law. Courses in international and comparative law should also be made compulsory in the standard Australian law degree.²¹ Law students from around the world, including the large number of Asian students in Australian law schools, are at the forefront of this emerging process of the globalisation of legal regulation. It is incumbent on our academic institutions to equip them appropriately to actively participate in these ongoing developments. However, this does not deny the

19 S Bryant, “The Five Habits: Building Cross-cultural Competence in Lawyers” (2001) *Clinical Law Review* 33 at 33-111.

20 M Edwards, “Teaching Foreign LLM Students about US Legal Scholarship” (2002) 52(1 and 2) *Journal of Legal Education* 520 at 520-532.

21 This suggestion is similar to the requirement that all law degrees in Europe offer a compulsory subject in European Union Law.

challenges associated with the development of an appropriate cross-cultural educational curriculum.

Comparing Apples and Oranges: Experiences in Teaching Economics and Business Law to Asian Students

Recent statistics have shown that three out of five foreign students choose to pursue information technology and business-related degrees,²² as there is a perception amongst these students and their parents that skills obtained from business degrees would provide them with the highest return for their investment. Since most business undergraduate degrees in Australia include compulsory commercial law and economics subjects,²³ Asian students have to overcome the difficulties associated with studying these two broad areas.

These issues are highlighted by the case study below, which narrates one of the author's experiences in teaching economics and business law to Asian students in Australia and New Zealand.

For foreign Asian students coming from rapidly industrialising economies, where business information is prevalent in their daily lives, there is an implied assumption that learning economics may not be too alienating, compared to law subjects whose content may be significantly different to their own legal system. In addition, subjects about Asian economies are widely available and taught in every university in Australia.²⁴ As a result, foreign Asian students are more likely to have some affinity to the business subject matter and hence find studying these subjects easier.

Yet, many foreign Asian students still find economics a difficult subject to comprehend and study. Two academics in the School of Finance and Economics at University of Technology, Sydney surveyed a sizable number of local and foreign students in 2003, uncovering problems experienced by local and foreign students in undergraduate first and second year economics subjects. The surveys separated the responses of local and foreign students (including Asian students) and the results indicated two trends.

22 D J Phillips, *supra* note 9 at 7.

23 Department of Education, Science and Technology, "Which University?": <http://www.dest.gov.au/tenfields/>.

24 M Edwards, *supra* note 23.

First, foreign students found that their secondary education was not adequate to prepare them for university education and they lacked important skills such as note-taking during lectures, self-discipline and working in an independent learning environment. Further, the survey revealed foreign students had problems with tutorial participation and written assignments, more so than local students, presumably due to language factors.²⁵ Secondly, many found the textbooks difficult to comprehend because they were forced to translate many keywords into their own language. More surprisingly, it is comparatively easier for them to learn from textbooks than lectures. Yet, those who attended lectures and tutorials tended to have better learning outcomes and results.²⁶

In addition to the results highlighted by this survey, many Asian students have found the logical imperatives of economic analysis and its way of thinking difficult to follow, particularly where this subject requires the student to understand how each topic is interlinked. For this reason, employing basic techniques, such as repeating simple key concepts and linkages between topics in class, is perhaps the only proven way to ensure that students have understood issues covered in previous lectures and tutorials. Even if this technique is effective, it is a labour-intensive and time-consuming exercise.

Time-proven teaching methods, such as an interactive learning environment, are the most effective in encouraging students to learn and probe deeper into the topic. Equally important is the development of critical thinking, the deconstruction of the concepts and linking them to earlier topics covered. The levels of absorption appear to improve when Asian students are given "real" economic problems to analyse. For example, discussing topics such as the recent Asian Economic Crisis in 1997 seemed to help them make stronger connections between economic concepts taught in the curriculum and real life experience.

Catering to various learning patterns and methods is not easy to achieve. Often, many Asian students are left to fend for themselves. Even though many universities provide language support through the international student offices, they tend to only address specific aspects of the problem. There seems to be an inherent assumption among these offices that lecturers

25 T Hutcheson and H Tse (2004) *Learning by Students at University* (Working Paper, School of Finance and Economics, University of Technology, Sydney, forthcoming) pp 5-7.

26 Department of Education, Science and Technology, *supra* note 25 at 8.

and tutors would be able or equipped to deal with subject-related questions of Asian students.

Law teachers in Australia may confront a similar but different set of challenges when teaching business law to Asian students. Several key factors that may help explain this include:

- 1 the Asian student's attitude towards law as a subject matter;
- 2 the legal system in the student's home country;
- 3 language and cultural barriers;
- 4 the approach, method and purpose of education;
- 5 the scope of application from acquired knowledge.

Needless to say, the impact of these factors would vary amongst students.

In points 2 and 4, it is important to highlight that Asian students come from diverse legal systems. Recently the Council of Australian Law Deans produced a guide about studying law in Australia, which explains:

The non-lawyer tends to think of the law in terms of clear rules against reprehensible behaviour such as murder or theft. In that sense we do know what is right and wrong in terms of individual behaviour. For the lawyer and the interested observer, however, these fundamental prohibitions form only a small part of the subject matter of the law. The different legal systems have surprisingly similar content in their laws but content does not determine to which family of law a particular country's legal system is said to belong. The laws of country will be said to belong to a family, depending upon the kinds of values and goals the society endorses, the roles and duties of the institutions and individuals empowered to pursue those goals, and the detailed processes through which the goals are implemented.²⁷

It goes on to classify various legal systems of many parts of the world into four major categories. These are: common law, civil law, customary law, and the socialist system of law.²⁸

Compared to the study of economics, law subjects appear to be much more limited in the scope of application over certain countries. Hence, for a foreign Asian student coming

27 Council of Australian Law Deans, *Studying Law in Australia*: <http://www.cald.asn.au/slia.html> (accessed 3 December 2004) p 3.

28 T Hutcheson and H Tse, *supra* note 27.

from a different legal system, studying Australian business law will often become another subject to pass rather than something of genuine value, unless the student intended to enter a profession that required legal expertise involving the common law system (point 5).

The guide to studying law in Australia also notes:

With the internationalisation of business there is an increasing need to consider the law of more than one country or culture ... In Australia more than a third of graduates with law degrees do not practise law. Law is seen as a good general education for people desiring entry into business, banking, technology, the property market and construction and public administration. As in other countries, a large percentage of parliamentarians at the State and Federal level are qualified lawyers.²⁹

Due to the need for a global approach to business and political interactions, Asian students, as well as local students, would need to appreciate business law not as a compulsory subject but as a tool to facilitate the workings of international commerce and political relations.³⁰

This is not to suggest that different legal systems of education should be amalgamated to meet the challenges of globalisation, though the distinction between certain areas of civil law and common law jurisdictions is decreasing, for example the application of the Vienna Convention of the International Sale of Goods. General principles of effective legal education and knowledge of cross-jurisdictional procedures should prevail in teaching business law for the generation of global business students.³¹

Australian law schools have over the last few years increasingly been aware of the need to invest and develop a much more international approach to legal education. Professor David Barker, the Dean of the Faculty of Law at the University of Technology, Sydney has noted:

The process of internationalisation in Australia has begun, but the internationalisation of law will continue at an even

29 T Hutcheson and H Tse, *supra* note 27 at 5, 17.

30 For further discussions about a competitive market and a strong legal structure, see B Black, "The Legal and Institutional Preconditions for Strong Securities Markets" (2001) 48 *UCLA Law Review* 781 at 781-855.

31 For more on globalisation of legal and judicial education, see J Wallace, "Globalisation of Judicial Education" (2003) 28 *Yale Journal of International Law* 355 at 355-364.

faster pace, thus minimising the parochial attitudes which some would say have characterised legal education.³²

Drawing from the experience of the economics department, a possible strategy to improve Asian students' interest in studying law as part of their business degrees is to include electives in Asian law subjects. However, more research will need to be undertaken before resources are devoted to this area. There would need to be a significant number of students enrolling in these subjects for it to be a financially viable option.

Similar to the study of economics, Asian students might find studying law a tedious task, particularly for those who are weak in their command of the English language. There are those who argue that legal language is discriminatory and biased towards some deep-rooted traditions and culture that marginalise others.³³ A more moderate view would be that the purpose of legal education is to train law students to think like lawyers.³⁴

One option law schools in Australia could consider to assist foreign students with their language and subject-related problems is to draw on Macquarie University's experiences in the Master of International Relations by coursework, where a program-based part-time tutor is employed to help foreign students with specific language problems. Both students and lecturers alike have positively received this facility.

Lastly, in regard to point 1, experiences and perceptions of the law by Asian students will vary. In some countries, such as Singapore, the law and law enforcement officials have wide powers and are highly regarded. The position may be different in other countries. Any differences in value systems towards the law would certainly impact on the Asian student's learning approach and attitude to the subject matter.

Taking into consideration all the above, although Australian laws are being taught, Asian students could be motivated by the connection between the themes and general principles of Australian business laws and international business norms. Particularly for those considering applying for professional

32 D Barker, "Beyond Australia and the Pacific Rim: Challenges for the Internationalisation of Australian Legal Education" (2002) 21 *Pennsylvania State International Law Review* 88.

33 G Shepherd, "No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools" (2003) 53(1) *Journal of Legal Education* 103 at 103-153.

34 J Kleefeld, "Rethinking 'Like a Lawyer': An Incrementalist's Proposal to First-Year Curriculum Reform" (2002) 53(2) *Journal of Legal Education* 254 at 254-266.

accreditation like accountancy, the emphasis of convergence of securities and financial sectors laws have encouraged greater interest among Asian students to shift their attitudes towards studying law.

In addition, business laws are not merely rules to be portrayed as best practice. For example, the law of contracts, which has often been neglected in Asian business culture because “building business relations” has traditionally taken precedence over written documents, has now gained wider acceptance amongst Asian students. This is illustrated by the advances in information technology which has reduced the need for “in-person” business dealings, making written agreements a centrepiece in the new market place. In addition, contracts coagulate business transactions beyond the confines of the abstract theory of “demand and supply” in economics.

While the stories behind court cases have been of interest to some Asian students, encouraging them to engage and participate through debate is often met with only moderate enthusiasm. For those Asian students with a weak English foundation, it continues to pose a challenge in terms of communicating legal concepts and arguments, coupled with their inability to read the textbooks. More acute is the problem of Asian students’ lack of ability to develop arguments in their written assignments. These reasons were documented above. Yet these observations are not unique to teaching law. They apply to the teaching of politics and international relations to Asian students where developing key arguments is central to essay writing.

An Innovative Project: Teaching Australian LLM Program in China Using Mandarin

With the increase in the number of Asian students in Australia, a huge challenge for any educational provider is to maintain standards and produce quality education. Yet, proposing practicable solutions is not easy or straightforward, particularly with students from a diverse number of backgrounds. In this second case study, the author narrates her experiences from an innovative project developed by an Australian university. The lessons drawn might provide further insight into how to meet the challenges of globalising legal education.

Background

The University of Technology, Sydney (UTS) prides itself on its innovative thinking. Since 2000, the Faculty of Law has been

running a special law program called “Mandarin International” in Master of Laws (LLM) and Master of Legal Studies (MLS). The basic admission requirement is a Bachelor’s degree with sufficient Mandarin language skills. This initiative brought much attention and controversy both in Australia and China. Key issues were quality control, curriculum development, class arrangement and assessment format. Throughout the process, the expectation was to deliver a quality, high standard Australian law degree program.

The first batch of students were 14 Chinese lawyers. They were selected from 10,000 applicants in Shanghai vetted by the Shanghai Justice Bureau (SJB), which is part of the Shanghai Municipal Government. The selection processes were strict and lengthy. Some of the criteria were age, work experience and educational background. In addition, two elimination examinations were held to test the candidates on legal knowledge and basic English skills. A short-list of candidates then enrolled as full-time students at Fudan University in Shanghai,³⁵ and attended one-and-a-half months of intensive English training. At the end of the course, SJB covered the cost of the tuition for those successful candidates.³⁶

UTS Law Faculty provided considerable resources to develop this course as it had to be delivered in Mandarin. A Chinese version of the curriculum, readings and lecture framework had to be developed from the ground up.

By December 2000, all of the 14 students in the first cohort successfully graduated. An LLM degree awarded by UTS gave these students significant advantages in China’s job market. One student is now a very successful lawyer in China. He owns three firms – one in Hong Kong, another in Shanghai and one in Silicon Valley, USA. Another student, Bailey Xu, set up his own practice in Shanghai and won the 2001 Shanghai Bar Association Award for Outstanding Young Legal Practitioner.

Evaluation

After eight semesters, there are several lessons to be learned from these experiences. The key achievements and lessons are highlighted below.

The achievements of the program were:

- To bridge some of the difficulties for Chinese students coming from a very different legal system. In so doing,

35 Fudan University is a prestigious university in China.

36 Some students had to agree to a contract with SJB to stay in Shanghai and work for at least three years upon the completion of the program.

the program played a part in the education of the next generation of lawyers in a world of converging international legal principles.

- Achieving exponential growth in student enrolments. In 2001, the program grew to 55 in Beijing and 36 in Shanghai. By 2003, more than 100 applications were received in the Beijing program alone.
- Developing a set of bilingual curricula and readings for an Australian degree consistent with other postgraduate programs. More than 20 bilingual researchers, who drafted the course outline and curriculum, assisted the faculty. This approach to preparing materials proved to be a successful way of solving language difficulties.
- Many international law subjects were very well received and popular with the students, such as international business law, international banking and financial laws. Topics discussing the WTO, World Bank and International Treaties were very informative for those involved in China's export-orientated industries.
- The students' performances were satisfactory in most of the subjects with an extremely low failure rate. Indeed, a large percentage of students scored a credit or better average in their degree.

The lessons learnt were:

- This is an innovative program running on a basic faculty academic and administrative infrastructure. In reality, it required a separate administrative structure, including bilingual administrative staff, curriculum development personnel and student liaison. In hindsight, all of this should have been in place before the course commenced. Naturally, the set-up costs were considerable.
- Due to the bilingual requirements, a large contingent of support staff was needed. The selection of personnel required extensive consideration. For example, the translators needed extensive legal knowledge in both common law and Chinese legal systems. This was vital to the communication of multifaceted legal concepts to the students. It is not surprising that these skills are rare and expensive.
- The Chinese students from a very different legal system experienced a steep learning curve. Ideally, an orientation program would be implemented to introduce Australia's legal attributes and the rationality of a common law system to the Chinese students.

- The design of the course would be geared towards a more international perspective. Internationally focused subjects were the most popular and there was greater acceptance and interest in the international legal frameworks.
- Assessment methods and criteria were difficult to design. Initially, the program allowed students to submit their assignments in either Chinese or English. Lecturers assessed the English texts relatively easily, while Chinese texts had to be translated before they could be assessed. This created a number of problems, such as delays in marking and occasionally concerns were raised regarding disparities between the translated version and the original work submitted. The program was subsequently altered so that every assignment was required to be submitted in Chinese. However, the amount of the translation work doubled and so did the associated costs.
- The cultural differences in an Australian-centred program were probably the most difficult to overcome. The lack of both critical thinking skills and the ability to develop arguments were the two main issues. This is because their educational system is different from that of Australia's. Much of Australia's legal education requires understanding, analysis, and the ability to develop arguments, which Chinese students are not able to learn in a short span of time.

After eight semesters, the UTS Law Faculty decided to close the Mandarin International Program for a variety of reasons. The University of Canberra will offer a similar course soon, and has started to recruit Chinese students. No matter which Australian legal education provider takes on this lucrative project, they will be confronted with both existing and new challenges. A well-designed orientation program for Chinese students would be an indispensable feature for a Mandarin International law program to be sustainable. Much like Mao's "long-march", the cost will be just as high as the rewards.

Conclusion

Australian education providers, particularly at the university level, have developed into a key export service industry over the last two decades. However, commercialisation does pose certain downsides if the courses are not well managed or designed. Business degrees are likely to be in constant demand. Thus, Asian students will continue to study core subjects like

economics and business law. Whilst there will be some similar problems with the two subjects, particularly the weakness in the students' command of the English language, studying law subjects will pose greater difficulties for them.

Law teachers might design a short orientation seminar course to orientate the students' mindset about the Australian legal system and doctrines, so that keeping up with the local students is not too difficult. In addition, essential skills such as note-taking could be taught. Alternatively, a separate business law subject could be made available for Asian students with the emphasis on comparative legal structures in the context of globalisation. This poses other problems, like the depth of knowledge the students would acquire given the timeframe of 13–14 weeks per semester. In the worst-case scenario, these students might end up knowing little of any legal system. Then again, if the students were continually obliged to study an alien legal system with little scope of application post-degree, both the teachers and students would find the teaching-learning process difficult, affecting the students' interest and grades in the subject matter. It is therefore important that there is further research into appropriate methods of teaching Asian students in Australian law schools, particularly given the complexities associated with globalisation.

The challenges of the 21st century are daunting for all mankind. Rapid developments in technology, changes in the geopolitical climate and the recognition of issues of global concern will demand that the legal processes respond in an appropriate manner. Despite the many problems associated with globalisation, it is a trend that is irreversible. This will, in turn, require more effective and sensitive multilateral legal regulation in many areas. The changes associated with globalisation are having an inordinate effect on the Asian region, with the result that many Asian students are seeking to enhance their "global" perspective by undertaking law degrees in Australia. As a result, it is important to put into place an educative process that will best equip the lawyers of tomorrow in the Asian region to operate effectively in this changing environment and enable them to preserve the important role of law in the conduct of contemporary domestic and transnational relations.

APPENDIX 1

Year 2003 Market Indicator Data
Student Enrolments in Australia from Top Ten Source
Countries

Country	% Change 2002 – 2003
China	20.1%
Hong Kong	7.7%
Korea, Republic of (South)	18.8%
Indonesia	-3.1%
Malaysia	12.8%
Japan	9.6%
Thailand	8.8%
India	26.6%
United States of America	10.2%
Singapore	-1.8%
Other Countries	7.6%

Source: Department of Education, Science and Technology.

TEACHING NOTE

The Journey of a Law Teacher

*Peter Spiller**

My journey as a law university teacher began in 1976 with my appointment as a part-time lecturer continuing uninterrupted to the present. Over these 28 years, I have journeyed both physically and intellectually. My journey has taken me from my homeland to an adopted country. I have also had cause to reflect upon and change my conceptions and practice of teaching.

In this teaching note I share the beginnings of my academic career, my first teaching methods, and the developments that occurred in my teaching. I then describe my present philosophy and practice of teaching, using my first-year law course as an example. I present the evaluations of my teaching and the analysis that I have done of these appraisals. I conclude with the lessons drawn from my teaching journey. I have chosen to share this journey in the hope that this may be a source of inspiration for new academics and reassure more experienced academics who are committed to the cause of student-centred teaching and learning.¹

The Beginnings

Learning is but an adjunct to ourself
And where we are our learning likewise is.²

I begin with my life before my teaching career because, to paraphrase Shakespeare's words, where I have been is where I have learnt my own philosophy of teaching. Parker J Palmer, in his inspirational book, *The Courage to Teach*, stressed the

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1 See below, under the heading "The Role of the Student", for my understanding of student-centred teaching and learning.

2 *Love's Labour's Lost*, Act IV Sc 3.

importance of teachers infusing their work with a strong sense of personal identity.³

I grew up in Durban, South Africa. My parents and grandparents were intelligent people who valued education, but none had been to university or completed university entrance qualifications. My family offered me invaluable qualities: reliability, hard work, and the common touch. The Catholic faith in which I was raised stressed honesty, duty and the service of others. My English grandfather gave me an early model of teaching – with inexhaustible patience he taught his very unpromising grandson to swim.

My love for matters academic emerged as far back as I can remember. I earned from my family an early reputation for having my head in books at family gatherings and received bewildered comments at my early obsession with the myths of Ancient Greece and Rome. By the age of 9, schoolwork was central to my life, both as a way of escaping into another world (especially historical) and as a way of earning parental approval through achieving high marks.

This pattern, involving self-motivation and self-organisation continued into high school. The sound resources and organisation of a state school with an established tradition assisted me and the academic streaming of the time meant that I was in a reasonably supportive environment. The teacher I shall always remember was an intense mathematics teacher. He had both a passion for his subject and a willingness to share with us his reflections on learning. He willed me into a desire to do well for him and into a life-long understanding of the elements of his subject.

My academic success at school made my progression to university obvious and an academic bursary made my university attendance financially possible. My introduction to university life took place in early 1969, when I began a BA degree majoring in English and History at the University of Natal in Durban. Most of the teaching that I experienced through lectures and tutorials was remote and mediocre. I spent most of my time transcribing and learning lecture notes without doing further reading. However, there were two groups of lecturers whose love for their subject was infectious. The Latin and History lecturers' teaching methods tended to be formal and one-sided, but their subject appeared to be an extension of themselves and they took pleasure in sharing this with others. The other memorable lecturers were leading

3 P J Palmer, *The Courage to Teach* (San Francisco: Jossey-Bass, 1998) 10.

figures in the English Department. Their teaching was marked by clarity and rigour, and their close analysis of key texts gave me a skill that has proved invaluable.

At the beginning of 1973, I enrolled in a law degree at the University of Natal in Durban. The three years of my law degree were largely an arid time. There was virtually no exposure to the humanity of the law that gives this subject its fascination, almost all of the courses comprised lectures and examinations without tutorials or internal assessment. Like others of my generation, I was required to engage in passive note-taking with a view to memorising current law as reflected in Acts of Parliament and reported cases, culminating in examinations which required high-speed regurgitation. This legal education neither instilled an understanding of current legal reality nor prepared me for responding to the legal changes of the future. At that time, I was not fully aware of the inadequacies of my legal education, apart from knowing how dull and uninspiring it all was.

However, I valued some lecturers. There were those who showed human kindness, including the lecturer who supervised me in a research project that proved to be the highlight of my degree. Others were good at transmitting their knowledge clearly in a structured way.

Towards the end of the final year of my law degree, the lecturer who was supervising my research project called me into his office to advise me that he was going on sabbatical leave, and asked if I would like to teach his course (the Law of Persons). This was a turning point in my life. Although I was committed to working in a solicitors' office the following year, it was arranged that I would lecture part-time. Thus, at the beginning of 1976, I commenced my teaching career.

First Experience of Teaching

Set in a note-book, learn'd, and conn'd by rote.⁴

I approached my first lectures with serious disadvantages. I had had no teacher training and none was at hand. The models of legal education that I had experienced were limited. I was required to balance the demands of my new work in a solicitors' office with the need to prepare teaching materials.

What was I to do? One factor in my favour was my genuine interest in the subject that had been a favourite and

⁴ *Julius Caesar*, Act IV Sc 3.

in which I had done well. Another was my joyful excitement at approaching a task that I realised I really wanted to do in the service of others. Yet another was that throughout my life as a student I had had to motivate and organise myself to do the best that I could. I was also assisted by my closeness to the experiences and needs of the law students.

What were the aims and objectives of my course? To the extent that I thought of these at all, I aimed to impart the material contained in the set syllabus. I intended that the students would conclude the course with knowledge and understanding of the main principles of family law in the ways in which they were expressed in key legislation and case law. Thus, like many novice academics, I thought entirely in terms of the transmission model of teaching that had been my own experience as a student.⁵

How was I to achieve these aims and objectives? In preparing my lecture notes, I thought of the approach that had served me well in my studies. This involved a careful structuring of topics so that the subject matter was clear, simple and readily accessible. Throughout the year, as I struggled to keep up with the lectures that I had to give, I thought of ways in which the material could be made more interesting to the students, for example through apt literary and other references.

In terms of presenting my material, I was required to lecture to a group of around 90 students. In this context, the mode of delivery was essentially that which I had found easiest as a law student: that of semi-dictating notes at a slow pace. Assessment in the course was one essay and a heavily weighted examination. This meant that the students and I had a limited opportunity of getting to know their progress in the course.

The evident limitations involved in this teaching approach were mitigated by two factors. First, the subject matter of the course had considerable inherent interest and relevance to the students involving little technical or “black-letter” law. Secondly, I was keen to establish a close personal rapport with the class. To this end, through regular reference to the class list, I learnt the names of all the students so that I could respond to them by name when they asked or were asked questions. This appeared to motivate the students to engage in the course. It was already evident that my instincts for student-centred

⁵ J Biggs, *Teaching for Quality Learning at University* (Buckingham: SRHE and Open University Press, 1999) 21.

education were rebelling at the constraints imposed by the transmission model of teaching that I had inherited.

In terms of the criteria adopted at the time, my first course was a success: the teaching appraisal was very positive and the student grades were above average. The result was that I was offered a full-time lecturing position for the following year. At the end of that year (1977), I was appointed to a permanent position and so my career as a law academic was confirmed.

Developments in Teaching

He ... chid his truant youth with such a grace
As if he master'd there a double spirit,
Of teaching and of learning instantly.⁶

The pattern of my early teaching career was one of teaching and learning simultaneously while weaning myself away from "truant" notions of teaching towards a truer sense of the interconnection of teaching and learning.

I was assigned to teach Roman Law, an undergraduate subject with a class of around 150 students, and Legal History, a postgraduate subject with a smaller group of students. These subjects had interested me, but were of far less relevance and interest to most students than the Law of Persons. I recall my early years of teaching these subjects as involving countless hours of preparing materials such as maps, pictures and copies of original manuscripts. I thought of ways that would engage the students to bring the subject alive for them. So hectic was the schedule that in my first year of teaching legal history I once had to excuse myself two-thirds of the way through a class on the basis that I had run out of material to teach!

In these early days of searching for teaching aids, a particular memory remains an inspiration. One day I was sorting out my overhead projector slides, which were then a novelty for law teachers. Into my office walked the father figure of our law school, a dedicated teacher who was in the 50th year of his lecturing career. He asked what the slides meant, and once I had shown him he declared that he would use them in his teaching. In subsequent years, when new teaching methods have been presented and I have felt reluctant about putting in the effort to master them, I have thought back to the 77-year-old teacher who was not too old to take on a new method that would benefit his students.

6 *Henry IV Part I, Act V, Sc 2.*

Within a few years, my instinct to reach out to students made me realise that truly student-centred learning could not occur in a lecture-only format – as such I tried to compensate by interesting, structured presentations and getting to know each student. From my point of view, I came to be bored with repeatedly semi-dictating lecture notes that covered the syllabus; I was uncomfortable with the lecture-centred teaching that placed all the pressure on me to perform.⁷

A further problem with my teaching method was that it did not align my learning objectives with the assessment. There was very limited formative or internal assessment, which meant that there was little engagement in learning-related tasks or mutual feedback on the progress of the students. Furthermore, in compiling my notes, I paid inadequate attention to what would be examined. In fact, when the departmental secretary asked for examination papers before the end of the academic year, I would react with the irritated question: how could I set the examination before I had completed what I was to teach? While I tried to gear my assessment to what had been taught, there were indications from my marking that there was a gap between the teaching and the desired learning in the course. This became an increasing concern as the university began a policy in the 1980s of opening university education to all races with markedly differing backgrounds of secondary education.

An impetus for change to my teaching practice came from my research and study activities. In 1978, I was granted 10 months leave to take up a scholarship to read for a Masters degree at Cambridge University. Here most of my classes were weekly group meetings with a handful of students taking turns to prepare and make presentations on topics that interested them. I revelled in being in close contact with world-class scholars, who were immersed in the study of original sources, whose fascination for their subjects was irresistible. The Cambridge experience also showed me the depth of engagement of learning that was possible when students took an active role in their own learning. I returned to lecturing with a new enthusiasm for my subjects and the hope that I could replicate my educational experience for my students.

In the early 1980s, I made the momentous change to seminar-based teaching in my Roman Law class. Before

7 Palmer noted that the metaphor of covering the field portrayed teaching “as the act of drawing a tarp over a field of grass until no one can see what is under it and the grass dies and nothing new can grow”: Palmer, *supra* note 3 at 121.

the start of the academic year, I compiled the lecture notes and Roman legal sources into a printed handout that was distributed before classes. Each week students were required to read a section of the notes in the light of key questions that either were on thematic topics or were problem-type questions in which legal principles were to be applied. I reduced lectures to one at the beginning of each week and divided the remaining classes into seminars of which the students had to attend one per week.

The effect of the change was remarkable. Perhaps for the first time, the minds (and not simply the pens) of the students were actively engaged in the course during classes. The smaller class sizes for seminars, the removal of the distraction of continuous note-taking, the opportunity for preparation meant that there was the chance for genuine interchange between the students, the subject and me. This interchange could occur in a measured, incremental way during the course of the year. A far greater number of students now contributed in class, and it was gratifying to see the growth in their confidence and ability in the subject. There was now a greater assessment focus in that the questions I formulated for class discussion formed the basis for the internal assessment and examination. For me, teaching became more pleasurable – I was repeatedly stimulated by the new insights that students expressed in their interpretation of the Roman law sources.

The basic format that I adopted for Roman law continued until the end of my teaching at Natal University. In 1988, I moved to Canterbury University in Christchurch, New Zealand, where I continued with this format. With few exceptions, students expressed their satisfaction at being freed from the teaching-dictating method and the chance to engage in their learning in a focused way during the academic year. Able students blossomed and classes became a creative learning opportunity for those concerned.

At the end of 1991, I moved to the newly-established Law School at Waikato University in Hamilton, New Zealand, and I have remained there since. This Law School consciously addressed itself to student-centred learning through small-group teaching and the provision of course materials for discussion. It was thus in an environment conducive to innovation and effective teaching that I continued to develop my approach to teaching. I was assisted by my wife, who was a member of the Teaching and Learning Development Unit at the university.

A further landmark in my academic career was my appointment at the end of 1991 to a part-time, quasi-judicial position as a Referee in the New Zealand Disputes Tribunals, modelled on the Small Claims Tribunals of Australia. Since my year in the solicitors' office in 1976, I had had very little exposure to the practice of the law. I found my weekly mornings in the Tribunals an exhilarating experience as I experienced at first hand the law in action. My understanding of law and the legal system deepened immeasurably, and the subjects that I taught came alive for the students through reference to the cases that I had decided. My Tribunal experience offered my students and me invaluable insights into how legal knowledge was applied in human situations.

The next important development in my teaching career took place in the late 1990s with my introduction of incentive-based preparation exercises. This was prompted by two problems I had encountered. One problem was the uneven engagement of students in preparation and participation in seminars. Students who were not engaged missed out on key learning opportunities and were not prepared for assessment, with the learning activities in class dominated by the same self-selecting group of students. The other problem that I experienced was the lack of formative assessment that would provide mutual feedback between the students and me. Issues that needed to be clarified sometimes surfaced during class discussion, but otherwise I was left to make judgments on student work only in summative assessment. Students were not alerted to areas in their work that needed to be improved, and I was not attuned to recurrent difficulties that needed to be rectified in my teaching.

The practice that I introduced was that students were required to prepare a one-page written response to focused questions on course materials to be handed in at the start of each seminar class. The preparation exercises were read and returned with relevant comments at the following class. A percentage of the final mark was assigned to students who completed the preparation exercises and attended the seminars. The exercises were ungraded so that students were not penalised for initial failures in understanding, but contained qualitative feedback to assist students to improve.

The introduction of the preparation exercise technique resulted in a significant improvement in student engagement, reflected in student class discussion and higher student achievement. The technique also provided effective formative assessment for the students and me. All of this was in line

with the overall development of my teaching career towards a student-centred approach that aligned teaching and assessment.

The final key development in my teaching career was a heightened interest in the theory of tertiary education. This interest was stimulated by my research for the University of Waikato Vice-Chancellor's Medal for Excellence in Teaching 2003. This challenged me to reflect upon my conceptions of teaching and its theoretical underpinnings. I was heartened by the sense of vocation for teaching that shone through the works of Parker J Palmer and others. I was encouraged to shift my views and practices to such areas as the learning outcomes, key competencies and criteria that I required of my students. My new interest in the theory of tertiary education led to my completion in 2004 of the University of Waikato Postgraduate Certificate in Tertiary Teaching, which provided a useful stimulus and framework for further endeavours in my teaching career.

Present Philosophy and Practice of Teaching

Here let us breathe and haply institute
A course of learning and ingenious studies.⁸

Shakespeare pinpoints that learning should be based on "us" – a joint experience – and that there should be space for life-giving forces and fulfilment for those concerned. In line with this, my present philosophy is that teaching is a shared creative activity in which the teacher assists the student to develop understanding and skills in a particular subject area. For me, teaching involves conversation and interchange amongst teacher, student and subject.

I shall now explain my present concept of teaching with reference to my major teaching commitment at Waikato University Law School, which is to the Legal Systems course. Legal Systems is one of three courses taught to around 180 first-year LLB students. I shall explain the key elements of my teaching philosophy and the teaching practices that I use in Legal Systems to reflect these elements. I present my philosophy and practice in terms of ideals that are sometimes realised and which will no doubt undergo further change in the future.

8 *The Taming of the Shrew*, Act I Sc 1.

The Role of the Teacher

I believe that the good teacher brings to his or her role a strong sense of personal identity and enthusiasm for teaching.⁹ The effective teacher is a mentor figure, modelling what is taught through their actions.¹⁰ The teacher should provide guidance in a collaborative way, although the precise nature of the teacher's role will vary according to the level of the teaching/learning activities.¹¹ The teacher should strive to be an authoritative, though not authoritarian guide, teaching with credibility and authenticity in their field.¹² In order to be an effective director and guide, the teacher should acquire a solid knowledge base and affinity with the subject.¹³

I am fortunate that the Legal Systems course covers areas generic to law, so I am able to draw upon my experience and insights gained throughout my life in the law. Furthermore, much of the course relates to my legal historical interests and judicial experience, so I have an enthusiasm to teach in the subject. Conscious efforts are made to assist students and be approachable, that is, for teaching to occur in a positive, comfortable and relaxed atmosphere, subject to a measure of detachment required by the professional relationship with the students.

I am also fortunate in that I have done considerable research and published extensively in areas covered by the Legal Systems course. The student resources include references to my works and other texts, but the students' attention is strongly focused on primary materials, notably statutes and judgments. The books that I have produced in these areas have required further editions, so I have continually updated and refined my knowledge and understanding. Each year in Legal Systems is a stage in my ongoing journey of discovery in the field as I gain new insights from my students and the subject matter.

The Role of the Student

The student occupies a central role in the educational process.¹⁴ Ultimately, what students do determines whether changes in their understanding actually take place.¹⁵ Thus, teaching

9 Palmer, *supra* note 3 at 90-91.

10 I Shor and P Freire, *Pedagogy for Liberation* (South Hadley, Mass: Macmillan, 1987) 160.

11 Biggs, *supra* note 5 at 72.

12 S Brookfield, *The Skilful Teacher* (San Francisco: Jossey-Bass, 1990) 134.

13 Palmer, *supra* note 3 at 105.

14 Palmer, *supra* note 3 at 31.

15 P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 131.

should be a co-operative activity in which talk passes between teacher and students.¹⁶ In the words of Katz, one should teach as though students mattered.¹⁷

It should be recognised that the student in the educational process is not simply a mind waiting to be trained. The student should be seen as a whole person, including their affective/emotional dimensions. This requires that the individuality of each student should be recognised. Furthermore, the achievements and progress of each student should be continually acknowledged to encourage growth in self-confidence.¹⁸ Student concerns and questions should be listened and responded to with respect. Students should have a sense of being seen and heard.¹⁹ It has been recognised that affirming students' self-esteem is crucial to sustained learning.²⁰

Students, particularly in large classes and in increasingly multi-cultural countries, present considerable cultural and social diversity. Teaching practice should enable the teacher to understand the variations that exist in student understanding to be alert to differing student misunderstandings and needs.²¹

In the Legal Systems course, efforts are made to place the students at the centre of the learning process. There is one lecture per week at which attempts are made to engage students through providing materials beforehand with the idea of giving them opportunities to contribute in class. It is recognised that the voice of students can much more readily be heard in smaller groups so the class is divided each week into six groups for a double-period seminar. Every student is encouraged to contribute in seminar classes, so that the wisdom of mature students and the insights of younger students are presented for the betterment of all in the class. Students are required to prepare answers to focused questions on course materials to hand in at the start of the seminar being a one-page summary of their responses. This preparation gives many students greater confidence to contribute to seminar discussions and to learn from each other.

16 Id at 167.

17 J Katz, *Teaching as Though Students Mattered* (San Francisco: Jossey-Bass, 1985).

18 Brookfield, *supra* note 12 at 157.

19 Palmer, *supra* note 3 at 151.

20 Brookfield, *supra* note 12 at 95.

21 M Prosser and K Trigwell, *Understanding Learning and Teaching* (Buckingham: Society for Research into Higher Education and Open University Press, 1999) 135, 169.

In the course an effort is made to value students as whole human beings. I learn and use the name of each student; this process is facilitated by reference to the weekly attendance sheets and by weekly class interaction. The weekly preparation exercises, which are marked and returned each week, allow for the achievements and progress of students to be continually acknowledged. Use is made of audio-visual teaching material and the fun aspect of learning is encouraged. At the last lecture of the year, I compose a song that reflects major themes covered and which is presented by students with accompanying music.

Efforts are made in the teaching and assessment of the course to cater for a diversity of student abilities. The class includes the usual range of academic abilities, with students who are set to make their mark in the legal world and others whose talents are better directed elsewhere. New Zealanders of European extraction mainly populate the student body of the Law School, but the school has the highest proportion of Maori students of any Law School in New Zealand. Some students from overseas include those from Pacific Island countries and Asia. In addition, there are New Zealand residents whose mother tongue is not English and who have different cultural traditions. Another feature of the Waikato law student body is the range in ages: there is a high percentage of mature age entry students, some of whom are without formal academic entry qualifications.

In responding to this diversity, students engage in various forms of assessment and interaction, including written tests, essays, oral and visual contributions. The weekly preparation exercises allow me to become aware of the different learning experiences and the needs of each student. The course offers a separate stream for Maori students conducted by a Maori lecturer. At the start of the year, the self-introduction of the students in each of the streams immediately alerts the students to possible peer groups they can form. To foster peer group learning and support, in the early weeks of stream meetings I direct the class to divide into small groups in order to discuss a set topic to report back to the group as a whole.

Many law students have reported on the peer group as being particularly helpful in the law learning process. Whereas students from other cultures may be shy about asking questions or making comments in class, their peer group provides a safe environment and reassurance that they are not on their own. Maori students in particular demonstrate their need for peer group formation, to replicate the "awhi"

(embracing) communal support of their own culture and to counteract the isolation that a number of them experience.

Educational Development in the Subject

I believe that teaching should involve more than the transmission of knowledge, referred to by Freire as the banking of deposits into empty vaults.²² A course of learning should be designed to engage rather than energe.²³ Teaching is most effective where students are engaged in learning activities that are related to the course objectives. In this way, teaching has the optimum chance of assisting the majority of students who do not spontaneously reach the standards required.²⁴ Good teaching is directed to the development of understanding and of academic and professional skills. This should mean that the student integrates knowledge and skills.²⁵ Teaching should also be geared towards developing critical thinking.²⁶ This is important in the teaching of law, where true understanding requires an appreciation of the human context of legal developments and openness to alternatives.²⁷

Good teaching focuses on depth rather than breadth, to facilitate deep rather than surface approaches to learning.²⁸ Palmer, in encouraging educators to “teach more with less”, remarked that “each discipline has an inner logic so profound that every piece of it contains the information necessary to reconstruct the whole”.²⁹ Teaching should be based upon a clear structure. It has been observed that the human mind works best in patterns of meaningful connection.³⁰ Effective teaching is conveyed in a way that makes learning accessible – this involves building on the known, making use of students’ existing knowledge.³¹ Pervading teaching should be consistent and honest action – the building of trust – is an important foundation for meaningful education.³²

Good teaching is holistic; in particular, it should align assessment with the objectives and teaching methods of the course.³³ Student perceptions of what is recognised for

22 P Freire, *Pedagogy of the Oppressed* (London: Penguin, 1970).

23 Palmer, *supra* note 3 at 133.

24 Biggs, *supra* note 5 at 8.

25 *Id* at 51.

26 Brookfield, *supra* note 12 at 20.

27 R McGechan, “Preface” (1953) *Victoria University of Wellington Law Review* 9.

28 Ramsden, *supra* note 15 at 137.

29 Palmer, *supra* note 3 at 122-123.

30 *Id* at 127.

31 Biggs, *supra* note 5 at 93.

32 Brookfield, *supra* note 12 at 131.

33 Biggs, *supra* note 5 at 11.

assessment purposes have a substantial impact on their learning behaviour.³⁴ Assessment should reinforce learning. Biggs has remarked that assessment is the “senior partner in learning and teaching”.³⁵ Formative assessment should play a key role and should help to lessen the anxiety of assessment for students.³⁶ There should be assessment incentives for formative assessment that reward the intrinsically motivated students and encourage students who are motivated by external rewards.³⁷

The course outline of Legal Systems notifies students of the aims and objectives of the course. These are to develop an understanding of the basic principles and features of the New Zealand legal system, to develop legal skills of critical analysis of cases and application of legal principles to factual situations. The lecture for each week outlines the principles and features of an aspect of the legal system, models the approach which students could take to the topic, and guides students to readings with focused questions on that topic. The seminars each week provide the opportunity for enhanced understanding through clarification of questions and issues arising out of the lecture, discussion of the student readings and focused questions on the legal system. The streams also allow opportunity for students to develop legal skills of critical analysis of cases and to apply legal principles to factual situations. The materials selected include cases that have had differing outcomes (successful appeals and split decisions) to highlight the struggle for competing principles to engender in students a critical spirit of analysis.

The preference for depth rather than breadth is shown in the fact that each week the course is devoted to a particular theme and all the teaching activities of the week are devoted to that theme. Key ideas, information and skills relating to the theme are summarised and reinforced. Each theme forms part of a six-week module that is assessed as a whole at the end of the module. There are four modules in the course; these are presented in a logical progression. The course outline presents students with the structure of the course, which aims to provide the building blocks for a step-by-step development of the students’ understanding and skills.

34 R Wakeford, in H Fry, S Ketteridge and S Marshall, *A Handbook for Teaching and Learning in Higher Education* (London: Kogan Page, 1999) 58.

35 Biggs, *supra* note 5 at 160.

36 Ramsden, *supra* note 15 at 212.

37 S Newstead and S Hoskins, in Fry et al, *supra* note 34 at 80.

Efforts are made to present the course in a manner that is accessible and easy to understand with simple terms and concrete examples. A range of teaching techniques is used. These include overhead projector transparencies, teaching on whiteboards or greenboards, and dividing the class into discussion groups to report on questions. These methods are supplemented in seminars where all students have the opportunity of presenting ideas and information orally to the group and to debate on controversial areas. Last year, drawing inspiration from my 77-year-old mentor at Natal University, I decided to learn and use PowerPoint. This system, being attuned to the visual and computerised experiences of many of our students, proved to be an attractive and helpful aid to teaching. However, it became readily apparent that it held the temptation to support a polished public performance rather than a dialogue with students, and so needed to be used with caution.

The course outline sets out the assessment tasks and criteria required of the students relating to grades from A+ to C. There is encouragement for ongoing completion of formative assessment tasks by students: 10% of the final mark is assigned to students who complete the weekly preparation answers on the focused questions set and attended the weekly seminars. At the end of each of the first three quarters there is graded internal assessment of the work covered (each counting 10% of the final mark), and the examination includes areas taught throughout the year. The graded internal assessment questions and examination questions are based on the readings and focused questions the students have had to prepare and discuss each week in seminars. Thus, through completion of the weekly exercise, students further their understanding and practise the skills required for the graded internal assessment and examination. Students can approach this summative assessment with reduced anxiety and enhanced confidence.

Evaluation of teaching

Stand by and mark the manner of his teaching.³⁸

In recent years I have made it my practice to ask my students to “mark the manner” of my teaching. The primary vehicle for student appraisals has been the Teaching and Learning Development Unit that organises and processes anonymous student evaluations throughout the University

³⁸ *The Taming of the Shrew*, Act IV Sc 2.

of Waikato. These appraisals have revealed encouraging quantitative scores and indicated satisfaction with various aspects of my teaching.³⁹

In 2004, I conducted a special evaluation of the incentive-based preparation exercises that form an important part of my teaching. In my Fair Trading course, I devised a questionnaire that was handed out with the course appraisal in the last class. The main qualitative response was that the exercises made students do the readings, provided preparation for group discussion in classes and feedback on how to improve and practise for the assessment. In terms of quantitative results, the overwhelming majority of students believed the exercises encouraged engagement in the course (learning step-by-step), gave greater confidence to contribute to class discussion, enhanced the level and value of this discussion, allowed for advice on improvement during the course, provided the opportunity to practise the skills required for summative assessment, reduced anxiety and enhanced confidence in approaching this assessment.

I also analysed the results in the Fair Trading course to explore the linkage between completion of the preparation exercises and the final grades of students. The results showed a close correlation between completion of the exercises and academic success. For example, all students who achieved a final grade in the A range completed the required exercises and attendance, the great majority of those in the C range (55-50%) or below did *not* fulfil the requirements.

While my teaching evaluations have been the cause of satisfaction and encouragement, I am aware that problem areas have surfaced. First, it is apparent that a student-centred approach to legal education requires a considerable time commitment for academic staff. It has been observed that “even the best law teacher is likely to suffer from assessment fatigue”.⁴⁰ This fact has become increasingly problematic in the New Zealand context where a recent Performance Based Research Funding exercise has placed considerable pressure on staff to spend more time on research activities.

I believe that there are several lessons to be learnt in this context. First, the staff workload involved in student-centred teaching needs to be properly acknowledged in the allocation of staff teaching loads. Secondly, the practice of teaching

39 The most recurrent comments on teaching were that it was clear, interactive, well structured and indicated what was expected of students.

40 R BurrIDGE, K Hinett, A Paliwala and T Varnava, *Effective Learning and Teaching in Law* (Kogan Page, London, 2002) 73.

that I have described is feasible where courses attract small numbers or where courses are team taught so that staff are responsible for only a certain number of seminar classes. It is sensible to recognise that more economical student-centred teaching methods (for example, involving oral feedback and brief written responses) need to be applied to large classes.⁴¹ Thirdly, there need to be synergies involving teaching and research, so that staff are engaged in teaching in areas where they are research-active, and retained in these areas from year to year as far as possible.

The second major problem area that has surfaced is the continuing lack of engagement of certain students. This is seen in their non-completion of preparation exercises and in their resultant poor academic results. A possible answer to this is the monitoring of student involvement in course activities. At intervals during the course I would contact those who are not engaging in the required work to ascertain the reasons why, attempt to address these reasons, and emphasise the benefits of their involvement. However, I have come to the realisation that I have to grant some students the right not to learn.⁴²

Conclusion

Hitherto ... I have labour'd,
And with no little study, that my teaching ...
Might go ... safely; and the end
Was ever, to do well.⁴³

This quotation points to key lessons that I have learnt on my teaching journey. The first is that teaching is an ongoing experience of learning, involving considerable labour and study. It has rightly been said that one cannot teach except by constantly learning.⁴⁴ In this regard, I have found that my development as a law teacher has been enhanced by various factors, including my recent exposure to the practice of law and the theory of tertiary education.

The second lesson is that a teaching career is subject to the desire for safety on the part of both teacher and student. A relevant factor here has been the environment in which I taught and the extent to which it was supportive of good teaching. Safety caused me to begin my teaching career with

41 T Angelo and P Cross, *Classroom Techniques: A Handbook for College Teachers* (San Francisco: Jossey-Bass, 1993).

42 Brookfield, *supra* note 12 at 162.

43 *King Henry VIII*, Act V Sc 3.

44 K Eble, *Craft of Teaching* (San Francisco: Jossey-Bass, 1988) 9.

the approach that had predominated my own university education. A recent pull of safety has been the impulse to retreat into purely research-related activities that satisfy the demands of the current academic environment. Safety has also been a factor in some of the frustrations and disappointments that I have experienced in my career. Some of these have been self-inflicted, having arisen out of lapses into the one-sided lecturing that offers the allure of security. The antidote to these lapses has been the detached boredom that has quickly descended on the class and me, prompting a rethink on my part in all our interests. Frustrations and disappointments have also arisen out of the safe places of some of my students, in particular, their apparent determination not to respond to the challenge of changes that is part of the educational enterprise.

However, the third lesson is that for those of us for whom teaching is a vocation, there is a countervailing impulse continually "to do well" for our students. It is this impulse that has sustained my belief that it is better to experiment in teaching and sometimes fail, than not to experiment at all. This impulse stemmed from my desire to be of service to others, as reflected in my first halting steps towards student-centred education, and has sustained my continuing endeavours to improve my teaching practice. My impulse to do well in my teaching career continues to draw support from the personal qualities given to me by my family, the teachers who inspired me by their passion, expertise and kindness, my wife who has been a source of educational wisdom and the thousands of students whose eagerness to learn has continually reinvigorated me. They have all been part of my journey as a law teacher, as we have striven together to teach and learn well.

TEACHING NOTE

Law School Teaching: Linking Learning with Law Practice

*James K Eckmann**

Introduction

This Note features a pedagogical method in a specific law practice course to suggest that this method can assist in meeting the challenge law teachers have faced for as long as there have been students, namely, how can the students be better prepared for the practice of law. The pedagogical method predominately uses the active learning technique of student presentations. Stated another way, the course is mainly taught by students. The course, entitled “Practising Law: Successful Strategies”, is bread-and-butter practical dealing with topics such as client care, marketing, hiring and motivating staff, insurance, office location and set-up, law partnership concepts, and retirement planning, to name a few.

This Note explores the need for this type of course, then gives a brief historical overview of law teaching, describing the author’s law practice course introduced into the curriculum in 1996, giving some examples of the students’ creativity and contributions. The note closes with a discussion of the results of the pedagogy from evaluations submitted anonymously by the students as part of law school routine at the end of each term.

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The Need for a Law Practice Course

One need not look very far to find critiques by law teachers of law schools and their pedagogy.¹ At the same time, lawyers looking back on their academic training overwhelmingly favour healthy doses of practical courses as part of law school efforts.² Although the two groups, law teachers and lawyers agree on many items, there is also a substantial disconnection between what lawyers say are important and what law schools emphasise.

Both groups, academics and attorneys, agree that law schools should do more than just “teach law”. Both agree that knowledge of the law and “thinking like a lawyer” are key skills. Both agree that business savvy, communication skills, collaborative abilities and problem-solving capabilities are important. Practitioners go further, adding that negotiation, fact gathering and document preparation could be taught effectively, but only a quarter of practitioners responding to an earlier survey believed those subjects receive sufficient attention.³

The author undertook a survey in 2003 of graduates of California Western School of Law.⁴ The respondents join those from prior studies in their assessment that law schools need to do a better job of preparing their graduates for law practice.⁵ For example, in responding to the question of specified areas where they felt they needed more preparation when they started practising law, the two groups (those who did not take the Practising Law class [“general alumni”] and those who did [“course alumni”]) expressed concerns, though the course alumni less so, as the following table shows.

- 1 D L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford: Oxford University Press, 2000) 185-199 and numerous authorities there cited.
- 2 Rhode, *supra* note 1 at 190.
- 3 Rhode, *supra* note 1 at 190 and studies there cited.
- 4 There are roughly 2,000 alumni in the law school's electronic database. Individual e-mails were sent in late May 2003 to those individuals; they were invited to click to a link that displayed the survey. The participants entered their responses on the templates provided, added any narrative comments and then submitted the completed survey. The responses were electronically tabulated using statistical software in June 2003. Responses received totalled 305, two-thirds from graduates within the past 12 years. Ninety-six took the time to add narrative comments, some of substantial length. Nearly 90% were practising lawyers and 62% were in private law firms. Eighty percent of those were in law firms of nine attorneys or fewer. Fourteen stated they had taken the Practising Law class.
- 5 Rhode, *supra* note 1 at 190. It could be the mission is almost impossible, for what educational structure could totally prepare the law graduate for the challenge of law practice? Thus, in most instances the task is framed in terms of better preparation.

Topic	General Alumni (#/%)	Course Alumni (#/%) ⁶
Marketing and bus devpmnt	159/54.6%	7/50%
Managing a practice	151/51.9%	4/28.6%
Client care	29/44.3%	2/14.3%
Funding a practice	114/39.2%	2/14.3%
Hiring and training staff	88/30.2%	None
Partnership aspects	83/28.5%	2/14.3%
Other (not described)	50/17.2%	6/42.9%

In answering the question whether attendance at a law practice course should be mandatory, 121 (41.6%) general alumni “strongly” agreed, and an additional 103 (35.4%) “moderately” agreed, for a total of 77%. The course alumni were even more definite: 10 (71.4%) “strongly” agreed and three (21.4%) “moderately” agreed, for a total percentage of 92.8%. The course alumni also recommended law students take a law practice class and voted in the exact same numbers as in the previous sentence. These total percentages are significant expressions of how law graduates view the importance of this type of course.

Assuming the respondents represent a reasonable cross-section of law graduates, law schools can do more to meet the expressed importance of “law practice” type courses. The author laboriously reviewed the websites of 175 or so law schools accredited by the American Bar Association to see how many law schools offer law practice courses. That review revealed the following:

- Such courses are offered in only one-in-five of the 175 or so ABA-accredited law schools in the United States.⁷

6 The “#” symbol refers to the raw number of responses in that category. The “%” symbol refers to the percentage this raw number bears to the total number of responses.

7 The websites of all the ABA-accredited law schools, at <http://www.abanet.org/legaled/approvedlawschools/alpha.html>, were reviewed in March and April 2003. Almost all provided Course Descriptions or similar curricula information, although 13 did not. Some of the “legal profession” courses covered ethical issues exclusively; if so, these were not counted. Any doubt was resolved in favour of labelling the courses “law practice”. Not included are internship programs, wherein law students perform a variety of tasks in law firms and obtain credit hours. Such programs doubtlessly expose the students to law firm operations, though not designed for systematic study of the practice of law. Also not included are clinical programs; these programs also give hands-on learning experiences. See discussion accompanying *supra* note 16. Although the author is reluctant

- A law practice course is mandatory in only one law school.⁸
- The course is an elective in the remaining 30 or so law schools.
- Though difficult to assess from course descriptions, the teaching style mainly appears to be of the case study, lecture or seminar style, or some combination of these three, with the instructor generally leading the class and making the presentations.
- One course requires interviews with practising attorneys, and submission of papers that summarise the lessons learned about law practice.⁹ Fewer than five courses expressly state practising attorneys are at least partially involved in the instruction.

In short, the marketplace (law graduates) is telling law schools what it needs. The providers (law schools) need to do more to meet that need. The history of law teaching, discussed next, may be partly to blame.

A Brief History of Law Teaching

Legal training started with the apprenticeship method, progressed to the proprietary law schools that emphasised practical aspects and ultimately to the modern model, now over 100 years old.¹⁰ For several decades the pedagogy in the modern model has been the case study method, wherein appellate opinions on related topics are briefed, analysed, contrasted, compared, and reviewed. The instructor questions the students about the facts, the holdings, and the reasoning of the cases under study.¹¹ This pedagogy is used to improve the students' critical thinking skills, although most who experience this "Socratic method" of instruction often conclude the purpose is (apparently) to provide a vehicle by which the instructor tortures, humiliates and embarrasses the students.¹²

to classify law schools, the website efforts revealed that only about six of the law schools which most would call "first tier" offered a law practice course.

8 The Norman L Wiggins School of Law, Campbell University, Blues Creek, NC.

9 Suffolk University Law School, Boston, MA.

10 F M Hart and J Norwood, "The Origins of Law School Education" in S Hoberman and S Mailick (eds), *Professional Education in the United States: Experimental Learning Issues* (Greenwood: Greenwood Publishing Group, 1994) 77-85.

11 *Id* at 76-78.

12 Professor Rhode described the conventional Socratic dialogue in law school as a one-sided exercise where the instructor "invites the student to

The Socratic method was combined with lectures to form the backbone of most law schools' pedagogy, a situation that still predominates.¹³ Researchers Hart and Norwood asserted the case study method has several disadvantages: it (1) injects a chronic adversarial model; (2) overlooks other necessary legal skills (such as negotiating and fact-gathering); (3) does not easily address ethical questions; and (4) limits the context to an appellate court's recitation, thereby often under-emphasising socially relevant information.¹⁴ Indeed, one recent author, changing slightly the words of a Yale law professor, wrote there are only two things wrong with law school teaching – its content and its style.¹⁵

A partial answer to those disadvantages emerged when law schools borrowed a teaching method from medical schools and formed clinical programs. Like medical students examining patients in a supervised clinic, law students are made available to those seeking legal services, often in impoverished settings, under faculty supervision.¹⁶ The scope and extent of the clinical efforts vary with the law student gaining direct experiences of interviewing and advising clients. Another method of introduction to law practice involves internships, where law students work in law firms, often in research projects and earn academic credits. Faculty coordinators are involved in such programs, although supervision and feedback usually come from the law firms.

Active learning techniques can also help impart important skills. For example, role playing or experiential learning was used in 81% of the skills courses (such as a trial practice course), although there are unresolved ambiguities in the Friedland study as to whether role-playing was a cameo feature or was extensively used.¹⁷ Other methods of teaching were listed as incidentals by responding law instructors, including student presentations, watching videos, and simulations. However, no textbook discussions of student-led classes in law school have

'guess what I'm thinking', and then inevitably finds the response lacking" (Rhode, *supra* note 1 at 197). As one can recall from philosophy courses, the original Socratic dialogues were more supportive and encouraging than those practised by some law professors.

13 S I Friedland, "How We Teach: A Survey of Teaching Techniques In American Law Schools" (1996) 20 *Seattle UL Rev* 28.

14 Hart and Norwood, *supra* note 10 at 78-79.

15 Rhode, *supra* note 1 at 196. The Yale Law School professor in question, Fred Rodell, actually attributed those shortcomings to legal writing: F Rodell, "Goodbye to Law Reviews" (1936) 20 *Va L Rev* 38.

16 Hart and Norwood, *supra* note 10 at 79-82.

17 Friedland, *supra* note 13 at 30.

been found¹⁸ and only one article sets forth the concept in any detail.¹⁹

Despite these commendable efforts to introduce law students to the realities of practice in developing needed skills sets, complaints and concerns persist that law schools could do more, as the section immediately above revealed.

The Practising Law Course Described

The course originated from an offhand remark by a law professor to the author at a reunion dinner in 1995 at Stanford Law School, to the effect: "You know, law schools under serve the students when it comes to teaching them about the practicalities of being a lawyer." That remark planted a seed and a few hours in the library launched the following efforts. First, I reviewed a number of law practice books and articles to conceptualise the class. That review yielded an outline that listed three dozen possible topics. Next, I met with the members of a networking organisation of alumni and added additional topics suggested in that meeting.²⁰ Time constraints forced me to trim or to combine topics to reach the target number of 21 topics. I researched these topics further and compiled a "Resource Guide", divided by topic, to distribute to the students. This is updated before each offering. The students are expressly encouraged to research further and bring in other resources. The Internet provides a wellspring of additional information.

The students are assigned randomly to teams at the first class. The syllabus states: "The goal is for teams to learn (and to exhibit) promotional, organisational and managerial skills lawyers need, which the business world calls entrepreneurship." The syllabus expressly encourages creativity although quite intentionally does not give any examples of it. There are

18 G F Hess and S Friedland, *Techniques for Teaching Law* (USA: Carolina Academic Press, 1999); Friedland, *supra* note 13.

19 A Greig, "Student-Led Classes and Group Work: A Methodology for Developing Generic Skills" (2000) 11 LER 81. Professor Greig used this pedagogy in a Torts course.

20 California Western graduates in the early 1990s created a monthly "Breakfast Club" out of necessity due to a meagre job market. This informal network of referrals, job leads and mutual support has continued over the years and now includes educational programs. The Breakfast Club assisted the development of the Practising Law course in several ways and responded to a survey. Indeed, during a meeting to hand out the survey they shouted out suggested topics, such as "Make sure they know about Rules of Court"; "They should know about forms"; "We never learned in law school how a lawsuit comes together. We just were taught the parts."

seven teams and each team presents three times during the term for about 30 minutes per team.

Typically, early student presentations follow the lecture format²¹ often with overhead transparencies. Soon creativity blossoms and a wide variety of presentations occur, discussed in the next section. After the first round of presentations is completed, an entire class is devoted to a roundtable of practising attorneys who candidly answer all questions about client care, financial aspects, partnership arrangements and the like. The students typically ask questions such as: "How much did it cost to open your law firm?" or "Where did your first clients come from?" or "How long before you concluded you wouldn't starve?" The predominant reaction of the students from the roundtable is: "We can do it (translation: "I can succeed in the practice of law"). Written student evaluations year after year show that the roundtable is a course highlight.²²

Written assignments are required. The students must keep and submit individual learning journals. A learning journal is a student's review of all the topics, including self-reflection on how various steps and recommended practices match to the student's strengths or test weaknesses.²³ Also, the students submit a 10-page plan of the 20 significant steps the student would take to create and operate his or her "Dream Law Firm". A formal "business plan" is not required, although the student is requested to specify why each step was chosen. Special arrangements are made for the final paper for those not certain about forming a law firm.²⁴ Thus, writing skills are prized as well.

A cautionary note should be added about creating a law practice course. First, law schools are constantly evaluating their curriculum. New courses cannot be added at the drop of a hat. So a "law practice" course will necessarily have to take its place in line with all the other courses under consideration, issues such as classroom space and instructor assignments will need to be addressed. This latter item raises a second issue. Studies show almost half of all law professors have no private

21 Are the students at first merely copying the pedagogy they've seen thus far in law school?

22 The roundtable is usually composed of several attorneys of various vintages with from five to nine years in practice. The Breakfast Club provides many of the panellists, year after year. See *supra* note 20.

23 Professor Greig noted another of her assumptions (in which this author joins) – self-reflection is an important aspect of learning: Greig, *supra* note 19 at 87.

24 For example, two team members hit it off so well they decided to form a law firm upon graduation. They were allowed to submit a joint paper.

practice experience. Going further, the “mean years of (private practice) experience for all law professors is 2.5”.²⁵ Thus, the faculty may decide law practice issues could be delegated, at least in part, to adjunct instructors.²⁶

What the Students Do

The author by no means is arguing that the following examples of student creativity will find their way into courtroom presentations or appellate court arguments. It is argued that the “process” of creativity constitutes a significant part of the instructional value. The reader will be tempted to say: “Yeah, but the use of poetry in the practice of law will never happen.” That’s not the point. Rather, this section asserts how creative students can be, and how differing methods can be employed to impart information. That knowledge will carry forward after law school so that the attorney can design a creative presentation appropriate to the venue and audience.

The first time we saw a PowerPoint presentation we were probably all captivated. PowerPoint is now a well-worn delivery system, though many expect it as part of almost any meeting.²⁷ Students sense this and use PowerPoint sparingly, rarely as an entire presentation. Skits are often employed to show marketing techniques or client care concepts. Home videos are effective. For example, one student dressing as and mimicking children’s PBS personality, Fred Rogers, gave a video tour of “forms” to a harried young attorney, while the third team member filmed them in the law library. That same team handed out to every student a mini-diskette that contained hundreds of forms typically needed in several practice areas.

Another team, teaching on staff training and morale, created and filmed “The First Day at Work” of a legal assistant. The video consisted of scenes of how not to treat any employee. In discussion afterwards, several students eagerly added stories about similar experiences working in law firms.

Another team, instructing on office space, took the class on a tour of a vacant space at a nearby office building, arranging for the leasing agent to be present to answer questions about

25 M R Ramos, “Legal Malpractice: No Lawyer or Client is Safe” (1995) 47 Fla L Rev 1 at 37, and studies there cited.

26 A surprising number of attorneys muse about “teaching someday”. A willing labour pool waits to be invited. Closer connections between the Bar and academia are always a good idea, plus adjunct faculty would probably bring more current information into the classroom.

rates, tenant improvements, utilities and other topics under study. That same team handed out a “tour brochure” which superbly covered the main points of leasing space.

The course has more than enough room for, and welcomes, the thespians. One team did a take-off of late night television, including a Top 10 list relative to equipping an office, a Dave Letterman-type interview of a fellow team member and concluded with “student on the street” video-recorded interviews to reveal what students believed was the most important equipment in a law office.²⁸ Another team was assigned this same topic a few years earlier. They visited an office supply store with the manager’s permission, filmed the typical equipment and furniture required, including prices, and taught from their video.

One student brought in his electronic keyboard, played musical accompaniment and sang vocals. Another, a mother of two young children, used the cadence, metre and rhyme of Dr Seuss (complete with large striped hat) to deliver her team’s key concepts as she closed their presentation. A student posing as a gangster who had used self-help in a contract dispute found himself as a defendant in a civil lawsuit. His team used his predicament to explain the arc of a civil case.

Game shows also come forward with contestants (including the entire class) asked for their views on the topic under study, including “Family Feud” and “Jeopardy” formats. Rewards for good answers often involve pieces of candy tossed to the class members. Excerpts from movies or television programs are also used. Some illustrate client care, marketing (or how not to), and funding problems lawyers can experience. One team, teaching on marketing, parodied a slick marketing seminar complete with sign-in sheets, coffee, juice, Krispy Kreme donuts, opening jokes, banter with the class, rah-rah mantras and a glossy handout.

This instructor makes special and supportive comments regarding stories told by the presenters, often from their summer job experiences or internship programs.²⁹ The students seem to pay more attention to their peers’ presentations of war stories than the instructor’s. In this regard, almost anything can be turned into a fascinating story, including The Rule

27 Audiences are becoming more and more adept at incorporating PowerPoint presentations into their sleep patterns.

28 They corralled on the sidewalk a long-time faculty member, known for his sense of humour, and we learned that “a bathroom fan that works” is important.

29 Storytelling can be an effective way to deliver information.

Against Perpetuities. One way may be to use a “Readers’ Theatre” format.³⁰

There are instances when things don’t go so well. Audio/visual equipment can malfunction or not be adequately cued in advance or provide other misadventures – such stumbles also provide learning opportunities. Teams can be dysfunctional. Students sometimes complain about uncooperative or lazy team members. Lack of effort or poor preparation reveal themselves when team members cover the same points, or in awkward hesitations or whispers about who will present next. One or two students may ask to switch teams in order to work with friends. No such requests have been granted. A perceptive instructor will have a reasonably accurate impression of the team members who are collaborating and working and those who are not and so can grade accordingly.

A little over half of the class time³¹ involves student-led efforts. The design of the course involves the instructor to act as a “back-up” for the student teams and in short lectures cover concepts, questions or realities the student teams missed or under-emphasised. The instructor also comments on the presentations, including speaking styles.³²

Discussion of Results

It is my opinion a law school pedagogy which engages and uses the students’ skills, energy, resourcefulness and creativity in the instruction process furthers the goal of delivering to the law school graduates various skill sets needed to be successful practitioners. This opinion is validated in several ways. First, the general assumption is that students learn in ways that are meaningful to them.³³ The students in structuring their presentations are automatically matching their learning styles to their peers. Student-led classes allow the students to have a voice in how information is imparted and the assumption is they do so in ways that engage their classmates.

30 R Donmoyer and J Yenne-Donmoyer, “Data as Drama: Reflections on the Use of Readers Theater as a Mode of Qualitative Data Display” (1995) 1 *Qualitative Inquiry* 402.

31 The class runs for two hours, once per week, for 14 weeks.

32 This can be done confidentially or openly. This instructor favours the former and writes compliments and critiques, along with suggestions for improvement. The goal is to encourage a communication style that will be most effective with lay clients and others.

33 Greig, *supra* note 19 at 85.

The second validation comes from the students themselves. The following are taken from written student evaluations from the past two years:

- “The class is unique and *important!* Having the students present the course material worked well because class was never mundane. We learned *practical* things.”
- “This is the most practical course I’ve *ever* taken.”
- “[I]t was fun to learn material that could be dry at times.”
- “Class participation ... was very refreshing because throughout law school [the] Socratic method was used.”
- “The information that was given will be vital throughout my legal career.”
- “Requiring group presentations was a great exercise.”
- “[B]y skits it was fun to learn material that could be dry at times.”
- “It helped [me] to become more confident in presenting in front of a group.”
- “I’ve really learned a lot about the ‘actual or real life’ practice of law.”
- “[We were allowed] to participate.”
- “[We were allowed to] be creative.”
- “The ideas for ‘real-world’ experience in setting up a practice were priceless.”
- “[This is] a great way to get the students involved in the class material by having them present several topics throughout the semester. It makes the class interesting and I have learned a lot in the process.”
- “This has been one of the most helpful and practical courses I have taken [in law school].”
- “This is one of the only *practical* courses offered [in law school]. It is extremely informative and fun.”³⁴ (Emphases in originals.)

The survey responses provide a third validation. Alumni of the Practising Law class strongly favoured a law practice course being mandatory and recommended this teaching style.³⁵

Finally, there are my observations. The learning journals submitted each year show constant and unrelenting attention to the bread-and-butter aspects of the course, even though

34 Not all is champagne and peaches: “This should be a 3 credit course for all the work”; “I thought it was a lot of work for 2 units.”

35 See discussion accompanying *supra* note 4.

the teaching is presented in skits, by home movies, or in other creative ways. Also, the students' final papers, in which they describe their steps to create and to operate their dream law firms, show a sound understanding of the basic principles, such as identification of their own core values and competencies, the importance of service to clients, funding, insurance, management, staff training and of numerous other critical aspects in undertaking a successful law practice. Lastly, and perhaps most importantly in my view, the development of communication skills, fostered by creativity and enthusiasm, is palpable. Students whose first presentations were made behind a lectern, head down reading notes with scant eye contact with the audience, morphed over time into presenters with good eye contact, growing ease away from the lectern and working the room.³⁶

Conclusion

Student-led classes offer a way for law schools to foster skill sets needed in representing clients, such as collaboration, negotiation, team dynamics, communication styles, visual and graphic aids, to name a few. These benefits can flow in any course.³⁷ In addition, a law practice course provides a way for students to be better prepared for the practical side of the legal profession.

³⁶ More than one student has advised that law firms are asking interviewees to make "presentations" as part of the job search process. In this regard, one student, painfully shy (and thus extremely courageous) made her first presentation in tremulous voice, head down, behind the lectern. She was urged to move beside the lectern for her second presentation. She did so. It was suggested she move out front for her third presentation, perhaps using 3x5 cards. She did so, but without any notes. As she left class that morning, she joyously shouted back, "I did it, Professor!" Law professors don't get many moments like that.

³⁷ Greig, *supra* note 19.